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 NEUTRAL TANDEM, INC., d/b/a INTELIQUENT

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Neutral Tandem, Inc., d/b/a Inteliquent ("Inteliquent"), hereby submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking ("*FNPRM*") regarding possible changes to the contribution system for the Universal Service Fund ("USF" or "Fund").[1] Inteliquent provides U.S. and international voice, IP Transit, and Ethernet services, primarily on a wholesale basis, using an IP network. Inteliquent delivers global connectivity and solutions for a variety of media, including voice, data and video, and enables other providers to deliver services where they do not have or elect not to use their own networks.

Inteliquent submits these reply comments to urge the Commission to retain the wholesale exemption and preserve carriers' ability to recover Universal Service Fund costs from end-users in a transparent manner—two points supported by the overwhelming majority of commenters in this proceeding. The current contribution system for USF has served the needs of carriers, consumers, and those who benefit from USF support for over a decade and a half. While it is sensible to update the USF system as the communications market evolves, the Commission

[1] *In re Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC No. 12-46 (rel. Apr. 30, 2012) ("*FNPRM*").

should not uproot bedrock elements of the USF regime that work well and have been relied upon by an entire industry. Two of the most important of these foundational elements are the wholesale exemption and the ability to pass through USF charges as transparent line items on customer bills. As numerous commenters have recognized, these long-standing Commission policies satisfy the Commission's statutory directives and also promote the Commission's goals of efficiency, fairness, and sustainability.

First, the Commission should continue to exempt wholesale (or "carrier's carrier") revenue from USF assessments. This proven method prevents double assessment of USF fees and maintains competitive neutrality at a low administrative cost. Alternative approaches, such as a "value-added" regime, would introduce unworkable uncertainty and administrative costs and frustrate settled market arrangements. The Commission should, however, streamline the current system by reforming the reseller certification process.

Second, the Commission should not restrict carriers' ability to recover their USF costs via pass-through charges to end-users. Eliminating carriers' ability to assess a USF line item would undermine the important goal of transparency the Commission seeks to advance in this proceeding. And the even more draconian step of prohibiting the recovery of USF charges altogether would distort the market and upset contractual market expectations.

I. THE COMMISSION SHOULD RETAIN THE WHOLESALE REVENUE EXEMPTION.

Inteliquent joins the overwhelming majority of commenters and urges the Commission to retain its wholesale revenue exemption for USF assessments. Under this exemption, wholesale providers do not contribute USF fees based on wholesale or "carrier's carrier" revenue—*i.e.*, sales to customers who themselves contribute to the Fund.[2] As the Commission has previously acknowledged, this approach prevents assessing the same revenue twice, and is easy and efficient to administer.[3] It is thus unsurprising that virtually every commenter addressing wholesale arrangements either urges the Commission to retain the current wholesale exemption[4] or rejects adoption of a value-added system in favor of a streamlined version of the current system.[5]

As the comments point out, the current system for addressing wholesale revenues best serves the statutory goals of the USF. The Communications Act requires that USF contributions be made on an "equitable and nondiscriminatory basis,"[6] that the contribution methodology be

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[2] *See* 47 C.F.R. § 54.706; *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9207-08 ¶¶ 845-848 (1997).

[3] *See Id.*, 12 FCC Rcd at 9206-07 ¶¶ 843-844 (finding that the wholesale exemption "eliminates the double payment problem, is competitively neutral and is easy to administer" and, specifically, that it is "more administratively efficient").

[4] *See, e.g.*, Comments of Alaska Communications Systems Group, Inc. at 20-22 (filed July 9, 2012); Comments of American Cable Association at 10-11 (filed July 9, 2012); Comments of BT Americas, Inc. at 7 (filed July 9, 2012); Comments of Cincinnati Bell, Inc. at 13-16 (filed July 9, 2012); Comments of Clearwire Corporation at 9 (filed July 9, 2012); Comments of COMPTEL at 29 (filed July 9, 2012); Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 3-8; Comments of NTCA, OPASTCO, and WTA at 45-47 (filed July 9, 2012); Comments of Peerless Network, Inc. at 3, 6 (filed July 9, 2012); Comments of Satellite Industry Association at 3-8; Comments of Verizon at 15-20 (filed July 9, 2012).

[5] *See, e.g.*, Comments of Comcast Corporation at 13-16 (filed July 9, 2012); Comments of EarthLink, Integra Telecom, and tw telecom at 13-16 (filed July 9, 2012); Comments of International Carrier Coalition at 9-11 (filed July 9, 2012); Comments of Level 3 Communications, LLC, at 19-21 (filed July 9, 2012); Comments of Sprint Nextel Corporation at 20-22 (filed July 9, 2012); Comments of Universal Service for America Coalition at 8-9 (filed July 9, 2012); Comments of US Telecom Association at 11-12 (filed July 9, 2012); Comments of XO Communications Services, LLC at 7-8 (filed July 9, 2012).

[6] 47 U.S.C. § 254(d).

fair to contributors, and that it be competitively neutral.[7] The Commission was faithful to these statutory requirements when it established the wholesale exemption. It found then that basing contributions on end-user revenues (rather than wholesale revenues) "is competitively neutral because it eliminates the problem of counting revenues derived from the same services twice," which the Commission noted "distorts competition . . . [by] disadvantag[ing] resellers."[8] The current regime now has a proven track record of serving these goals in an administratively simple way. It bases assessments on a single, easily determinable value—end-user revenues—which captures revenues generated by wholesale services without assessing such services twice.

In contrast, the value-added proposal discussed in the *FNPRM* flies in the face of the Commission's goals. It would require providers to engage in complex—and perhaps unanswerable—calculations and judgments about how much "value" each input carrier provides to an eventual end-user-directed product or service. For example, a provider might sell per-minute services built from flat-rate upstream inputs, or it might combine wholesale services received from several carriers, along with its own inputs, to produce services with both assessable and non-assessable components.[9] These sorts of practices are increasingly common as the rapidly changing communications sector introduces new and evolving products and services.

A value-added system would also disrupt commercial agreements between wholesalers and their customers. In reliance on the wholesale exemption, many agreements flatly prohibit

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[7] *See* 47 U.S.C. § 254(b)(4), (d); *Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 8801, ¶ 47 (implementing section 254(b) by adopting the additional principle of competitive neutrality).

[8] *Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 9207, ¶ 845; *see also FNPRM* ¶ 159 ("We note that one of the considerations in crafting the current revenue-based system focused on end users was to avoid 'double counting' revenue.").

[9] *See, e.g.*, Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 4-5; Comments of Verizon at 18-20; Comments of Cincinnati Bell, Inc. at 14.

wholesalers from passing USF fees through to their customers.[10] Changing the regime would at best dislocate these agreements, sowing confusion and unnecessary transaction costs into an industry that must innovate and invest rapidly. At worst, a regime change to a value-added system would create considerable inequities as expenses apportioned by mutual agreement would be reshuffled by regulatory fiat.

It is thus unsurprising that the value-added proposal garnered only limited and tepid support. In three instances, commenters tentatively preferred value-added regimes depending on results from future studies or considerations,[11] and the commenter in a fourth supported the shift only if the Commission undertook certain reforms elsewhere.[12]

More importantly, these outliers do not oppose the wholesale exemption in principle, even acknowledging that it is generally an elegant contribution solution.[13] They simply fear that industry changes have left the current system too complex or unworkable. But a streamlined reform of the current regime could fully address these concerns while retaining the regime's long-proven benefits.[14]

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[10] *See, e.g.*, Comments of Fibertech Networks, LLC, *et al.* at 7 (filed July 9, 2012).

[11] *See* Comments of Coalition for Rational Universal Service and Intercarrier Reform at 10 (filed July 9, 2012) ("A value-added methodology is economically rational, and could simplify the process for all concerned, but it would only make sense if it could be administered without even more complexity than the status quo."); *see also* Comments of CTIA—The Wireless Association at 11-12 (filed July 9, 2012) ("The value-added assessment process discussed in the FNPRM shows some promise for addressing these issues, although the Commission would need to consider further how such a system would work before moving forward to adopt it.") (footnote omitted); Comments of T-Mobile USA, Inc. at 8-9 (filed July 9, 2012) ("This value-added approach also could potentially meet the proposed goals . . . . [but] [a]dditional study about how to implement such a system would be required before any decision could be made").

[12] *See* Comments of AT&T at 32-33 (filed July 9, 2012) ("If the Commission decides to retain its revenues-based contribution methodology, which it should not except on a transitional basis, the current wholesale/resale regime must be significantly altered, such as by adopting a modified value-added approach").

[13] *See, e.g.*, Comments of AT&T at 30 (deeming the wholesale/resale regime a "simple and elegant solution" whose utility eroded as the landscape changed).

[14] *See* above at n. 5; *see also, e.g.*, Comments of CTIA—The Wireless Association at 12 (acknowledging that the Commission could still use a modified reseller certification regime to promote its efficiency goals); *see also* Comments of Coalition for Rational Universal Service and Intercarrier Reform at 10 ("[A value-added methodology] would only make sense if it could be administered without even more complexity than the status quo.").

Inteliquent agrees in particular with the commenters who suggest reforming the current burdensome certification process. USAC's insistence that wholesalers obtain annual certifications from resellers requires wholesalers and resellers alike to spend significant amounts of time and money on unnecessary paperwork. Commenters have thus suggested that wholesale providers be given a range of means to demonstrate that their reseller customers are contributing to the Fund, with certifications being merely one option.[15] Inteliquent supports this proposal, and also agrees that if wholesalers choose to rely on the certification process, they should not be required to repeat the process every year. Instead, wholesale providers should be allowed to obtain a one-time, initial certification from each reseller customer, subject to a requirement that the reseller notify the wholesaler about any changes in its status as a USF contributor.[16]

II. THE COMMISSION SHOULD NOT LIMIT CARRIERS' ABILITY TO PASS LINE-ITEM USF CHARGES THROUGH TO END-USERS.

Inteliquent also agrees with the multitude of commenters asking the Commission to maintain the ability of carriers to pass USF charges through to end-users via clear line items on customer bills. Carriers currently recover their USF contribution fees through a federal universal service line-item charge that may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.[17] Prohibiting such recovery[18] would undermine the very transparency that the Commission seeks to promote. In order to understand

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[15] *See* Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 11; *see also* Comments of XO Communications Services, LLC at 8 ("[T]he FCC should reconfirm that filer compliance with the Form 499-A Instructions is not mandatory to meet the 'reasonable expectation' standard. Specifically, wholesale carriers may classify a customer as a reseller after reliance on the verification procedures in the Instructions or based on 'other reliable proof' of a customer's reseller status.").

[16] *See* Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 13.

[17] *FNPRM* ¶ 388; *see also* 47 C.F.R. § 54.712.

[18] *FNPRM* ¶ 394 ("[S]ection 54.712 of the Commission's rules, which currently specifies that line items may not exceed the assessable portion of the bill times the contribution factor, could be replaced with the following rule: Federal universal service contribution costs may not be recovered by contributors as a separate line-item charge on a customer's bill.") (internal quotation marks omitted).

their bills and compare prices between competitive services, customers need to know which portions of their bills are attributable to mandated government tax and contribution programs and which are simply market-responsive pricing.[19] As the Commission itself has stated, prohibiting recovery via a line-item charge would "obscure, from the customer's standpoint, the nature of the contribution burden that each end user bears."[20] It is not surprising, then, that nearly every commenter opposes a ban on carriers recovering USF fees through a line-item charge.[21]

Moreover, any effort to prohibit USF recovery *altogether* would at best significantly distort the market.[22] USF fees are costs to providing a service like any other. Such costs must be recovered somewhere, or else the service will not be provided. If the rules were changed to prohibit USF recovery, the USF fees would have to be baked into the rates for the service. Existing contracts that provide for particular rates plus explicit USF recovery would be disrupted.[23] Even if the contracts contained so-called "change of law" clauses, a regulatory

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[19] *See* Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 10-11.

[20] *FNPRM* ¶ 391.

[21] *See* Comments of AARP at 51-53 (filed Jul 9, 2012); Comments of Alaska Communications Systems Group, Inc. at 24-25; Comments of American Cable Association at 12-13; Comments of BT Americas, Inc. at 9-10; Comments of Cable & Wireless Worldwide plc at 4 (filed Jul 9, 2012); Comments of California Public Utilities Commission and the People of the State of California at 15-16 (filed Jul 9, 2012); Comments of Cincinnati Bell, Inc. at 23-24; Comments of COMPTEL at 39-40; Comments of CTIA—The Wireless Association at 28-29; Comments of EarthLink, Integra Telecom, and tw telecom at 21; Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 8-11; Comments of International Carrier Coalition at 15; Comments of Level 3 Communications, LLC, at 25-26; Comments of MegaPath Corporation at 3-5; Comments of National Cable & Telecommunications Association at 6-8 (filed July 9, 2012); Comments of Peerless Network, Inc. at 14; Comments of Public Service Commission of the District of Columbia at 5-6 (filed July 9, 2012); Comments of T-Mobile USA, Inc. at 12; Comments of Telstra Incorporated and Australia-Japan Cable (Guam) Limited at 9; Comments of United States Cellular Corporation at 49-51 (filed July 9, 2012); Comments of Verizon at 49-53; Comments of XO Communications Services, LLC at 50-51.

[22] *See, e.g.,* Comments of BT Americas, Inc. at 9-10 ("[A]ny rule that restricts the characterization of any line item on end-user customer bills as a federal universal service charge could change the allocation of risk in a contract for USF liability and trigger contract disputes"); Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 8-11 ("The various proposals concerning restrictions on the pass through of USF fees and description of the fees on bills raise a number of problems, particularly when applied to contracts currently in effect").

[23] *See, e.g.,* Comments of Fibertech Networks, LLC, Light Tower Holdings LLC, Sidera Networks, LLC, and Zayo Group, LLC at 9.

change of this magnitude would undoubtedly spark numerous contact disputes, introducing unnecessary costs and uncertainty.

Only two commenters diverged from the overwhelming majority view against making changes in the USF pass-through mechanism, and even they did so tentatively.[24] The first commenter was largely ambivalent about cost recovery,[25] and acknowledged that, if the Commission took other steps, it could still permit line-item charges.[26] The other commenter *conditionally* suggested banning line-item recovery, but only if the Commission did not undertake certain reforms elsewhere.[27]

In short, Inteliquent agrees with nearly every commenter that limiting USF pass-through is at odds with the very premise of transparency the Commission values.[28] The transparency the Commission seeks is already present in the current regime.

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[24] *See* Comments of National Association of State Utility Consumer Advocates at 22 (filed July 9, 2012); Comments of TracFone Wireless, Inc. at 6-8 (filed July 9, 2012).

[25] *See* Comments of National Association of State Utility Consumer Advocates at 22 ("[T]here does not appear to be any good reason why such line items should be permitted. . . . Thus NASUCA's initial recommendation in this area is that carriers be forbidden from placing federal USF line items on customers' bills").

[26] *See* Comments of National Association of State Utility Consumer Advocates at 22 ("[I]f the Commission does allow USF line items on customer bills, then NASUCA strongly supports requirements that ensure clarity of that line item").

[27] *See* Comments of TracFone Wireless, Inc. at 7 ("If the Commission fails to establish an appropriate USF collection mechanism for non-billed telecommunications services such as prepaid wireless services, as recommended in these comments, then TracFone respectfully proposes that the Commission promulgate a rule prohibiting any provider of interstate telecommunications service from recovering USF contribution amounts through line item assessments on customer bills.").

[28] *See* Comments of California Public Utilities Commission and the People of the State of California at 16 ("For California, however, the proposed rule contradicts CPUC policies which require transparency of program surcharges on customer bills"); Comments of National Cable & Telecommunications Association at 6 ("[S]uch a prohibition would be the opposite of transparency because it would obscure, from the customer's standpoint, the nature of the contribution burden that each end user bears.") (internal quotation marks omitted); Comments of Verizon at 52 ("This proposal is inconsistent with the purpose of the Commission's Truth-in-Billing rules and cannot be reconciled with the Commission's desire to 'promote transparency.'").

CONCLUSION

Inteliquent respectfully urges the Commission to retain the wholesale exemption and preserve carriers' ability to recover USF costs from end-users in a transparent manner. Any modifications to the USF regime should respect these foundational elements in order to promote the Commission's stated goals of efficiency, fairness and sustainability.

Respectfully submitted,

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