

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

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

REPLY COMMENTS OF MICROSOFT CORPORATION

INTRODUCTION

Microsoft Corporation (“Microsoft”) submits these comments in reply to the comments filed in response to the Commission’s Further Notice of Proposed Rulemaking¹ regarding reform of the Universal Service Fund (“USF”) contribution system (“FNPRM”).

DISCUSSION

There is a broad consensus among commenters that the USF contribution system should be reformed.² While opinions vary about what specific changes should be made, it is significant that stakeholders from both within and outside the traditional telecommunications services sector have recommended that the Commission consider introducing a USF contribution

¹ In the Matter of Universal Service Contribution Methodology, *Further Notice of Proposed Rulemaking*, WC Docket No. 06-122 *et al.*, FCC 12-46 (rel. April 30, 2012) (“FNPRM”).

² *See, e.g.*, Comments of Verizon, WC Docket No. 06-122, at 1 (July 9, 2012) (“Verizon Comments”) (“The current contribution system . . . is in need of reform. The contribution system was designed for a very different communications ecosystem, and applying old rules to today’s marketplace results in inefficiencies, administrative burdens, and competitive distortions”); Comments of the Information Technology Industry Council, WC Docket No. 06-122, at 2 (July 9, 2012) (“ITIC Comments”) (“Continuing on a revenue-based, service-by-service basis as the FNPRM proposes would be complicated and burdensome to administer, difficult to structure to ensure competitive neutrality, harmful to small business and innovators, and potentially ever expanding”); and Comments of XO Communications Services LLC, WC Docket No. 06-122, at 4 (July 9, 2012) (“XO Comments”) (“It is equally apparent . . . that the need for reform of the current system is urgent”).

methodology that is not based on revenues.³ If the Commission nevertheless decides against reforming the overall methodology for USF contribution, the Commission must address the concerns described herein if it moves forward with proposals to broaden the revenue base for assessable services. In particular, the Commission should not impose USF contribution requirements on non-interconnected VoIP services, Internet-based text messaging and enterprise services that do not provide telecommunications connectivity.

I. Insufficient justifications have been provided to conclude that the public interest requires one-way VoIP services to be subject to USF contributions.

No commenter has offered sufficient legal or policy justification for making “one-way VoIP services” subject to USF assessment. We continue to believe that the statutory requirement for extending USF contributions to one-way PSTN VoIP services has not been met, and the significant administrative complexity and compliance burdens associated with the proposed one-way VoIP rule have not been properly weighed against the modest anticipated amount of additional USF contributions.

A. No evidence has been presented that one-way VoIP services are being widely used as replacements for telecommunications services.

Commenters generally recognize that USF contributions should not be assessed on services that neither compete with nor replace traditional telecommunications services.⁴ Notwithstanding that recognition, commenters who favor extending USF assessment to one-way VoIP services have not presented any significant evidence that such services are

³ See, e.g., Comments of AT&T, WC Docket No. 06-122, at 17 (July 9, 2012) (“AT&T Comments”) (“It is time for the Commission to adopt a non-revenues-based contribution methodology”); Comments of CTIA—The Wireless Association, WC Docket No. 06-122, at 8 (July 9, 2012) (“CTIA Comments”) (“CTIA is open to considering a range of contribution methodologies”); Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122, at 11 (July 9, 2012) (“Now is the time to push comprehensive reform of the federal USF contribution methodology over the finish line”); Comments of Vonage Holdings Corp., WC Docket No. 06-122, at 27 (July 9, 2012) (“[I]t is time for the Commission to move to a new method of assessing contributions . . .”); and Comments of Comcast Corporation, WC Docket No. 06-122, at 2 (July 9, 2012) (“Comcast Comments”) (“Comcast recommends that the Commission carefully explore alternatives to the current revenues-based system unless the Commission can develop and implement workable reforms that efficiently address the economic distortions and other problems that afflict the existing system”).

⁴ See, e.g., AT&T Comments at 12 (July 9, 2012) (“ . . . the Commission has long emphasized that its contribution rules ‘should be competitively neutral’ and should ‘extend . . . to providers that compete with common carriers, because common carriers are subject to mandatory contributions.’”)

replacements or substitutes for wireline or wireless telephone services. Discussion of the issue in the comments has largely focused on the technical capability of some one-way VoIP services, when combined together, to provide functions that are similar to some functions of assessable telephone services.⁵ Other commenters have made broad, unsupported allegations that one-way VoIP products compete against traditional telephony services.⁶ However, no market data or consumer surveys have been provided showing that one-way VoIP services are actually being used as replacement services on any wide-scale basis, or are viewed as anything other than a complement to a telephone service, as Skype's own surveys indicate.⁷ General unsupported statements and hypotheses about the potential substitutability of one-way VoIP services are an insufficient basis to justify the imposition of significant new regulatory obligations on a broad category of information services that have previously been subject to little telecommunications regulation.⁸

We disagree with COMPTTEL that the extent to which one-way VoIP services compete with traditional telephone services is irrelevant and that all "voice services" should be assessed in the same way.⁹ The exercise of the Commission's permissive authority requires a clear showing of public interest in making any offerings that are not telecommunications services under the Communications Act subject to USF assessment. In its FNPRM, the Commission is correct to focus on whether one-way VoIP services are actually being used as substitutes for other USF-assessable services. As many of the commenters recognize, the Commission's

⁵ See, e.g., Comments of Time Warner Cable Inc., WC Docket No. 06-122, at 7-8 (July 9, 2012) ("TWC Comments"); and Comments of RCA-The Competitive Carriers Association, WC Docket No. 06-122, at 7 (July 9, 2012).

⁶ See, e.g., TWC Comments at 7 ("[P]roviders of [one-way VoIP services] are not required to contribute to USF, despite the fact that they compete directly with (and increasingly serve as substitutes for) interconnected VoIP and traditional telephone services"); and Verizon Comments at 28 ("One-way VoIP services compete directly with other voice services offered by providers that must contribute to the USF").

⁷ See Comments of Skype Communications S.a.r.l., WC Docket No. 05-196 *et al*, at 12 (filed Nov. 2, 2011).

⁸ We disagree that Skype S.a.r.l.'s draft initial public offering prospectus provides a sufficient basis for determining that one-way VoIP products, such as SkypeOut, are replacements for USF-assessable telecommunications services. The draft prospectus includes general statements about Skype's potential competitors, referring to both regulated telecommunications companies and unregulated hardware vendors in this context. In addition, Skype's broadly-worded statements about its current and potential markets and competitors are consistent with the particular purpose of an IPO prospectus to provide the most thorough possible disclosures about a company's business and future prospects. Such disclosures cannot serve as a simple substitute for the more sophisticated, granular analysis the Commission must make in assessing the market before it can determine that there is a public interest justification for the introduction of new regulations.

⁹ See Comments of COMPTTEL, WC Docket No. 06-122, at 14 (July 9, 2012) ("COMPTTEL Comments").

rationale for exercising its permissive authority to require “interconnected VoIP” services (i.e. two-way PSTN VoIP) subject to USF contributions was that consumers increasingly viewed and used interconnected VoIP services as a highly-similar substitute for traditional telephone service. All types of VoIP services should not be subject to USF assessment merely because certain services that transmit voice communications have been deemed to be assessable, just as not all data services are assessed simply because certain services that transmit data communications are.¹⁰

One reason that “network-independent” or “over-the-top” information services should be assessed, at most, only when they are replacements of telecommunications services is because otherwise the users of such information services will effectively be required to pay USF twice, once on the assessed telecommunications service that they have kept and then again on the newly assessed information service. The wide support for assessments based upon telephone numbers or connections reflects a general recognition that going forward, consumers should bear a relatively equal burden. One-way VoIP users typically have a wireline telephone and/or a mobile phone that are already assessed.¹¹ They also typically have a broadband connection that may become subject to assessment based on the outcome of this proceeding. It would not make sense or be fair to impose USF on that same consumer a second or even third time just because one of the applications that they happen to use their assessed services for is one-way VoIP.

B. The Commission does not have the authority to assess USF merely on the basis of a service’s access to the PSTN or use of the Internet.

Some commenters have suggested that services – including one-way VoIP services – could be assessable under the Commission’s permissive authority on the basis that such services use access to the PSTN or have the capacity to transmit data through the Internet. For example, some commenters argue that one-way interconnected VoIP services should be

¹⁰ The Commission lacks the authority to impose USF obligations on over-the-top purely Internet-based information services, including those that offer PC-to-PC VoIP capabilities. We disagree with any suggestion that the Commission should adopt a definition of “VoIP services” for purposes of assessing USF that encompasses such applications. See Comments of MetroPCS Communications, Inc., WC Docket No. 06-122, at 18-19 (July 9, 2012).

¹¹ See Comments of Skype Communications S.a.r.l., WC Docket No. 05-196 *et al*, at 12 (filed Nov. 2, 2011).

assessable for USF contribution at least in part because they “benefit from access to the PSTN”.¹² This cannot be a primary consideration for whether a service is subject to USF contributions. Many information services benefit from access to the PSTN and broadband data networks. Indeed, at some level, all Internet-based services and applications benefit from access to the PSTN and broadband Internet access. The Commission did not assess dial-up ISP services that use PSTN connections, nor could it conceivably try to assess the vast range of companies and services that benefit from access to broadband, even just those that in some form or fashion could be argued to enable communications between consumers and businesses. Assessing USF on services and applications simply on the basis that they are accessed over broadband connections is also out of step with the Commission’s new focus on using the USF program to promote the availability of Internet access services rather than the availability of particular content or applications through such access. For these reasons, the Commission does not have a sound basis or the authority to assess USF contributions merely on the basis that a service provider benefits from the PSTN or broadband access networks.

In particular, we disagree with AT&T’s suggestion that all Internet content and applications providers are potentially subject to USF obligations. AT&T contends that “any provider of over-the-top Internet services would fall into the same regulatory category [as interconnected VoIP] so long as it arranges for the provision of transmission between any points through the Internet”¹³ and later concludes 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.”¹⁴ All Internet-based providers purchase some form of connection to the Internet in order to arrange for end-users to have access to their servers and to send data to these end-users. The purchase of such services from third parties (or the creation of similar capabilities internally) means that they are *users* of telecommunications, not providers. As such, it is sufficient that they may contribute to

¹² See Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket No. 06-122, at 14 (July 9, 2012); and XO Comments at 27.

¹³ See AT&T Comments at 8.

¹⁴ *Id.* at 9.

USF indirectly through the carriers from which they buy these inputs. The Act directs the Commission to collect USF contributions from “providers of telecommunications services,”¹⁵ not from users of telecommunications.

C. VoIP services without end-user revenues should not be required to make USF contributions.

Some commenters have suggested that one-way VoIP services that do not charge their users should still contribute to the USF.¹⁶ Verizon has proposed that such services that do not generate end-user revenues should be required to pay a minimum contribution amount – such as a per-subscriber alternative minimum contribution.¹⁷ As a practical matter, a minimum contribution would be more trouble than it is worth. A contribution floor that would be applied to small companies could not be too high, such as the \$25 minimum contribution for the TRS and NANPA funds. But if the amount is low, then the societal costs of applying filing and contribution to new classes of companies would far exceed the benefit to the fund. Indeed, it is likely that the administration costs to USAC alone would exceed such benefit. Implementing a minimum contribution would add a great deal of complexity to the administration of a contribution regime that is already too complicated. For these reasons, the Commission has declined to implement such a requirement with respect to contributions to the TRS Fund.¹⁸ As with TRS Fund contributions, it would be inadvisable to try to implement minimum assessments within the USF contribution regime.

II. Text messaging that uses data networks at least in part should not be subject to USF assessment.

Several commenters have argued that all forms of text messaging – whether transmitted via SMS or otherwise – should be assessable for USF purposes.¹⁹ Other commenters that have advocated assessing “text messaging” have not specifically addressed

¹⁵ 47 U.S.C. § 254(b)(4).

¹⁶ See, e.g., Verizon Comments at 30, and COMPTTEL Comments at 20.

¹⁷ See Verizon Comments at 31.

¹⁸ See *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14556, ¶ 19 (2011).

¹⁹ See Comments of the Universal Service for America Coalition, WC Docket No. 06-122, at 6 (July 9, 2012).

whether this should include non-SMS messaging applications.²⁰ As we noted in our initial comments, the Commission needs to carefully consider whether text messaging should be made assessable for USF contribution. As Verizon and CTIA point out, the storage and retrieval aspects of text messaging make them information services with more similarities to email services than telephone services.²¹

In particular, forms of text messaging that use the Internet or a data connection – at least in part – are clearly information services that should not be assessable. These forms of messaging would include services that send a message between two devices connected to the Internet or an IP data connection and do not use SMS in any way. They would also include services that permit messages to be sent from a PC or Internet-connected mobile device to an SMS service. Although this latter type of service relies on a wireless carrier’s SMS service in part (either on the receiving end of a message that originates over the Internet or on the originating end for a messages that is received by an Internet-based service), such services provide a net protocol conversion to reach SMS endpoints and are different from services that connect to endpoints entirely via SMS.

For these reasons, text messaging that relies on the Internet or a data connection, in whole or in part, should not be subject to USF assessment. If the Commission makes “text messaging” an assessable service, in drafting its rules, it must ensure that the relevant definitions make it clear that non-SMS information services are not subject to USF contribution.

III. Enterprise services that do not provide telecommunications connectivity should not be subject to assessment.

Several commenters have recommended that any enterprise service that includes the provision of telecommunications as a component of the service should be subject to USF assessment.²² While enterprise services that provide customers with transmission services may provide at least in part assessable telecommunications services, it is important to distinguish such services from cloud-hosted enterprise services, particularly where the service provider is

²⁰ See TWC Comments at 6, and COMPTTEL Comments at 13.

²¹ See Verizon Comments at 33, and CTIA Comments at 31.

²² See COMPTTEL Comments at 8.

responsible for providing or managing certain data connection between the provider and the customer or the customer and the Internet.

The FNPRM refers to “unified communications” in connection with a general discussion of enterprise services that may be subject to USF contribution.²³ It is important to recognize that unified communications can include a variety of offerings, many of which do not include the provision of telecommunications as defined under the Communications Act. For example, unified communications services may include the hosting of email servers and other applications that are clearly information services under the Communications Act and the Commission’s prior decisions. At a minimum, the Commission should assure that these types of bundled information services remain free from assessment.²⁴ It must also be clear that any connections that the provider of such service maintains either to communicate with its customers’ systems or to deliver or receive emails on behalf of its customers does not make the service provided to its customers subject to USF contribution.

Respectfully submitted,

MICROSOFT CORPORATION

Jim Lamoureux
Sr. Attorney
One Microsoft Way
Redmond, WA 98052
(425) 704-0836

Staci Pies
Director - Government Affairs
901 K Street NW
Washington, DC 20001
(202) 783-0467

Bob Stankey

²³ See FNPRM at ¶ 48.

²⁴ For this reason, the Commission should not adopt its proposed changes to its bundling rules, which currently afford providers reasonable flexibility to make good faith determinations to exclude bundled information services from assessment.

Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW
Washington, DC 20006
(202) 973-4200

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