

**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 USA COALITION

The Universal Service for America Coalition (“USA Coalition”), by its attorneys, hereby replies to comments filed in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned dockets.¹ The USA Coalition joins the substantial majority of parties who agree that the current revenues-based contribution mechanism should be improved, rather than replaced, and the contribution base broadened to cover functionally equivalent services. A replacement mechanism would merely create new opportunities for arbitrage and increase the administrative burdens that carriers, USAC, and the FCC must bear. The USA Coalition also joins the nearly unanimous support for reducing the administrative burdens associated with the contribution mechanism, changing the wireless safe harbor revenue allocation, and implementing an annual notice-and-comment process for updating the contribution reporting mechanisms. The FCC should also act quickly to streamline the reseller certification process.

I. The Record Supports the Modification of the Current Revenues-Based Mechanism Over the Adoption of a Connections-Based, Numbers-Based, or Hybrid Mechanism

Much has changed since the FCC last requested comment on alternative contributions mechanisms. Today, a consensus has emerged across a broad range of industry stakeholders that the existing revenues-based contribution mechanism should be retained in its fundamental form,

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

although the FCC should adopt significant improvements.² Even parties who once urged the FCC to adopt an alternative replacement mechanism now instead support modifying the existing revenues-based contribution mechanism.³ The record demonstrates persuasively that modifying the current revenues-based contribution mechanism would be the best way for the FCC to ensure that contributions are collected through a rational, fair and efficient means. Each of the potential alternative contribution mechanisms would disproportionately burden certain classes of users, including low-usage consumers who can least afford to contribute, and create new arbitrage opportunities that would exacerbate the very harms that the FCC now seeks to redress.

A. Commenters Agree that Revenues Are the Best Basis for Calculating Contributions Because Revenues Are the Best Proxy for Network Usage

As NASUCA correctly observed, “the current mechanism, which bases USF contribution on carriers’ revenues, despite problems, works, especially as a gauge of how the network is used.”⁴ The California PUC agrees, noting that, under a revenues-based system, “the burden is relative to the volume of the service consumed.”⁵ Restated, revenues best approximate use.

By contrast, both connections- and numbers-based contribution mechanisms suffer from serious pitfalls. Specifically, both alternatives are unacceptable due to the limited nexus between telecommunications usage and connection speeds or telephone numbers. The limited nexus also creates opportunities for heavy users of services to engage in arbitrage to limit their contribution

² See NASUCA Comments at 9 (“A revenues-based mechanism should be maintained and improved.”); California PUC Comments at 3 (“the CPUC supports a reformed revenue-based contribution system as the most effective way to assess contributions”); Alliance of Automobile Manufacturers, Inc. Comments at 1 (“The Alliance urges the FCC to refrain from adopting rules that would assess USF contributions based on assigned telephone numbers or network connections”); Cincinnati Bell Comments at iii; XO Comments at 31 (“a revenues-based contribution methodology is preferable and more administratively simple than a numbers-based, connections-based or hybrid methodology.”); NTCA, OPASTCO, and WTA Comments at 35 (“NTCA Comments”) (“Revenues provide the most efficient route towards contributions reform.”); US Cellular Comments at 32 (“the existing revenues-based system, if it is enhanced by certain reforms the FCC should adopt in this proceeding, would work effectively to promote the FCC’s universal service and broadband deployment policies.”).

³ See T-Mobile Comments at 5-6.

⁴ NASUCA Comments at 1.

⁵ California PUC Comments at 8.

obligation, which unfairly increases the contribution burdens of everyone else.⁶ Any mechanism that fails to link contributions with usage would be unfairly regressive, and thus must be rejected as fundamentally inconsistent with the Act's requirement that contributions be "equitable."⁷

The initial comments on the record underscore a basic tenet of fairness: those who use more of a supported network should contribute more to its support. The proposed alternatives, however, would make those who use less of the supported network contribute comparatively more to its support, as COMPTTEL correctly explains.⁸ Despite their superficial appeal, contribution methodologies that impose fees for each number or connection would cause "a massive, unjustified shift in the burden of USF contribution obligations among user groups, unrelated to the statutory objectives for universal service."⁹ By contrast, retaining a revenues-based contribution mechanism that has been modified as the USA Coalition recommends is the fundamentally fair and rational way to collect support.

B. A Numbers-Based or Connections-Based Mechanism Would Negatively Impact Consumers and Low-Use Connected Devices

The record provides ample evidence that abandoning the existing revenues-based contribution mechanism in favor of an alternative would not be consistent with the FCC's stated objective that the USF regime be "fair for contributors." Mechanisms based on numbers or connections would unduly burden consumers and small businesses, and the arbitrage made possible by such mechanisms would exacerbate the unfairness. For example, consider the usage patterns of TracFone customers: "TracFone's per customer USF obligation under the current revenue-based methodology is substantially less than \$1.00 per month. Thus, imposition of a monthly per number charge of \$1.00 would significantly increase the price of prepaid wireless

⁶ XO Comments at 36; California PUC Comments at 8.

⁷ US Cellular Comments at 33, citing California PUC Universal Service Reform White Paper at 9 (2011).

⁸ COMPTTEL Comments at 34.

⁹ Association of TeleServices International, Inc. Comments at 4.

services[.]”¹⁰ TracFone’s observation reflects the widespread agreement that a numbers- or connections-based contribution mechanism would disproportionately impact both vulnerable populations and light users of interstate telecommunications, who account for many of the numbers in use but have low network usage and no means for shielding themselves from harm that arbitrage will cause.¹¹

The comments of USA Mobility, OnStar, and the Alliance of Automobile Manufacturers provide additional examples of the negative impact that a connections- or numbers-based contribution mechanism would cause.¹² As these commenters explain, not only would an alternative contributions mechanism impose higher regulatory costs on most residential consumers, who are generally light users of interstate telecommunications services, but it would also have an adverse impact on existing and future machine-to-machine services that have numbers and connections but only use the network sparingly for interstate services, if at all.¹³ For these reasons, the USA Coalition agrees that the existing revenues-based mechanism represents the most equitable allocation of the contribution burden among the available alternatives, as the evidence on the record in this proceeding demonstrates.

C. Alternative Contribution Mechanisms Would Be Prone to Arbitrage

Many commenters noted the “perverse incentives” that numbers- and connections-based contribution mechanisms create since neither type is a good proxy for usage, parties could manipulate the amount of numbers or types of connections they use in order to minimize their

¹⁰ TracFone Comments at 5; T-Mobile Comments at 6 (“fairness concerns arise if low-usage and high-usage numbers are required to contribute the same amount.”).

¹¹ California PUC Comments at 14; Peerless Comments at 91; US Cellular Comments at 32-33.

¹² USA Mobility Comments at 5; OnStar Comments at 7-8 fn. 17. Alliance of Automobile Manufacturers, Inc. at 3. *See also* RTGI Comments at 9; XO Comments at 33-34.

¹³ The USA Coalition notes that the policy issues and legal questions surrounding the applicability of Section 254 of the Act to machine-to-machine (“M2M”) services have received only cursory treatment in this proceeding. Key questions which have not been thoroughly explored include to what extent, if at all, M2M services or connections are “interstate telecommunications,” whether the FCC’s authority under Section 254 encompasses such services, and who is an “end user.” Any conclusions the FCC may reach regarding the inclusion of M2M in the revenue base are premature and lack support in the record.

contribution obligation.¹⁴ This type of regulatory arbitrage is particularly problematic because the largest consumers of telecommunications – *e.g.*, large business, call centers, *etc.* – would be best positioned to engage in arbitrage, which would shift the relative contribution burden to other users who may not be in a position to absorb these unfair increases.¹⁵ For example, residential consumers and wireless consumers cannot reduce the amount of numbers or connections that they use, and thus they would bear the full brunt of the contribution requirement, which would increase as a result of arbitrage by others. As the California Public Utilities Commission noted, the result of the contribution reduction enjoyed by the large users of telecommunications services would be to increase the burdens borne by the most vulnerable populations.¹⁶ Even if the FCC sought to protect the most at risk populations through exemptions, the “middle market users” who do not qualify for the exemption but who cannot engage in arbitrage would bear an even greater unfair share of the contribution obligation. The net result would be that an even greater percentage of the USF contribution burden would fall upon a smaller percentage of users, including residential and small business customers who are the least able to absorb additional costs. This unfair result would be fundamentally inconsistent with the FCC’s obligations under Section 254 of the Act.

A hybrid mechanism would be even more problematic, both in terms of the potential arbitrage it would invite and the increased compliance burden it would impose upon contributors. As NASUCA noted, the potential for arbitrage increase as the complexity of the mechanism

¹⁴ AARP Comments at V (“Assessment based on revenues will promote administrative efficiency as identifying revenues associated with assessed services has less potential for gaming than connections-based or numbers-based alternatives”); California PUC Comments at 12; MetroPCS Comments at 6; NASUCA Comments at 9-10; Twilio Comments at 4-5.

¹⁵ Twilio Comments at 5 (“companies... could act to avoid USF by reducing their use of telephone numbers. Given the current and future state of software and hardware involved in telecommunications, one can imagine assigning a single telephone number to hundreds of users with extensions used to differentiate among users.”).

¹⁶ California PUC Comments at 9.

increases, making a hybrid system even less desirable.¹⁷ A hybrid option has been recognized as possessing “all of the same concerns as each system individually and also would place a greater burden on providers who would have to track both numbers and connections in order to make contributions.”¹⁸ Carriers would bear twice the administrative burden, and the FCC would face increased auditing and enforcement burdens, if dealing with two systems rather than one.

II. The Record Supports Broadening the Contribution Base to Include The Transmission Component of All Telecommunications and Information Services

As many commenters have noted, the flaw at the core of the current contribution mechanism is the “fundamental mismatch between the subset of services that contribute to the Universal Service Fund and the full range of services that rely on and benefit from the network that everyone uses.”¹⁹ Contribution reform promises to resolve this discrepancy and ensure that all services that benefit from the interconnected network should contribute on a fair and equitable basis to the USF. The USA Coalition lends its voice to those who call for the FCC to broaden the base of assessable services to include the interstate transmission component of all telecommunication and information services that consumers use to transmit information of their choice, without change in content or format, between points of their choosing, regardless of the consumer is making a voice call, sending text messages, or surfing the Internet.

First, as pointed out by Frontier, “[n]ow that the Commission has concluded that explicit broadband support is appropriate under its Universal Service rules, it is only logical that customers of that service should contribute to the funding broadband expansion.”²⁰ Concurrent

¹⁷ NASUCA Comments at 9 (“under a numbers- or connections-based mechanism, such a mechanism would likely be as complicated and subject to claims of arbitrage as the current mechanism. The same problems would be present with a hybrid mechanism, but would be even more complex.”).

¹⁸ California PUC Comments at 14.

¹⁹ CenturyLINK Comments at 9. *Accord* RTGI Comments at 3; NASUCA Comments at 4-5; Metro PCS Comments at 4; T-Mobile Comments at 2.

²⁰ Frontier Comments at 3; NASUCA Comments at 2; District of Columbia PSC at 2 (“If new services are to be supported by federal universal service, then providers of these services should be assessed for universal service contributions.”).

with this expansion in the services supported by universal service contributions is the need to pay for these newly-supported services. For this reason, the USA Coalition joins with NASUCA and those who believe that “[r]equiring voice service to be the sole support of a fund supporting broadband service would not only be unreasonable from a public policy perspective, but it would be financially unsustainable.”²¹ Further, as many commenters noted, it would be inconsistent with basic principles of fairness to require voice service to support broadband service even as traditional voice service is gradually phased out from the support it currently receives.²² By contrast, as noted by the California Public Utilities Commission, “expanding the revenue base to include broadband could reduce the contribution rate to as little as 2 percent.”²³ The time has come to broaden the base of assessable services.

Second, as noted by MetroPCS, NTCA, RCA, and many others, the line between broadband, VoIP, wireless, and traditional voice services is growing increasingly antiquated and with it the basis for treating these technologies differently for contribution purposes.²⁴ As Frontier noted, “functionally equivalent products need to be assessed in the same manner so as not to encourage technology substitution strictly on the basis of which services are subject to increased contributions burdens”²⁵ Similar services should be treated similarly and in accordance within the Act’s limits on jurisdiction and requirements that the contribution mechanism be competitively and technologically neutral.²⁶ For this reason, the FCC should heed the call to expand the contribution base to cover as many types of assessable services providers as possible pursuant to the requirements of the Act and structure its rules to ensure that service providers

²¹ NASUCA Comments at 2.

²² T-Mobile Comments at 3-4; *accord* NASUCA Comments at 2.

²³ California PUC Comments at 7.

²⁴ MetroPCS Comments at 4; NTCA Comments at 13; RCA Comments at 13;

²⁵ Frontier Comments at 7.

²⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997).

cannot gain a competitive advantage over each other, or avoid the universal service contribution obligations altogether, by adopting a regulatory structure that has no relevance to the market.²⁷

III. Revising the Wireless Safe Harbor Based Upon the Facts Available to the Commission Would Create Efficiencies for Contributors, the FCC, and USAC

As several commenting parties noted, existing safe harbor levels for certain services are too high. As it modernizes the contribution mechanism, the FCC should take steps to set safe harbors at rates that provide meaningful incentives for providers to make use of them, thereby saving money for both providers and USAC.²⁸ After over six years at the current level, and now 14 years as an “interim measure,” the wireless safe harbor is due for reconsideration as its underlying assumptions are no longer supported by market realities.²⁹ A wireless safe harbor that more accurately reflects wireless traffic patterns would negate the need for carriers to commission costly traffic studies and ease USAC’s administrative burden associated with both analyzing and auditing individual traffic studies.³⁰

There is nothing sacred about the existing safe harbors and they should be modified so that contributors will actually use them.³¹ As RTGI noted, “The safe harbor was last increased in 2006, when the FCC raised it from 28.5 percent to 37.1 percent, [a number chosen]... because it was the *highest* percentage of interstate and international usage by a wireless company supported in the record.”³² As CTIA pointed out, the FCC’s own data shows that over three-quarters of

²⁷ RCA Comments at 6; California PUC Comments at 3-4; GNVW Consulting Comments at 4; NTCA Comments at 3-4; Metro PCS Comments at 4; RTGI Comments at 6; NASUCA Comments at 5 (“market distortions in a revenues-based system could potentially be reduced by including the broadest set of services in the contribution base and by assessing competing services at the same rate.”).

²⁸ CTIA Comments at 10, *citing* FNRPM at ¶ 124, Chart 3; Verizon Comments at 21.

²⁹ For example, in 2002, the FCC revised the interim wireless safe harbor to increase the contribution requirement from 15 to 28.5 percent of a wireless carrier’s end-user telecommunications services revenues and amended the instructions to reflect this increase. *See* 17 FCC Rcd 24952 at ¶ 21 (2002); 13 FCC Rcd 21252 at ¶ 10 (1998).

³⁰ *Accord* CTIA Comments at 11 (“More fact-based wireless safe harbors would reduce burdens on carriers because they would no longer have to conduct and document traffic studies, as well as on USAC and the FCC because they would no longer need to review them.”).

³¹ *See* NASUCA Comments at 18-19.

³² RTGI Comments at 10 (internal quotations omitted).

wireless carriers filing traffic studies demonstrate that only 10 percent to 29 percent of their traffic is interstate.”³³ Indeed, in the FNPRM itself the FCC acknowledged that the average interstate or international percentage of use of the wireless traffic studies on file with the FCC is 23 percent, with the median study reporting 19 percent interstate/international.³⁴ The existing safe harbor is not a useful alternative for most wireless carriers and in need of adjustment.

In light of the efficiencies that can be gained by the use of a realistic safe harbor, the FCC should reevaluate its current safe harbors based on the facts available to it, and it should expressly consider setting safe harbors at levels that are slightly below the average level of an approximate interstate revenue percentage to encourage providers to make use of the FCC’s safe harbors rather than conduct costly and unnecessary traffic studies. In the words of Time Warner, “[e]xpanding the available bright-line options will make compliance more straightforward and far less complicated than it currently is, which is one of the FNPRM’s key reform goals.”³⁵

IV. The FCC Should Act Quickly on Wholesaler-Reseller Contributions

The record demonstrates that the FCC should standardize and simplify the contributions obligations of wholesalers and those that deal with them.³⁶ As noted by Verizon, the current system of distinguishing wholesale from reseller revenues is a source of frustration for wholesalers and resellers alike.³⁷ Much of this stems from the vagueness of the FCC’s rules that direct wholesalers to have in place “documented procedures” to ensure that the wholesaler reports as “revenues from resellers” only revenues from resellers that “reasonably would be expected to contribute” to the USF, but provides no guidance on the means to meet this standard.

³³ CTIA Comments at 10

³⁴ FNPRM ¶ 124.

³⁵ Time Warner Comments at 12.

³⁶ AT&T Comments at 30; T-Mobile Comments at 8; Verizon Comments at 16; Clearwire Comments at 10.

³⁷ Verizon Comments at 16.

For this reason, the USA Coalition agrees that a standardized certification procedure would help resellers “navigate the many varying wholesale provider certification procedures.”³⁸

The USA Coalition supports those who call for the Commission to adopt standardized certification procedures that contributors may use to satisfy the FCC’s documentation procedures.³⁹ Providing clear guidance on acceptable certification procedures and lengthy certification “expiration dates” would be an effective way to address many of the concerns raised by the commenting parties without the need for the FCC to develop an alternative to the existing reseller, process which would be complicated to develop, implement, and administer.⁴⁰

V. The FCC Should Request Comment on All Proposed Reporting Mechanism Changes, Including Changes to the Worksheet and Accompanying Instructions.

The USA Coalition joins with the many commenters who support the FNPRM’s proposal to adopt a formal, annual process for the Wireline Competition Bureau to update and adopt the Telecommunications Reporting Worksheet and its accompanying instructions.⁴¹ The record demonstrates that the FCC should publish and request comment on proposed modifications to the Worksheet and accompanying instructions so that the FCC can benefit from the wisdom of the industry and so that reporting changes will not catch anyone by surprise.⁴² This widely supported step would lend needed clarity and predictability to the existing system.

³⁸ United States Telecom Association Comments at 9; CTIA Comments at 12.

³⁹ *See e.g.*, Fiber Provider Coalition Comments at 11.

⁴⁰ CTIA Comments at 12; Earthlink, Integra, and tw telecom Comments at 16; Clearwire Comments at 11-12.

⁴¹ CenturyLINK Comments at 7; CTIA Comments at 15-16; T-Mobile Comments at 9; US Cellular Comments at 40; US Telecom Comments at 9; Verizon Comments at 2.

⁴² CTIA Comments at 16.

Conclusion

For these reasons, the USA Coalition urges the FCC to modify the current revenues-based contribution mechanism as recommended.

Respectfully submitted,

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

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

Counsel for the USA Coalition

Date: August 6, 2012