

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

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 U.S. TELEPACIFIC CORP.

U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific”) submits the following reply comments in response to the Commission’s Further Notice of Proposed Rulemaking on potential revisions and modifications to the contribution methodology for the Universal Service Fund (“USF” or “Fund”).¹

In the *FNPRM*, the Commission recognized that its original carrier’s carrier rules did not “directly focus on the potential implementation difficulties that such a rule would pose in situations where a wholesaler sells a service to another firm that incorporates that wholesale telecommunications into a different offering for its retail customers that is not subject to assessment.”² Thus, the Commission asked whether it should adopt rules that impose an “affirmative obligation on the part of the entity that purchases the wholesale telecommunications to specify in its certification the extent to which the wholesale input is incorporated into assessable services versus nonassessable services.”³ As described herein, service-by-service certification should not be adopted because it would create an unlevel playing field and unfair

¹ *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. April 30, 2012) (“*FNPRM*”).

² *Id.* at ¶ 147.

³ *Id.* at ¶ 170.

disadvantage for one carrier over another, would be administratively burdensome, and would not be necessary should the Commission require contributions on broadband Internet access services.

Section 254 of the Act requires contributions to USF to be assessed on an “equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanism established by the [Commission].”⁴ The Commission also has a policy of competitive neutrality which requires that “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁵ In a series of orders, the Commission deliberately and expressly created a level playing field for all broadband Internet access services, regardless of the transmission technology or network used to deliver such services to end users.⁶ Further, the Commission eliminated

⁴ 47 U.S.C. 254(d).

⁵ *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 47 (1997).

⁶ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 56 (2007) (stating the Commission’s goal of “encouraging the development of information services by ensuring that they remain free from common carrier regulation, and services the Act’s overarching goal of fostering competition by providing a level playing field in the market and removing unnecessary regulatory impediments.”); *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281, ¶ 2 (2006) (classifying broadband over power lines as an information service and holding that such classification “furthers the Commission’s goal of developing a consistent regulatory framework across broadband platforms by regulating like services in a similar manner”); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 1 (2005) (“*Wireline Broadband Order*”) (finding that the Commission’s determination that broadband access to the Internet over wireline is an information service “furthers the goal of developing a consistent regulatory framework across platforms by regulating like services in a similar functional manner, after a transitional period”); *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, ¶ 6 (2002) (holding that the Commission’s Order “seek[s] to create a rational framework for the regulation of competing services that are provided via different technologies and network architectures” and “strive[s] to develop an analytical approach that is, to the extent possible consistent across multiple platforms”).

competitive distortions for telecommunications inputs purchased by ISPs that are not direct USF contributors when it determined that an upstream contribution on DSL transmission sold to ISPs would undermine its exemption for the finished broadband Internet access service.⁷

Any new requirements should ensure competitive neutrality and must not impose discriminatory obligations that vary based on ownership of facilities, type of leased facility, or business model (integrated or separate affiliate). Under the current contribution methodology, broadband Internet access is not subject to USF contribution requirements. If carrier A, who owns loop facilities, sells \$400 worth of broadband Internet access to a direct customer, its USF contribution will be \$0. If carrier B (here, TelePacific) buys a \$100 loop from carrier A and cannot certify USF exemption because B incorporates the loop in a retail broadband Internet access service, B would owe a direct USF contribution of \$0, but B likely would be required to pay the portion of the \$15 USF contribution that A must make and would likely pass on to B, thereby increasing B's cost of service, placing B at a competitive disadvantage and creating an unlevel playing field. Requiring service-by-service certification would unfairly disadvantage carriers that do not own loop facilities vis-à-vis competitors that own loop facilities. If carrier B passed-through to its customers the indirect USF contribution paid to carrier A, carrier B could price itself out of the market. On the other hand if carrier B chooses to remain competitive in its customer pricing and not pass-through the indirect USF contribution, carrier B's profits would diminish. Given that the Commission's overarching goals include promotion of access to broadband and competitive neutrality, the Commission should not require a service-by-service reseller certification that undermines those goals.

⁷ *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, n. 206 (2006). The same rationale justifies an "exemption" for telecommunications services used as an input in broadband Internet access. *See* TelePacific Ex Parte Notices, WC Docket No. 06-122, dated February 1, 2010, July 26, 2012, and July 30, 2012.

In addition, the practical difficulties of implementing a service-by-service certification without a sophisticated and complex mechanized ordering process are numerous. For example, a customer might originally order only broadband Internet access and later change to an integrated service that includes voice and broadband. Under a service-by-service certification system, carriers would have to disconnect the T-1 circuit from the “end user” Billing Account Number (“BAN”) and reconnect it under the reseller BAN each time a customer changes services.

Several parties pointed out that implementing a service-by-service certification would make the process more cumbersome and administratively burdensome, would be cost prohibitive, and would take time to implement⁸ and a “number of them could not be implemented by either wholesale providers or resellers.”⁹ Others have urged the Commission to simplify administration and “clarify that if a wholesale customer is a USF contributor, then all services the customer purchases from a wholesale provider are exempt from USF”¹⁰ or broaden the contribution base to include providers of broadband Internet access service.¹¹

TelePacific submits that even if it is possible to develop systems to implement service-by-service certification, it makes no sense to require carriers to incur time and expense to develop such systems. Instead, the Commission should expand the contribution base to include retail broadband Internet access revenues as several parties have recommended.¹² If contributions

⁸ See *e.g.*, AT&T Comments at 36 (filed July 9, 2012); Comcast Corporation Comments at 15 (filed July 9, 2012); CTIA-The Wireless Association Comments at 12 (filed July 9, 2012); Verizon Comments at 18 (filed July 9, 2012).

⁹ See AT&T Comments at 36.

¹⁰ See Cincinnati Bell Inc. Comments at 14 (filed July 9, 2012); *see also*, EarthLink, Integra, and tw telecom Comments at 14 (filed July 9, 2012).

¹¹ EarthLink, Integra, and tw telecom Comments at 15.

¹² See *e.g.*, AARP at 25 (filed July 9, 2012); The Ad Hoc Telecommunications User Committee at 38 (filed July 9, 2012); AT&T at 13-14; California Public Utilities Commission at 3-4 (filed July 9, 2012); CenturyLink at 10 (filed July 9, 2012); COMPTTEL at 7 (filed July 9,

on broadband Internet access, or the telecommunications transmission portion of the service, are necessary to ensure the sufficiency of the USF Fund, then the Commission should change the rules, prospectively, so that all providers (wireline, cable, wireless, stand-alone ISP, etc.) whether or not they own loop facilities contribute on an equitable and nondiscriminatory basis.

Accordingly, TelePacific urges the Commission not to require service-by-service certification because it would create an unlevel playing field and unfair disadvantage for one carrier over another, would be administratively burdensome, and would not be necessary should the Commission require contributions on broadband Internet access services.

Respectfully submitted,

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2012); EarthLink, Integra, and tw Telecom at 6-7; Frontier Communications Corporation at 3 (filed July 9, 2012); GVNW Consulting, Inc. at 8 (filed July 9, 2012); MetroPCS Communications, Inc. at 11-13 (filed July 9, 2012); National Telecommunications Cooperative Association, The Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance at 15 (filed July 9, 2012); Peerless Network, Inc. at 12 (filed July 9, 2012); Rural Telecom Group, Inc. at 3 (filed July 9, 2012); Sprint Nextel Corporation at 32 (filed July 9, 2012); United States Cellular Corporation at 23-24 (filed July 9, 2012).