

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS**

Michael E. Glover, *Of Counsel*

Christopher M. Miller  
David L. Haga  
VERIZON  
1320 North Courthouse Road  
9<sup>th</sup> Floor  
Arlington, VA 22201-2909  
(703) 351-3071

Attorneys for Verizon  
and Verizon Wireless

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**I. INTRODUCTION AND SUMMARY**

There is agreement among commenters that the Commission must make changes to the current contribution system used to fund the federal Universal Service Fund (“USF”). Numerous parties echo Verizon’s comments that the current contribution system can be inefficient and burdensome in ways that distort competition and harm consumers.<sup>2</sup>

However, little consensus exists about what should actually replace the current USF contribution methodology (if comprehensive reform is the right approach), and no party put forth a detailed plan for comprehensive reform.<sup>3</sup> Some commenters sketched out proposals, such as a

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> *See, e.g.*, Comments of the Universal Service for America Coalition (“USA Coalition Comments”) at 3-4; Comments of the Ad Hoc Telecommunications Users Committee (“Ad Hoc Comments”) at 2-3; Comments of T-Mobile USA, Inc. (“T-Mobile Comments”) at 1; Comments of Sprint Nextel Corporation (“Sprint Comments”) at 2 & 13; Comments of AT&T (“AT&T Comments”) at 1.

<sup>3</sup> *See, e.g.*, Comments of Voice on the Net Coalition at 1 (noting that the VON Coalition is “working with other interested parties in an effort to develop a more specific approach with broad support that is both equitable and efficient and will report to the Commission regarding any success with that effort”); Comments of Google Inc. at 11 (noting that “industry discussions

“numbers-based” or “connections-based” approach, but acknowledged that these methodologies involve various policy and implementation issues.<sup>4</sup> And, some parties sketched out new proposals but failed to provide sufficient detail to allow the Commission to adopt or other parties to respond to such proposals.<sup>5</sup>

In the absence of industry consensus, there is a need for interested parties to work together to develop an appropriate contribution system that will achieve the Commission’s goals in this proceeding – to improve efficiency, ensure fairness, and promote sustainability of the USF.<sup>6</sup> Verizon looks forward to working collaboratively with the Commission and other parties in fashioning a contribution methodology that will achieve these goals.

In the meantime, however, the Commission should take immediate steps on which there is consensus to improve administration of the current contribution system, which would make that system more efficient and equitable. Specifically, numerous commenters agree that the Commission should: (1) provide notice and comment before changing the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) and related instructions (collectively, “Worksheets”) and make any changes to the Worksheets prospective only; (2) improve the process for seeking guidance from the Commission on USF contribution requirements; (3) move

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*(footnote cont’d.)*

regarding a comprehensive proposal for reform are ongoing,” which may “soon come to fruition”); *see also* Comments of the Massachusetts Department of Telecommunications and Cable at 3 (claiming that it “would be premature for the Commission to overhaul USF contributions ... because current data is insufficient to support any type of long-term, comprehensive contributions reform”).

<sup>4</sup> *See, e.g.*, Ad Hoc Comments at 9-20; T-Mobile Comments at 5-6; Sprint Comments at 23-25 .

<sup>5</sup> *See* Comments of Alaska Communications Systems Group, Inc (“ACS Comments”) at 11-21; AT&T Comments at 19-21.

<sup>6</sup> *Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, ¶¶ 23-25 (April 30, 2012) (“*Notice*”).

to an annual contribution factor; (4) adopt a symmetrical limitations period for carrier revisions to the Worksheets; (5) revise the Commission's current safe harbors; and (6) streamline the reseller exemption process, although not in the ways proposed in the *Notice*.

Likewise, there is broad agreement among commenters that the Commission should not modify its bundling rules in reforming the current revenues-based contribution system. The proposed modification to limit carriers to contributing based only on either the standalone price of the assessable service or the full price of the bundle raises significant implementation, competitive, and legal issues. Furthermore, there is no principled reason why the Commission should prohibit a contributor from using any other "reasonable" approach to allocating revenues for USF purposes, particularly if the contributor uses the same approach to revenue apportionment that has been deemed appropriate and used for tax and financial reporting purposes.

Nor should the Commission adopt proposals that broaden the revenue base at the expense of a competitively neutral contribution system. Specifically, assessing contributions based on a "total revenues" approach would distort competition. Requiring one set of competitors to contribute on revenues from information services, equipment sales, and other non-telecommunications offerings, while relieving another set of competitors of the same contribution obligation cannot be reconciled with the Commission's goal for a competitively neutral contribution system.

The Commission also should not require USF contributions based on revenues from text messaging services. Notwithstanding claims by some commenters to the contrary, text messaging is an information service, not a telecommunications service. Furthermore, assessing contributions for text messaging services would not be in the public interest given that: (i) text

messages are not simply a substitute for voice communications; (ii) wireless services already are subject to excessive taxes and fees; and (iii) other comparable and competing messaging services – such as email and Internet messaging services – are exempt from contribution requirements. In short, assessing contributions for text messaging services would disserve consumers by unfairly increasing costs and would disadvantage providers by creating untenable competitive inequities and marketplace distortions.

Consistent with the principle of competitive neutrality, the Commission should nonetheless require one-way VoIP providers to contribute to the USF. These providers offer voice service in competition with providers that currently contribute to the USF, and no legitimate reason exists for the Commission to continue to bestow an artificial competitive advantage on one-way VoIP providers by exempting them from a USF contribution obligation.

Taken together, the comments underscore the important policy issues associated with assessing broadband services. At the very least, if the Commission decides to assess broadband revenues in the future, it must define precisely what services are or are not included within any contribution obligation and must adopt a definition of broadband that is competitively neutral. Similarly, the Commission should reject proposals to apportion broadband revenues between the interstate and intrastate jurisdictions. Such proposals are plainly contrary to the Commission's determination that broadband is an interstate service, and would also be difficult to administer.

Finally, commenters agree that the Commission should not modify its USF contribution recovery rules. There is practically no support in the record for proposals to: (1) require more granular disclosures about the amount or method of calculation of the USF contribution; or (2) prohibit a separate universal service line item on customer bills.

## II. COMMENTERS AGREE THAT THE COMMISSION SHOULD TAKE IMMEDIATE STEPS TO IMPROVE ADMINISTRATION OF THE CURRENT UNIVERSAL SERVICE FUND.

While commenters have not reached consensus on a comprehensive reform proposal, there is broad support for several immediate and significant steps to improve administration of the current system.

### A. Broad Agreement Exists for the Commission to Provide Notice and Comment for Worksheet Changes and to Make Changes to the Worksheets Prospective Only.

The record broadly supports the Commission’s proposal to implement a formal process to solicit industry input before making changes to the Worksheets.<sup>7</sup> As noted by multiple commenters, the current system by which changes to the Worksheets are made without advance notice to or input from contributors creates unnecessary and costly confusion.<sup>8</sup> Furthermore, because the Worksheets are often treated as substantive rules to which contributors are required to adhere, any changes must be subject to notice and comment requirements under the Administrative Procedure Act (“APA”), which currently are not followed.<sup>9</sup>

As proposed in the *Notice*, the Commission should identify, on an annual basis, any proposed changes to the Worksheets, explain the reasons for those changes, and seek comment

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<sup>7</sup> See *Notice* ¶¶ 346-347; see, e.g., Verizon Comments at 6-9; USA Coalition Comments at 4; Comments of the United States Telecom Association (“USTelecom Comments”) at 10; Comments of XO Communications Services, LLC (“XO Comments”) at 40; T-Mobile Comments at 9; AT&T Comments at 41-42; Comments of CTIA – The Wireless Association® (“CTIA Comments”) at 14.

<sup>8</sup> See, e.g., USA Coalition Comments at 5 (noting “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”); Comments of CenturyLink (“CenturyLink Comments”) at 7-8

<sup>9</sup> See, e.g., CTIA Comments at 15; CenturyLink Comments at 7-8; Comments of Comcast (“Comcast Comments”) at 30; T-Mobile Comments at 9-10; Comments of United States Cellular Corporation (“U.S. Cellular Comments”) at 41; Comments of Level 3 Communications LLC (“Level 3 Comments”) at 23.

on the revised form and instructions each year. *Notice* ¶¶ 5 & 346. The Commission should revise the Worksheets using the E-Rate Eligible Services List process as a model, making red line changes to the forms available for review by interested parties.<sup>10</sup> This process should occur sufficiently in advance of the relevant reporting period so that contributors will have adequate time to make changes to their tracking and reporting procedures as may be necessary to comply. And, as many commenters point out, any changes to the Worksheets should be effective prospectively only.<sup>11</sup>

**B. Broad Agreement Exists for the Commission to Provide Better Guidance About Contribution Requirements.**

Commenters agree that the Commission has the opportunity to improve the contribution system by encouraging open communication with USF contributors and creating a system by which contributors can receive clear guidance from the Commission on specific Worksheet questions.<sup>12</sup> Doing so would minimize any misunderstandings regarding report and contribution requirements and would promote the efficient administration of the contribution mechanism.<sup>13</sup> Consistent with this approach, the Commission should consider creating an advisory process, like that suggested by USTelecom, which would allow carriers to meet with the Commission

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<sup>10</sup> *See, e.g.*, AT&T Comments at 42-43; T-Mobile Comments at 9; Verizon Comments at 8.

<sup>11</sup> *See, e.g.*, AT&T Comments at 41-43; T-Mobile Comments at 10; USTelecom Comments at 10; Verizon Comments at 9.

<sup>12</sup> T-Mobile Comments at 12-13; USTelecom Comments at 10; Verizon Comments at 9-11; Level 3 Comments at 12-13 (recommending that the Commission establish a “system of private rulings”).

<sup>13</sup> *See, e.g.*, Comments of MetroPCS (“MetroPCS Comments”) at 21-22 (informal guidance from the Commission regarding contribution requirements, “much like the IRS guidance procedures, would instead provide carriers with some basic ‘rules of the road’ for USF contributions that can inform their revenue allocations”).

staff to explain their good faith interpretation of the Worksheets and have the Commission either confirm their interpretation or not without the threat of penalties for incorrect interpretations.<sup>14</sup>

**C. Broad Agreement Exists for the Commission To Move To An Annual Contribution Factor.**

Commenters generally agree that the Commission should move to an annual contribution factor, which would make payments by contributors more efficient and end user contribution obligations more predictable.<sup>15</sup> As commenters correctly note, the use of an annual factor rather than quarterly factors would eliminate the volatility inherent under the current contribution system and would be consistent with the approach used by the Commission to assess and collect other regulatory fees.<sup>16</sup>

There is no merit to claims that the use of an annual contribution factor would result in “wide year-to-year fluctuations.”<sup>17</sup> Based on experience with the Telecommunications Relay Service (“TRS”), which is funded using an annual contribution factor, it is unlikely that end user fees would fluctuate significantly from year to year if USF contributions were based on a similar annual factor. If anything, because the current system is premised on quarter-to-quarter true-ups

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<sup>14</sup> Ex Parte, USTelecom, *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Federal-State Board on Universal Service*, CC Docket 96-45; and *A National Broadband Plan for Our Future*, GN Docket 09-51 (Mar. 28, 2012); *see, e.g.*, USTelecom Comments at 10.

<sup>15</sup> *See, e.g.*, AT&T Comments at 43-44 (“The volatility of the quarterly contribution factor is confusing to consumers, expensive to carriers, an unnecessary.”); CTIA Comments at 17-18; CenturyLink Comments at 8; T-Mobile Comments at 11; USTelecom Comments at 11; XO Comments at 11; ACS Comments at 23.

<sup>16</sup> XO Comments at 12; *see also* Verizon Comments at 11; CTIA Comments at 18; T-Mobile Comments at 11; Comments of Intercall, Inc. (“Intercall Comments”) at 11-12 (“An annual contribution factor will produce more stable and predictable assessments than today’s quarterly method”).

<sup>17</sup> *See* Level 3 Comments at 23-24; Comcast Comments at 30-31.

of fund-size projection errors and contributors' revenue, there is much more volatility now.<sup>18</sup> Furthermore, by virtue of the Commission's decision to cap the size of the high-cost fund,<sup>19</sup> an annual contribution factor would likely be more predictable for customers than the current system.<sup>20</sup>

**D. Broad Agreement Exists for the Commission to Adopt A Symmetrical Limitations Period.**

Commenters agree that the Commission should establish a symmetrical deadline for revising revenues reported on the Form 499-A and should eliminate the arbitrary one-year deadline for making revisions that result in a decrease in the filer's contribution obligation when there is no corresponding time limit for modifications that would increase a filer's contribution.<sup>21</sup> It often requires more than one year for contributors to determine that Form 499-A revisions are necessary, particularly given the complexity associated with the current contribution system.<sup>22</sup> Furthermore, the Bureau Order that established the asymmetrical, one-year limit on revisions that reduce required contributions is invalid because it was adopted in violation of the APA and was

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<sup>18</sup> Notice at ¶¶ 351-52; see Intercall Comments at 11 (noting that “the quarterly contribution factor has increased or decreased by over one percentage point *nine separate times*” since the 4th quarter of 2008) (emphasis in original).

<sup>19</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 125 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011)

<sup>20</sup> See USTelecom Comments at 11 (“[a]n annual factor would ... help consumers budget”); Intercall Comments at 12 (“A switch to an annual contribution factor will eliminate the effects of seasonality and should level out the other factors affecting USF contributions”).

<sup>21</sup> XO Comments at 12-13; AT&T Comments at 46-49; CTIA Comments at 20-22; Verizon Comments at 12-15; MetroPCS Comments at 22.

<sup>22</sup> XO Comments at 13.

beyond the delegated authority of the Bureau.<sup>23</sup> Accordingly, consistent with the comments, the Commission should repeal this one-year limitation and adopt in this proceeding a symmetrical three-year limitations period for refiling Form 499s – regardless of whether the revisions increase or decrease required USF contributions.

**E. Broad Agreement Exists for the Commission to Revisit Its Safe Harbors.**

Commenters support the Commission’s revising its current safe harbors to better reflect market realities.<sup>24</sup> As noted by several commenters, the current safe harbors are not realistic and do not serve their intended purpose, which is to enable contributors to avoid the time and expense of conducting traffic studies in order to allocate revenues between the intrastate and interstate jurisdictions.<sup>25</sup> Establishing more realistic safe harbors upon which contributors could reasonably rely would help achieve the Commission’s goal of making “compliance with and administration of the contribution system more efficient ....” *Notice* ¶ 23. Accordingly, the Commission should revise the safe harbors as set forth in Verizon’s initial comments.

**F. Broad Agreement Exists for the Commission to Improve the Reseller Process, Although Not In The Manner Proposed In The Notice.**

Commenters agree that the current process for distinguishing assessable retail revenues from non-assessable reseller revenues is in desperate need of reform.<sup>26</sup> The contribution

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<sup>23</sup> *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 1012, 1016-17, ¶10 (WCB 2004); *see, e.g.*, AT&T Comments at 46-49; CTIA Comments at 20-22; Verizon Comments at 12-15.

<sup>24</sup> *See, e.g.*, Comments of the American Cable Association (“ACA Comments”) at 4-5; CTIA Comments at 10-11; USTelecom Comments at 12; Verizon Comments at 20-22; USA Coalition Comments at 7; Comments of Time Warner Cable, Inc (“TWC Comments”) at 12; Comments of RCA – The Competitive Carriers Association at 10.

<sup>25</sup> *See* USA Coalition Comments at 7-8; TWC Comments at 10.

<sup>26</sup> XO Comments at 7; USA Coalition Comments at 8-9; USTelecom Comments at 9-11 (“The processes surrounding wholesale-reseller situations are burdensome and ineffective”); T-

obligations of wholesale carriers and their customers are the subject of numerous USF appeals, and the current process is fraught with unnecessary complexity and confusion.<sup>27</sup>

Accordingly, as recommended by multiple commenters, the Commission should streamline the reseller process by making it more efficient to administer. Unfortunately, neither proposal outlined in the *Notice* – the so-called “value-added” approach or the enhanced reseller certificate approach – would accomplish this objective. In fact, both proposals would likely make a bad situation worse.

There is practically no support in the record for the value-added proposal, which the vast majority of commenters agree is unnecessarily complicated.<sup>28</sup> As numerous commenters point out, the value-added approach would require contributors to establish a process for: (1) tracking the amount paid for services obtained from multiple other providers; and (2) segregating “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

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(footnote cont’d.)

Mobile Comments at 8 (“The existing wholesale exclusion and reseller certification system has become highly problematic”); Sprint Comments at 19-20; Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC (“Fiber Provider Coalition Comments”) at 11.

<sup>27</sup> See Notice ¶ 148, n.268; see, e.g., *Request for Review of a Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific d/b/a TelePacific Communications*, Order, WC Docket No. 06-122, ¶ 16 (rel. April 30, 2010).

<sup>28</sup> Comcast Comments at 13 (“the value-added approach would appear to create considerable implementation difficulties, costs, and potential distortions”); Comments of Clearwire Corporation (“Clearwire Comments”) at 9 (value-added approach “raises difficult issues and, most importantly, does not appear to offer a meaningful improvement over the treatment of wholesale revenues under the existing revenues-based system”); Comments of Peerless Network, Inc. (“Peerless Comments”) at 2; Comments of Earthlink, Integra, and TW Telecom at 16; Fiber Provider Coalition Comments at 6.

(i.e., reseller use, end user use and internal use).”<sup>29</sup> In addition to being a nightmare to administer, the tracking and segregating of services would result in significant extra costs for contributors, which would be required to devote personnel and develop new billing or accounting systems in order to comply.

Likewise, the enhanced reseller certification proposal enjoys no industry support. This approach would not address any of the complexities inherent with the current reseller certification process, but instead only would add to them by requiring the reseller to specify on the certificate the percentage of its revenues from the services that incorporate the wholesale service that are subject to assessment.<sup>30</sup> This process would be administratively burdensome to implement as the percentage of the services the reseller provides using services purchased from the wholesaler on which the reseller expects to pay universal service contributions likely will vary from service to service and may vary over time – variations of which resellers may be unaware at the time they are required to provide the requisite enhanced certification.<sup>31</sup>

Instead of adopting more onerous requirements, the Commission could simplify the reseller exemption process as Verizon proposed in its initial comments. Specifically, the Commission could direct USAC to publish a searchable database of “exempt” resellers that contribute directly to the USF and require that a wholesaler consult that database annually in

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<sup>29</sup> Sprint Comments at 20; *see also* Level 3 Comments at 19 (the value-added proposal is “unworkable in practice” because it would require establishing a system “to assign and trace ‘credits’ through what can be very complex layers of wholesale relationships”); Joint Comments of the International Carrier Coalition at 10-11; Peerless Comments at 6-7; Clearwire Comments at 9-10.

<sup>30</sup> Notice ¶¶ 162-174.

<sup>31</sup> *See* Level 3 Comments at 20-21; Comcast Comments at 15; AT&T Comments at 36 (“It is likely that this percentage will vary by circuit so that a reseller may have to provide this information for thousands of circuits,” a percentage that “may not be static,” potentially changing ever time “the reseller’s end-user customer opts to add or drop a feature or service”).

determining “carrier’s carrier” revenues for which the wholesaler is not required to contribute. This approach would be administratively easy to implement and would not require the granular analysis and detailed recordkeeping required under either the “value-added” or the enhanced contributor certification proposals.

In addition, the Commission should clarify that wholesalers are not guarantors for their reseller customers, as several commenters correctly point out.<sup>32</sup> A wholesaler that complies in good faith with the Commission’s reseller requirements should not be responsible for any contributions the reseller ultimately fails to make.

### **III. THE COMMISSION SHOULD NOT MODIFY THE BUNDLING RULES IN THE MANNER PROPOSED IN THE NOTICE.**

Commenters join Verizon in opposing proposed modifications to the Commission’s bundling rules that would require USF contributions to be made based on either the standalone prices of the assessable services that comprise the bundle or on all revenues for the bundle.<sup>33</sup> The effect of this change would be to deny contributors the ability to use a “reasonable” allocation of assessable revenues, even if this allocation is the same method used for financial reporting and tax purposes.<sup>34</sup> The proposed modification would force contributors to adopt

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<sup>32</sup> U.S. Cellular Comments at 43-44 (wholesale carriers should not be held responsible for “the accuracy of registration data supplied by the customers, nor should they be liable for withholding service from a potential customer ‘relying in good faith on the absence of such registration ...’”); Sprint Comments at 20.

<sup>33</sup> See, e.g., Comments of Vonage Holdings Corp. (“Vonage Comments”) at 4-5; XO Comments at 50; Comments of Harris Caprock Communications (“Harris Caprock Comments”) at 8-10); Comcast Comments at 9-13.

<sup>34</sup> See Harris Caprock Comments at 10 (noting that contributors must comply with “GAAP and countless financial reporting laws and regulations to collect and remit taxes consistent with applicable law,” which includes “a consistent, logical allocation of revenues to the appropriate service and equipment categories for purposes of revenue recognition ... USF contribution

apportionment methods, systems, and procedures solely for USF purposes – an outcome that is impossible to reconcile with the Commission’s goal of making “compliance with and administration of the contribution more efficient.” *Notice* ¶ 23.

**IV. THE COMMISSION SHOULD ENSURE THAT PROPOSALS TO BROADEN THE REVENUE BASE ARE COMPETITIVELY NEUTRAL.**

The Commission has made clear its commitment to competitive neutrality in fashioning a new USF contribution regime, which requires that the Commission refrain from adopting contribution rules that result in “similar or substitutable services [being treated] differently” or that “create unintended market distortions.” *Notice* ¶ 24. Consistent with this commitment, the Commission must: (1) reject the “total revenues” approach; (2) decline to assess text messaging revenues; and (3) extend USF contribution requirements to one-way VoIP service providers.

**A. The Commission Should Not Adopt the “Total Revenues” Approach.**

The Commission should reject the proposal by the State Members of the Joint Board to assess all revenues reported by contributors on line 418 of the Form 499, which include revenues from video services, web hosting, cloud services, and IT solutions – all of which compete with services provided by entities that do not file a Form 499. Otherwise, Form 499 filers would be placed at an untenable competitive disadvantage by virtue of being assessed for *all* services they provide when certain competitors would not pay any assessment at all – an outcome that plainly violates the principle of competitive neutrality.

Other commenters agree that the “total revenues” approach would introduce “a new major distortion in the market for information services” by requiring USF contributions for information services furnished by telecommunications providers, while exempting contributions

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*(footnote cont’d.)*

obligations are not and cannot be treated differently”); Level 3 Comments at 16; AT&T Comments at 27; Comments of the National Cable & Telecommunications Association at 9.

for information services furnished by competitors that do not “provide” any “telecommunications.”<sup>35</sup> And, while the Commission conceivably could cure the competitive ills associated with the “all revenues” approach by imposing contribution obligations on traditional and non-traditional providers alike, it is unclear whether that would be advisable or whether the Commission has the legal authority to do so.<sup>36</sup>

Only a few commenters endorse a modified version of the “all revenues” approach, urging the Commission to expand the contribution base by assessing revenues from information services and telecommunications if the contributor also provides transmission to the end user.<sup>37</sup> But because many information services – *e.g.*, health-care IT solutions, web hosting, and security services – are provided by competitors that do *not* provide transmission, the result of this approach would be to create the very competitive distortions the Commission’s new contribution regime is intended to eliminate. The commenters endorsing this modified version of the “all revenues” approach ignore this issue and make no attempt to explain how it can be reconciled with the principle of competitive neutrality.

**B. The Commission Should Not Assess Text Messaging Revenues.**

Text messaging is not subject to mandatory universal service contribution obligations under section 254(d) because it is an information service, not a telecommunications service.

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<sup>35</sup> Sprint Comments at 23.

<sup>36</sup> Sprint Comments at 15 (“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”). *Cf.* AT&T Comments at 9 (asserting that “the Commission “has the authority to impose contribution obligations on many Internet-based providers that procure transmission services from third parties or build transmission networks themselves”).

<sup>37</sup> *See, e.g.*, US Cellular Comments at 19 (citing *Notice* ¶ 75); T-Mobile Comments at 6

Although the Rural Associations assert that text messaging “does not typically involve a change in the protocol of the message on an end-to-end basis” or any “store and forward” feature, such assertions are wrong.<sup>38</sup>

As multiple commenters have explained, text messaging service: (1) requires the “storing” and “retrieving” of information, both when delivering messages between individual consumer handsets and when allowing subscribers to retrieve information such as news, alerts, or reminders from a content provider’s central information database; and (2) involves “transforming” message content, by adding identifying information and undertaking net protocol conversion to transmit a message to other networks or the Internet. These characteristics are integral to the text messaging service and place text messaging squarely within the “information service” category as defined under Commission precedent.<sup>39</sup>

There is also no basis for the Commission to exercise its permissive authority under section 254(d) to assess contributions on text messaging services. That approach would not be in the public interest.<sup>40</sup> There is no merit to the claim that requiring providers of text messaging to contribute to the USF would be in the public interest because they “benefit from use of the

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<sup>38</sup> See Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (“Rural Associations Comments”) at 10.

<sup>39</sup> See, e.g., Verizon Comments at 33-38; Sprint Comments at 34; CTIA Comments at 23-24. That the Commission has found a “call” for purposes of section 227 of the Act to include “text calls” does not mean that text messaging services are not information services. See Comments of Twilio Inc. at 8-9 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003)).

<sup>40</sup> See, e.g., Sprint Comments at 34-35 (noting that “the wireless sector contributed more than one-third of all funds used in the USF,” while the Connect America Fund “earmarks just 11 percent of all disbursements for wireless providers.” Subjecting text messaging to the current broken system would only increase further this discriminatory funding arrangement.”); Verizon Comments at 38-41; AT&T Comments at 14-15.

PSTN.”<sup>41</sup> To the contrary, the public interest requires that the Commission avoid burdening consumers with a new, substantial charge on their text messages.

Moreover, the notion that the Commission could realize significant new USF contributions by assessing text messaging is illusory. Already, consumers increasingly rely upon Internet apps – such as Apple’s iMessage and BlackBerry’s Messenger – as well as other Internet services such as Facebook Chat and Gmail Chat that provide a similar functionality as SMS text messaging but which make no use of the PSTN whatsoever.<sup>42</sup> And many of these services have no associated end user revenue to assess for USF purposes (which the *Notice* does not propose in any event), meaning the likely effect of assessing traditional text messaging services will only be to hasten the consumer migration to alternatives with no USF assessments. Under the circumstances, subjecting text messaging revenues to USF contributions when comparable services such as email and chat-related applications remain exempt from any contribution obligation would not be in the public interest.<sup>43</sup> Accordingly, the Commission should decline to assess providers of text messaging services pursuant to its permissive authority under section 254(d).

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<sup>41</sup> Rural Associations Comments at 10.

<sup>42</sup> AT&T Comments at 14-15; Comments of the Information Technology Industry Council at 6.

<sup>43</sup> Microsoft Comments at 13 (“to impose a USF contribution obligation on Internet-based text messaging, but not functionally similar information services like email, would be inequitable to both service providers and consumers”); T-Mobile Comments at 8; Comments of MetroPCS Communications, Inc. (“MetroPCS Comments”) at 16 (noting that “substantial inequity” that would result if text messaging services were required to contribute to USF when competing services – such as “email, Internet chat, among others” are exempt); Sprint Comments at 35; RCA Comments at 7 (“Selectively imposing contribution burdens on SMS services would result in significant marketplace distortions” when other “forms of text-messaging, including services such as web-based instant messaging and e-mail communications” are not required to contribute); CTIA Comments at 24-26.

**C. The Commission Should Assess Revenues From One-Way VoIP Services To Ensure Competitive Neutrality.**

For the same reasons that the Commission should decline to adopt the “all revenues” approach or to assess text messaging revenues, the principle of competitive neutrality compels the Commission to require one-way VoIP providers to contribute to the USF.<sup>44</sup> Commenters almost uniformly agree that one-way VoIP providers should contribute to the USF because they compete directly with two-way interconnected VoIP services and traditional telephone offerings, both of which are subject to USF contribution requirements.<sup>45</sup> As U.S. Cellular correctly observes, “the current exemption for one-way VoIP causes competitive disparities and creates a significant artificial cost advantage for non-assessable one-way VoIP services.”<sup>46</sup>

**V. THE COMMISSION SHOULD CONSIDER CAREFULLY THE POTENTIAL ASSESSMENT OF BROADBAND.**

Although some commenters support expanding the current contribution base by assessing revenues from broadband Internet access services,<sup>47</sup> this proposal raises significant issues that the Commission should consider more carefully before moving forward, if at all. For example,

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<sup>44</sup> XO Comments at 27; U.S. Cellular Comments at 31; USA Mobility Comments at 4 (“The Commission should adopt proposals to broaden the funding base by assessing all VoIP services that transmit calls to or from the PSTN ...”); TWC Comments at 7-8; Sprint Comments at 31-32; MetroPCS Comments at 17.

<sup>45</sup> See, e.g., AT&T Comments at 15; Rural Associations Comments at 14.

<sup>46</sup> U.S. Cellular Comments at 31; see also TWC Comments at 7 (even though one-way VoIP services “use the same infrastructure as interconnected VoIP services,” they are exempt from USF contribution requirements contribute to USF, “despite the fact that they compete directly with (and increasingly serve as substitutes for) interconnected VoIP and traditional telephone services”); Sprint Comments at 32.

<sup>47</sup> See, e.g., XO Comments at 28-30; US Cellular Comments at 21-28; Ad Hoc Comments at 38-40.

by increasing the cost of broadband service, imposing USF contribution requirements on broadband may adversely affect broadband adoption and deployment in unserved areas.<sup>48</sup>

Commenters that endorse expanding the revenue base to include broadband largely ignore these important public policy issues.<sup>49</sup> Likewise, these same commenters do not address in any detail the complicated implementation issues associated with any decision to impose a contribution obligation on broadband services, including defining precisely: (1) the broadband services to which the contribution obligation applies, consistent with the principle of competitive neutrality;<sup>50</sup> (2) the line between assessable broadband service and non-assessable services and applications that use broadband service.<sup>51</sup>

If the Commission ultimately decides to assess USF contributions based on broadband revenues, broadband should be treated as 100 percent interstate for contribution purposes, as

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<sup>48</sup> See Comments of the Wireless Internet Service Providers Association (“WISPA Comments”) at 1 (imposing a contribution obligation on broadband providers “would lead to higher monthly service fees, which would discourage broadband adoption”); TWC Comments at 10 (subjecting broadband to USF contribution requirements “could slow broadband deployment in unserved and underserved areas by altering consumer demand and thus harming the business case for investment”); Comments of Clearwire Corporation (“Clearwire Comments”) at 3-5; RCA Comments at 8; Comments of the National Cable & Telecommunications Association (“NCTA Comments”) at 4.

<sup>49</sup> See, e.g., US Cellular Comments at 26-27; RTG Comments at 4. The Rural Associations insist that “a nominal USF assessment imposed on [broadband] service will not lead existing customers to drop the service or dissuade potential new customers from adopting it,” pointing to the experience with interconnected VoIP. Rural Associations Comments at 22.

<sup>50</sup> To the extent Sprint is proposing that the USF contribution base only “include incumbent LEC providers of broadband Internet access services,” this proposal would violate basic concept of fairness identified in the *Notice*. See Sprint Comments at 32.

<sup>51</sup> See, e.g., Verizon Comments at 41-43; TWC Comments at 10 (noting the need to clearly define “how such a regime would apply to the application, content, and service providers that rely on broadband infrastructure”); Ad Hoc Comments at 39 (“There is no rational legal or policy justification for imposing assessments on one particular type of broadband Internet access or requiring one class of end user to assume disproportionate obligations to fund universal service”).

many commenters propose.<sup>52</sup> This approach would be consistent with Commission precedent that uniformly has recognized the interstate nature of broadband services.<sup>53</sup> A contrary approach also would be inconsistent with the Commission’s proposed goal of creating an efficient contribution system. *Notice* ¶ 23. Treating broadband as 100 percent interstate would obviate the need for the Commission to craft and the industry to implement complicated and inherently arbitrary tests for allocating broadband revenues between interstate and intrastate jurisdictions, particularly when no party has articulated any principled basis for doing so.<sup>54</sup>

## **VI. THE COMMISSION SHOULD NOT MODIFY THE USE LINE ITEM RULES.**

Commenters almost universally agree that the Commission should not modify its rules regarding the recovery of universal service contributions from customers. There is practically no support for proposals to require contributors to indicate on a customer’s bill how the universal service charge is calculated or to identify the portion of the bill to which the contribution factor was applied. Commenters agree that such proposals would be administratively difficult to

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<sup>52</sup> See, e.g., Verizon Comments at 43; U.S. Cellular Comments at 35-36; RTG Comments at 5 (“Broadband Internet access services are inherently interstate ...”).

<sup>53</sup> See, e.g., *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC Rcd 22466, ¶ 16 (1998), *recon. denied*, 17 FCC Rcd 27409 (1999); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 59 (2002), *aff’d*, *NCTA v. Brand X*, 545 U.S. 967 (2005).

<sup>54</sup> U.S. Cellular Comments at 36. *Cf.* Comments of the Nebraska Rural Independent Companies at 10 (in any “split [of] broadband revenues according to regulatory jurisdiction ... the Commission should not claim an unduly large share of the assessment base for federal surcharges”); NASUCA Comments at 17 (proposing that for information services the Commission create an “interstate safe harbor, with the residual being intrastate,” without explaining how that safe harbor would be determined).

implement without any corresponding consumer benefit; indeed, this is simply not something that customers want.<sup>55</sup>

Commenters also almost universally oppose the adoption of a rule prohibiting providers from including a line item on end-user customer bills to recover their USF contributions. *Notice* ¶ 394. In addition to being inconsistent with the Commission’s Truth-in-Billing rules and the First Amendment,<sup>56</sup> such a rule “would make the bill less informative, by requiring that carriers must withhold from their end user customers information about the level of their monthly charges that is used to defray the carriers’ Commission-imposed USF assessments.”<sup>57</sup> As the California Public Utilities Commission notes in opposing a rule prohibiting providers from including a line item on their customer bills reflecting the USF contribution customer bills, such a rule would be inconsistent with policies that “require transparency of program surcharges on customer bills.”<sup>58</sup>

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<sup>55</sup> See, e.g., Clearwire Comments at 12; U.S. Cellular Comments at 47 (requiring contributors to identify on their consumer bills the specific portion of the bill amount that is subject to USF assessment would impose “unnecessary and unwarranted administrative costs” on contributors, which would be required to “redesign [] customer bills,” “make changes in their billing programs and systems,” and engage in “additional monitoring of customer billings ... on a going-forward basis”); NCTA Comments at 7; Fiber Provider Coalition Comments at 11.

<sup>56</sup> See Verizon Comments at 52; Level 3 Comments at 25.

<sup>57</sup> U.S. Cellular Comments at 49; see also Peerless Comments at 14 (“there is no public policy reason to prevent carriers from accurately describing their USF contributions and passing this contribution through to consumers”); Fiber Provider Coalition Comments at 9-10.

<sup>58</sup> Comments of the California Public Utilities Commission at 16.

**VII. CONCLUSION**

For the foregoing reasons, the Commission should reform the USF contribution system consistent with Verizon's proposals in this proceeding.

Respectfully submitted,

By: /s/ Christopher M. Miller

Michael E. Glover, *Of Counsel*

Christopher M. Miller  
David L. Haga  
VERIZON  
1320 North Courthouse Road  
9<sup>th</sup> Floor  
Arlington, VA 22201-2909  
(703) 351-3071

Attorneys for Verizon  
and Verizon Wireless

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