

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Universal Service Contribution Methodology

A National Broadband Plan For Our Future

WC Docket No. 06-122

GN Docket No. 09-51

**COMMENTS OF THE
UNIVERSAL SERVICE FOR AMERICA COALITION**

Todd D. Daubert
J. Isaac Himowitz
Aaron M. Gregory
SNR DENTON US LLP
1301 K Street, N.W.
East Tower, Suite 600
Washington, DC 20005
(202) 408-6400
todd.daubert@snrdenton.com

*Counsel for the Universal Service
for America Coalition*

Date: July 9, 2012

SUMMARY

The Universal Service for America Coalition urges the Federal Communications Commission (“Commission”) to adopt reform by (1) making the program as efficient as possible to reduce the contribution burden and to make the most of contributed funds; and (2) spreading the contribution burden out as widely as possible to all who benefit directly or indirectly from the universal service programs without unfairly burdening specific technologies or classes of customers. In order to fully and properly analyze any reform proposal, the Commission should develop clear goals and metrics by which reform proposals should be evaluated for consistency with applicable law and impact on consumers. Any specific reform proposal should be analyzed against these goals and metrics during a notice and comment proceeding before a reform proposal is adopted by the Commission.

The current USF contribution mechanism is too complex, and imposes unnecessarily high administrative costs on contributors. To address this, the Commission should act to simplify and clarify regulatory distinctions in revenue reporting to reduce the burdens associated with compliance. The Commission should also modify existing safe harbors for wireless and VoIP providers to increase their usage and efficacy. In addition, the Commission should simply and standardize the USF obligations of providers entering into a wholesale relationship for telecommunications service.

Although the current revenues-based contribution mechanism needs to be improved, the Commission should retain the fundamental structure of the revenues-based mechanism rather than adopt a connections-based mechanism, a numbers-based mechanism, or some hybrid combination of the two. Either of these mechanisms, or a hybrid system, would require providers and consumers to bear additional costs with no offsetting benefits.

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USA Coalition’s USF/ICC Contribution Reform FNPRM Comments

The Universal Service for America Coalition (“USA Coalition” or “Coalition”), by its attorneys, respectfully submits these comments on the issues raised by the Federal Communications Commission (“FCC” or “Commission”) in the Further Notice of Proposed Rulemaking released April 30, 2012 in the above referenced dockets.¹ As with all universal service reform, the impact of potential reforms on consumers must be the primary focus of the Commission. Contribution reform should improve services for all consumers, whether they benefit directly or only indirectly from the universal service programs, by:

- making the program as efficient as possible to reduce the contribution burden and to make the most of contributed funds; and
- spreading the contribution burden out as widely as possible to all who benefit directly or indirectly from the universal service programs without unfairly burdening or favoring specific technologies or classes of customers.

Accordingly, the USA Coalition respectfully urges the Commission to reduce the administrative and compliance burdens that contributors, the Universal Service Administrative Company (“USAC”) Administrator and the Commission face under the current contribution system. The

¹ *Universal Service Contribution Methodology et al*, WC Docket No. 06-122 *et al*; Further Notice of Proposed Rulemaking, FCC 12-46 (rel. Apr. 30, 2012).

Commission should also expand the scope of contributors without unfairly benefiting certain technologies, classes of service providers or classes of customers.

I. The Commission Should Adopt Clear Metrics To Evaluate Proposed Contribution Mechanism Reforms.

In order to fully and properly analyze any reform proposal, the Commission should develop clear goals and metrics by which reform proposals should be evaluated for consistency with applicable law and impact on consumers. The Coalition respectfully submits that the potential reform proposals should be evaluated against the following goals and metrics:

1. The contribution mechanism must lead to a specific, predicable, and sufficient funding obligations.

The Act requires the Commission to ensure that there is a specific, predictable, and sufficient mechanism to preserve and advance universal service. Accordingly, the contribution mechanism must be designed to consistently ensure adequate funding to meet the needs of the Universal Service Fund without unpredictable swings in contribution rates that harm consumers and service providers.

2. The contribution mechanism must require all covered service providers to contribute on an equitable and nondiscriminatory basis.

The Act requires the Commission to ensure that the contribution mechanism is consistent with the principles of competitive and technological neutrality. Accordingly, the contribution mechanism must be sufficiently flexible and broad to apply neutrally to both existing and emerging service offerings without artificial distinctions between classes of providers or consumers.

3. The contribution mechanism should be inexpensive to administer.

The reformed contribution mechanism should be easier -- and less expensive for the FCC, USAC and providers -- to administer than the current mechanism. Expanding the contribution base while simplifying the basis for assessments would minimize both the opportunities for arbitrage and the burdens borne by the FCC, USAC and contributors associated with categorizing revenue, traffic, connections, numbers, or any other mechanism the Commission may be considering.

4. The contribution mechanism should not have a negative impact on communications resources or efficiency.

The Commission should ensure that any new contribution mechanism creates incentives for providers to use address resources efficiently, whether in the form of telephone numbers or IP addresses. The mechanism must recognize and account for the growing popularity of flat-rate, family plans, and alternative pricing options in the communications landscape.

Any specific reform proposal should be analyzed against these goals and metrics and put out for public comment, before it is adopted by the Commission. Specifically, the Commission should both (i) announce the specific goals or metrics for the contribution mechanism and (2) request comment on a specific, detailed contribution reform proposal before adopting any new contribution rules or mechanisms.

II. The Commission Should Act Expeditiously To Improve The Current Revenues-based Contribution Mechanism

A. The costs of the current contribution mechanism are unreasonably high.

The current USF contribution mechanism is too complex and imposes unnecessarily high administrative costs on contributors. Currently, the 2012 499-Q form, filed four times a year, estimates that the time to collect the requested information will take, on average, 10.0 hours.² In addition, the Form 499-A estimates that it will require an additional 13.5 hours to complete.³ In total, according to USAC's own estimates, it will take a contributor almost a week-and-a-half's worth of work hours to comply with its annual reporting obligations. Further, as nearly every contributor can testify, even the slightest change in either a contributor's revenue sources or in USAC's Form 499-A or 499-Q instructions can dramatically increase the cost associated with

² March 2012 Telecommunications Reporting Worksheet Instructions, FCC Form 499-Q, at 1 (2012).

³ March 2012 Telecommunications Reporting Worksheet Instructions, FCC Form 499-A, at 1 (2012).

compliance. Indeed, as a result of the complexities of the system, smaller contributors with limited staffs are often required to seek the service of outside counsel or consultants to determine their obligations, further increasing the overall costs of compliance.

These costs, however, must be borne given the high potential costs and penalties associated with mistakes in such filings. Specifically, inadvertent underreporting in such filings results in USAC audits, which can cost tens of thousands of dollars in legal fees, take years to complete, and require the company to operate in a cloud of uncertainty. Overly cautious overreporting assessable revenue, in contrast, results in lost revenue and higher payments for customers.

The complex rules associated with calculating contributions also results in unnecessary administrative expenses that are paid for with USF contributions. For example, audits are the second largest item on USAC's budget, costing more than \$6.5 million per year. Similarly, USAC's annualized legal budget for the third quarter of 2012 is \$1.5 million.⁴ These costs are ultimately borne by the consumers that pay the USF service fee on each bill, and who are both the ultimate contributors and beneficiaries of the Universal Service Fund. A simpler system could reduce these costs, and result in efficiencies for contributors, the Administrator, and consumers alike.

B. The Commission should act to simplify and clarify regulatory distinctions in revenue reporting.

Currently, Commission rules on the regulatory classifications of revenue required to be reported on the FCC Form 499-A and 499-Q are often vague or unclear. Further, USAC's instructions, the primary (and often sole) source of additional information for contributors attempting to complete these forms, are often confusing, and subject to change without notice or

⁴ Estimates based on USAC 2012 Third Quarter Appendices, FCC Filings available at <http://www.usac.org/about/tools/fcc/filings/2012/q3.aspx>.

comment. For this reason, the USA Coalition supports the FNPRM's proposal to adopt a formal, annual process for the Wireline Competition Bureau to update and adopt the Telecommunications Reporting Worksheets and their accompanying instructions.⁵

In addition, the instructions should be put out for notice and comment, and in sufficient time such that contributors have a meaningful opportunity to provide comments and questions. To accomplish this, instructions should be drafted and finalized prior to the year in which they go into effect, and with sufficient time for contributors to obtain clarification where necessary. This approach will provide contributors with prior notice of those revenues that they will be required to track and reduce the risk of errors that all contributors face when contributors are required to tease out revenues from general accounting reports at the end of the year.

C. The revenues-based contribution mechanism must be simplified, and the contribution base expanded to reduce opportunities for arbitrage.

The current contribution mechanism invites arbitrage while making compliance difficult for all contributors. Specifically, the current mechanism does not reflect today's pricing practices and thus makes it unnecessarily difficult to identify revenues as interstate telecommunications revenues subject to contribution. These difficulties are likely to worsen as voice, data, and text services continue to converge into unified offerings, and new technologies facilitate communications in new ways that further complicate the task of identifying specific service offerings as subject to contribution requirements (*e.g.*, interstate telecommunications services) or not subject to contribution requirements (*e.g.*, like information services and intrastate telecommunications services). Indeed, some service providers are already implementing plans to take advantage of this convergence. For example, in early June 2012, Verizon announced that it plans to stop counting texts and minutes on calls in favor of charging households based solely on

⁵ FNPRM ¶¶ 346-47.

the number of mobile devices and how much data they use.⁶ AT&T and other wireless providers are widely expected to follow suit. While the Coalition does not know how these providers plan to categorize revenue from these plans for USF reporting purposes, the potential difficulties all providers face are clear, and these difficulties create incentives for creative service offerings that are structured to minimize contributions rather than to best serve the wants and needs of consumers.

Indeed, the distinction between broadband, VoIP, wireless, and traditional voice services is growing increasingly antiquated, and the dichotomy between telecommunications and information services becomes less clear on a daily basis. For years, VoIP telephone service has been effectively indistinguishable from a consumer standpoint from traditional telephone service for most consumers. More recently, some service providers have begun offering VoIP services over wireless broadband connections which are nearly indistinguishable from a consumer standpoint from CMRS voice services, and these services are likely to become more available over the next few years as the availability of mobile broadband services increases.⁷ For these reasons, the Commission should expand the contribution base to cover as many types of voice and data service providers as possible, and simplify its rules to ensure that service providers cannot gain a competitive advantage over each other, or avoid the universal service contribution obligations, by using regulatory distinctions with no relevance to the market. Rather, to the extent that a service has a transmission component, it should be treated identical to all others, regardless of whether that transmission component is used to make voice calls, to surf the Internet, or to deliver text messages. In so doing, however, the Commission should not create

⁶ See Verizon's Share Everything Plan, available at <http://solutions.vzwshop.com/shareeverything/>

⁷ A list of some providers offering a variety of mobile VoIP services can be found at: <http://www.mobilevoipreview.com/>.

new classification burdens or inadvertently cause consumers to double contribute. Further, prior to adopting new contribution rules for text and data services, the Commission must provide a clear analysis of its jurisdictional authority for doing so and the methodology it intends to employ to develop the rules. Without this framework in place, Commission action is premature.

D. The Commission should modify existing safe harbors to increase their usage and efficacy.

The Commission should act immediately to make the various safe harbors more realistic and therefore more useful to contributors, USAC, and the agency itself. In particular, the current interstate safe harbor for wireless providers is set far too high. As a result, few wireless providers rely on the safe harbor, which unnecessarily burdens not just providers, but also USAC and the Commission. While wireless contributors are free to classify and report revenues based on the jurisdictional nature of their actual traffic during the relevant reporting period, this method should be used only in exceptional cases and should not be the norm in light of the administrative burdens associated with filing, accepting, and analyzing individual traffic studies.⁸ Specifically, traffic studies are expensive for providers, and review of those traffic expenses is an unnecessary expense for USAC. Monitoring traffic studies can also result in even more costly audits for both sides in the event of a dispute.⁹

The safe harbor for mobile services is already too high and may become even more so as consumers adopt mobile technologies as their primary telephones. Safe harbor levels should be set at rates that provide meaningful incentives for providers to make use of them, thereby saving

⁸ FNPRM ¶ 12.

⁹ The interstate safe harbor for analog Specialized Mobile Radio (SMR) revenues is 1%, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255, ¶ 6 (1998) (Wireless Safe Harbor Order), for paging revenues is 12%, *id.*, for wireless revenues is 37.1%, 2006 Contribution Methodology Order, 21 FCC Rcd at 7532, ¶ 25, and for interconnected VoIP service revenues is 64.9%, *id.* at 7545, ¶ 53).

money for both providers and USAC. Currently, the levels are so high that it creates significant incentives for mobile providers to conduct their own traffic studies and report revenues based on those rather than rely on the safe harbor. To address this problem, the Commission should review the traffic studies that providers currently submit and select a rate that reflects a reasonable approximation of the actual interstate revenues.¹⁰ Indeed, the Commission should consider setting safe harbors at levels that are even slightly below the average level to encourage providers to make use of the safe harbors rather than conduct unnecessary traffic studies.

E. The Commission should simplify and standardize the contribution obligations associated with wholesale arrangements.

The Commission should also take this opportunity to standardize and simplify the contributions obligations of wholesalers and those that deal with them.¹¹ Currently, the Commission's rules are vague, leading to abuses. Specifically, the Commission has directed wholesalers to have in place "documented procedures" to ensure that the wholesaler reports as "revenues from resellers" only revenues from resellers that "reasonably would be expected to contribute" to the Fund but failed to provide additional direction.¹² The Commission correctly notes that both providers and wholesalers incur significant compliance costs in documenting and

¹⁰ FNPRM ¶ 124 (acknowledging that the average interstate/international percentage of use of the wireless traffic studies on file with the FCC is 23 percent, with the median study reporting 19 percent interstate/international).

¹¹ FNPRM ¶ 169.

¹² Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18508 App. C (1997); *see also Universal Service Contribution Methodology*; Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP, WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14539, para. 15 (Wireline Comp. Bur. 2010) (NetworkIP Order) ("The Commission requires... that wholesalers have a 'reasonable expectation' that its reseller customers would contribute to universal service and have in place documented procedures to demonstrate compliance with this requirement").

enforcing procedures to support determinations as to which party is required to contribute for any services sold.

In addition, however, many wholesalers use the contribution exemption process as a means to impose unfavorable conditions on the provision of their services unrelated to USF contribution obligations. For this reason, the Commission should consider adopting a single, standardized provision that providers may use and refer to in their contracts. Specifically, the Commission should adopt a rule requiring wholesale providers to exempt a covered service provider from the obligation to pay contributions to the wholesale provider once the covered service provider submits a signed statement that:

I certify that the company is purchasing service that is incorporated into the company's offerings. I also certify under that either my company contributes directly to the federal universal support mechanisms for those offerings that incorporate this wholesale service, or that each entity to which the company, in turn, sells those offerings has provided the company with a certificate in the form specified by Commission rules.¹³

This will reduce the threat of regulatory extortion, and provide for a more smoothly functioning wholesale market.

III. Alternatives Contribution Mechanisms Discussed In the FNPRM Are Inferior To A Revenues-Based Contribution Mechanism.

Although the current revenues-based contribution mechanism needs to be improved, the Commission should retain the fundamental structure of the revenues-based mechanism rather than adopt any of the other proposals currently on the record (*e.g.*, a connections-based or numbers-based contribution mechanism). The problems with the current revenues-based contribution mechanism stem not from the concept, but rather the implementation. Specifically, the wide variety of service categories and exemptions has resulted in a complex system subject

¹³ See FNPRM ¶ 169.

to abuse. Above, the Coalition has identified some means to address these concerns. However, USF contribution assessment based on revenues remains a fundamentally fair and rational way to collect USF support. In contrast, the alternative proposals discussed in the FNPRM or previously proposed in these dockets would invite worse abuse while providing few redeeming benefits.

A. A Numbers-Based Contribution Mechanism Would Promote Arbitrage And Unfairly Burden Smaller Providers

If the Commission were to adopt a numbers-based contribution mechanism, both the telecommunications industry and large businesses in general likely would move to reduce the amount of numbers used. For example, enterprise customers could consider moving to PBX-style extensions using a single telephone number, rather than NANPA-assigned telephone numbers (*i.e.*, DIDs), in order to reduce their contribution obligation. Alternatively, providers may offer various forms of IP-based addressing systems as an alternative to traditional NANPA numbering. By making use of these options, consumers could significantly reduce the USF costs they bear, and providers would have the incentive to facilitate these cost savings by their customers.

This type of arbitrage is particularly problematic because the largest consumers of telecommunications – *e.g.*, large business, call centers, etc. – would be best positioned to make these types of changes. In contrast, residential consumers and wireless consumers will not have these options available to them. Instead, these consumers would remain subject to the full USF assessment requirement, even as more sophisticated telecommunications consumers use technological alternatives to significantly reduce their contribution obligations. The result will be an even greater percentage of the burden of supporting the Universal Service Fund falling on residential and small business customers than under the current mechanism.

Further, the Commission cannot address this problem by proposing to exempt certain vulnerable classes of customers (*e.g.*, low income or low usage). While the Commission proposal in the FNPRM to exempt certain vulnerable consumers from contribution obligations may be

well-intentioned, it will ultimately shift an even greater burden on those that continue to use NANPA numbers. The problem, which the Commission cannot address from within the confines of a pure numbers-based contribution mechanism, is that too many large users of telecommunications services will opt-out entirely. Exemptions for specific subclasses will only exacerbate that problem for those subscribers that continue to be required to contribute.

B. A connections-based mechanism, though inferior to a revenues-based mechanism, may be a viable alternative.

A connections-based contribution methodology provides a more-viable alternative to the current mechanism than a numbers-based mechanism, but still lacks key advantages of a revenues-based mechanism. A connections-based contribution methodology would be relatively easy to apply to all types of services, regardless of whether the service is a commercial or residential customer and involves voice or data services. Service providers could rely upon decades of precedent regarding the jurisdictional classification of connections in order to classify the connections they offer to their customers. Further, since connections are the foundation of all telecommunications and information services provided to end users, connections at least arguably reflect the benefit that particular end users gain from universal service, and therefore more accurately reflect the extent to which a network user should be required to contribute to the Universal Service Fund.

However, connections remain inferior to a revenues-based contribution mechanism for two reasons. First, high-use consumers under the revenues-based contribution mechanism are assessed (through the provider's pass-through charges) based largely on usage, and thus heavy-users contribute more than light-users to the Universal Service Fund. Indeed, low-usage consumers with little or no assessable traffic pay very little in universal service. This is consistent with the concept that those who reap the largest benefit from the telephone network should pay more to keep it operating throughout the country. A connections-based mechanism,

however, is based on the capacity of the connection rather than usage, which is identical for high-usage and low-usage consumers' residential and wireless consumers. By treating these consumers alike, the Commission would essentially be raising the contribution requirements for those consumers that simply wish to have such service available but who use it less, and lowering the costs for heavy users of the network.

Second, such a mechanism could inhibit the proliferation of wireless Internet services. Consumers increasingly own multiple devices capable of accessing the network through a multitude of mediums. Indeed, it is not unusual for a consumer or a family of consumers to own multiple computers, tablets, and phones, all of which may have their own separate dedicated access. As discussed above, Verizon, among other providers, has created a plan designed to meet exactly this change in demographics.¹⁴ The Commission should not adopt a contribution mechanism that will charge for each of these devices to access the network separately, without regard for how much or how the devices are used. Such charges may increase prices and reduce the options available to consumers, without any meaningful corresponding benefit for the Universal Service Fund. Further, assessing contributions based on connections for each individual device will unfairly burden wireless family plans, which are an important source of savings for many families that want each member to have access to mobile services.

IV. The Commission Should Reject Any Hybrid-Contribution Methodology.

As an initial matter, hybrid methodologies are inherently more complex than pure revenues-, numbers-, or connections-based methodologies, because service providers must implement, administer, and comply with two separate methodologies rather than just one.¹⁵

¹⁴ See Verizon's Share Everything Plan, available at <http://solutions.vzwshop.com/shareeverything/>.

¹⁵ FNPRM ¶ 322 ("We seek comment on a adopting a hybrid numbers-connections based methodology").

Further, service providers would suffer the detriments associated with each component of the hybrid methodology without enjoying any offsetting benefit because the individual components of each methodology share no common elements that could facilitate efficiencies.

The complexity and ambiguity in hybrid system will increase the burdens of compliance, create additional opportunities for arbitrage, and make compliance audits much more difficult, which ultimately would make the contribution mechanism less stable and predictable. A hybrid numbers-connections or hybrid numbers-revenue system has all of the potential disadvantages of both systems, along with the additional complexities associated with maintaining two different sets of records. These complexities, which exceed those associated with the current revenues-based methodology, would negate any benefits of contribution reform. Moreover, the costs associated with implementing these reforms would far outweigh any potential benefits, as providers are forced to develop entirely new tracking mechanisms. This burden will be particularly hard on smaller providers that lack large support staffs capable of devoting the necessary work hours to the project.

Conclusion

The USA Coalition urges the Commission to take reasonable steps to reform the current revenues-based contribution mechanism and expand the contribution base. However, the Commission should refrain from adopting an entirely new contribution mechanism, as the costs and inefficiencies of the alternative mechanisms under consideration far outweigh the benefits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal flourish extending to the right.

Todd D. Daubert
J. Isaac Himowitz
Aaron M. Gregory
SNR DENTON US LLP
1301 K Street, N.W.,
Suite 600 East Tower
Washington, DC 20005
(202) 408-6400
(202) 408-6399 (facsimile)
todd.daubert@snrdenton.com

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