Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

INTRODUCTION AND SUMMARY

Pursuant to the Further Notice of Proposed Rulemaking released in the above-cited dockets on April 27, 2012 (FNPRM),[1] the Public Service Commission of the District of Columbia (DC PSC) respectfully files limited reply comments on several issues raised in comments filed pursuant to the FNPRM. The DC PSC agrees that the contribution base of the federal universal service fund (USF) should be expanded to include a broad range of new services. Changes to the federal USF need to take into account the complementary state USFs, and ensure that the financial integrity of state USFs is sustained. The DC PSC agrees with those commenters that support extending the prohibition on collecting universal service fees from Lifeline service customers. Additionally, customer bills should include USF line items as well as clear and concise descriptions of how USF fees are calculated. The DC PSC supports the commenters that recommend adjustment of the contribution factor on an annual basis. However, the DC PSC objects to US Telecom's proposal that Lifeline be excluded from the federal USF and funded from general appropriations. Funding for Lifeline service customers should come

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[1] Further Notice of Proposed Rulemaking, *Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, rel. April 30, 2012.

from the federal (and state) USF, since the Lifeline service program promotes the goals of universal service by extending telecommunications service to low income customers.

THE CONTRIBUTION BASE SHOULD BE BROADENED.

Most of the commenters agree that the contribution base for the federal USF should include more services than are currently covered. The commenters disagree on exactly what services should be included in the contribution base, however. While the DC PSC believes that a broad rule regarding the types of services to be included may assist in reducing confusion, there may be some merit in establishing a non-exhaustive list of services covered by the rule. The DC PSC supports including a broad range of services that can be viewed as substitutes to traditional voice service, including text messaging, one-way Voice over Internet Protocol (VoIP), and broadband access services.[2] Text messaging is increasingly used as a substitute for voice service, so it should be included for that reason. One-way VoIP service does not differ substantially from interconnected VoIP service, which is already included in the contribution base. Broadband access should be included because the FCC is currently funding the deployment of broadband-capable networks through the federal USF.

ANY REFORMS TO THE USF CONTRIBUTION SYSTEM SHOULD PRESERVE THE FINANCIAL INTEGRITY OF STATE USFs.

As the DC PSC argued in its Comments, any reform to the federal USF contribution system must take into account the existence of state USF, which often assess intrastate revenues to fund the state USF. Some of the proposals floated by both the FCC and other commenters could impact the financial integrity of these state USFs. For example, the assessment of

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2 *See, Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Comments of AARP at 20-25, filed July 9, 2012; Comments of the California Public Utilities Commission and the People of the State of California at 5-7 (CPUC Comments), filed July 9, 2012; Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (Joint Comments) at 9-24, filed July 9, 2012.

intrastate revenues for the federal USF would pose significant legal and policy challenges. Legally, such a decision would run counter to the *Texas Office of Public Utility Counsel v. FCC* (TOPUC) decision, which prohibited the FCC from assessing intrastate revenues for the federal USF.[3] From a policy perspective, assessment of intrastate revenue for the federal USF is unwise because it would threaten the financial stability of both federal and state USFs. Since states can only assess intrastate revenues to provide financial support for their USFs, permitting the federal USF to also assess these revenues would lead to a double assessment of the same revenues in jurisdictions like the District of Columbia that have their own USF. If these assessments are passed on to consumers, the USF portion of customer bills will greatly increase.

As the Kansas Corporation Commission (KCC) pointed out in its Comments, assessing intrastate revenues for both the federal and state USFs will also provide an incentive for service providers to classify revenues as interstate in order to avoid the double assessments, leaving very little intrastate revenue for assessments by a state.[4] States would either have to increase their own USF assessment rates, or decrease the amount of USF financial support that they provide. The FCC should avoid such a result by refraining from assessing intrastate revenue for the federal USF.

Additionally, any decision to clarify any new services to be assessed for the federal USF as purely interstate would limit the ability of states to assess these services for state USFs. As several commenters have noted, many services that have been primarily interstate services are becoming more localized, as service providers bring content closer to individual users. In the past, the FCC has used safe harbors to allocate revenues between intrastate and interstate

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3 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 447-448 (5th Cir. 1999).

4 Comments of the Corporation Commission of the State of Kansas on the Federal Communications commission's April 30, 2012 Further Notice of Proposed Rulemaking at 4-5, filed July 9, 2012.

jurisdictions. There is no reason why the FCC cannot establish safe harbors for newly assessed services based on traffic studies.[5]

The DC PSC also supports the Massachusetts Department of Telecommunications and Cable's (MDTC) proposal to seek input from the Federal-State Joint Board on Universal Service (Joint Board) on USF contribution issues because of the importance of these issues to the federal-state relationship.[6]

LIFELINE CUSTOMERS SHOULD BE EXEMPT FROM PAYING USF FEES.

Many commenters have joined the DC PSC in supporting the proposed rule that would exempt all Lifeline service customers from paying USF fees, regardless of the customer's Lifeline service provider.[7] Otherwise, the additional USF fees may render telecommunications service bills unaffordable to Lifeline service customers, negating the purpose of the Lifeline service program. Additionally, extending the prohibition on collecting USF fees from all Lifeline service customers would ensure that different service providers are treated equally.

In its Comments, Nexus Communications Inc. argues that the prohibition should not be extended so that competitive eligible telecommunications carriers (ETC) can pass along USF fees to Lifeline service customers because in some cases, there is no other way for the

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[5] *Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Comments of AARP at 38-42, filed July 9, 2012; Comments of AT&T at 29, filed July 9, 2012; Comments of Time Warner Cable, Inc., filed July 9, 2012. In cases where commenters have argued that current safe harbors are inadequate, the FCC may also want to reset these safe harbors. *See*, Comments of the US Telecom Association (US Telecom) at 12, filed July 9, 2012.

[6] *Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Comments of the Massachusetts Department of Telecommunications and Cable at 14, filed July 9, 2012.

[7] *See*, *Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, CPUC Comments at 16; Comments of the MDTC at 15-16; Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking at 23, filed July 9, 2012.

competitive ETC to receive the USF fees.[8] However, as stated above, permitting the pass-through of USF fees to Lifeline service customers would render Lifeline service unaffordable to these customers, so they would be unable to receive Lifeline service.

CUSTOMER BILLS SHOULD CLEARLY IDENTIFY USF FEES.

In its Comments, the DC PSC supported including additional information on customer bills identifying federal USF fees and indicating how they are calculated.[9] Several commenters concur with this position.[10] While some service providers complain that including line items and calculations would complicate and make customer bills more expensive to produce,[11] the DC PSC believes that some information about USF fees must be on the bill to avoid customer confusion.[12] The DC PSC urges the FCC to consider requirements that would provide clear, concise information to consumers about federal USF fees on customer bills.

THE CONTRIBUTION FACTOR SHOULD BE ADJUSTED ANNUALLY, NOT QUARTERLY.

The DC PSC agrees with commenters that seek adjustment of the contribution factor on an annual basis.[13] Adjusting the contribution factor quarterly creates a great deal of uncertainty in determining customer bills, and expense in adjusting billing systems quarterly. An annual federal USF contribution factor would permit more stability in the billing process, reducing

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8 *Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Comments of Nexus Communications, Inc. at 8, filed July 9, 2012.

9 DC PSC Comments at 5.

10 AARP Comments at 51-53.

11 *Universal Service Contribution Methodology, A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Comments of the National Cable & Telecommunications Association at 6, filed July 6, 2012.

12 The DC PSC notes that there are costs to not including any USF information on customer bills, as angry customers call customer service representatives, who then have to spend time explaining USF charges.

13 Comments of US Telecom at 11.

customer confusion.

LIFELINE SERVICE IS PROPERLY COVERED BY THE USF.

In its Comments, US Telecom proposes legislative amendments that would end funding for Lifeline service through the federal USF; instead, financial support for Lifeline service would be covered through general appropriations.[14] The DC PSC strongly objects to this proposal. The purpose of the federal USF is to ensure that telecommunications service is available to those who would not otherwise be able to receive this service. That includes Lifeline service customers, who are unable to afford telecommunications service without financial assistance. There is no reason to exclude this group of customers from being funded by the federal USF while retaining funding for other groups of customers who need assistance in obtaining affordable telecommunications service.

Subjecting Lifeline service to the general appropriations process would mean greater uncertainty for Lifeline service funding. With Lifeline service funding coming from the federal (and state) USF, funding for Lifeline service is guaranteed. If Lifeline service were funded by general appropriations, the level of funding could vary annually, leading to uncertainty about the level of support and the number of customers that could be funded each year. Lifeline service should not be subject to such uncertainty.

Ending USF support for Lifeline service would also threaten the financial stability of state USF funds. The District of Columbia Universal Service Trust Fund (DC USTF) provides support for Lifeline service and Telecommunications Relay Service (TRS) to eligible customers.[15] Wireline Lifeline service in the District of Columbia is funded through a mix of

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[14] US Telecom Comments at 2.

[15] D.C. Code § 34-2001(22); D.C. Code § 34-2003 (2011 Supp.). There is no need for high cost support in the District of Columbia, as the District of Columbia has no high cost areas.

federal USF and DC USTF funding. If the federal USF funding were to end, the DC USTF would have to provide all of the funding for Lifeline service, which would substantially increase the budget of the DC USTF. To maintain the financial stability of the DC USTF, either the DC USTF would have to greatly increase its assessments on local exchange carriers and Voice over Internet Protocol (VoIP) service providers,[16] who could then assess higher state USF fees, or the DC USTF would be required to serve fewer Lifeline service customers. Requiring states to bear the entire burden for Lifeline service would not promote universal service.

The District of Columbia is a net payor in the federal USF. What funding it does receive from the federal USF is in the form of Lifeline service and some E-Rate (schools and libraries) funding. If Lifeline service were to be excluded from the federal USF, the District of Columbia's position would be even more unbalanced, as the District of Columbia would be receiving even less support from the federal USF than it does now.

In sum, removing Lifeline service from the federal USF would be a very detrimental legislative proposal, since it would most likely decrease the number of customers receiving Lifeline service. It would also place a serious strain on state USFs, especially those that devote most of their funding to Lifeline service. Lifeline service should remain a service supported by the federal USF.

CONCLUSION

The DC PSC supports ensuring the financial integrity of the federal USF through reform of the federal USF contribution system. These reforms should ensure that state USFs can also be sustained so that they can continue the partnership of federal and state USFs in promoting

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[16] D.C. Code § 34-2003(b)(1) (2012). The only contributors to the DC USTF and wireline local exchange carriers and VoIP service providers; wireless carriers do not contribute.

universal service. Lifeline service is an essential part of universal service, and financial support should not be moved from the federal USF to general appropriations.

The DC PSC appreciates the opportunity to submit comments in this proceeding.

Respectfully submitted,

PUBLIC SERVICE COMMISSION
of the DISTRICT OF COLUMBIA

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