

**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 COMCAST CORPORATION**

Comcast Corporation and its affiliates (“Comcast”) hereby submit this reply to the comments filed in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

As Comcast explained in its initial comments, it is essential that the Commission ensure that its reforms to the Universal Service Fund (“USF” or “Fund”) contribution system are consistent with the fundamental principles of fairness, economic efficiency, and long-term sustainability outlined in the Further Notice.<sup>2</sup> Comcast also recommended that the Commission adopt as additional policy goals of its reform effort maximizing broadband adoption and investment and minimizing interference with marketplace forces.

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<sup>1</sup> *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012) (“FNPRM” or “Further Notice”).

<sup>2</sup> FNPRM ¶¶ 22-25. As Comcast has previously emphasized, a primary means of ensuring sustainability is maintaining the budget established for the Connect America Fund and high-cost support mechanisms. Further, the Commission should actively pursue policies that will reduce the size of the Fund and thereby minimize the consumer burden.

The record developed in response to the Further Notice plainly shows that the current revenues-based contribution mechanism is inconsistent with those policy objectives and cannot be repaired by modest changes. Thus, if the Commission ultimately decides to retain a revenues-based methodology, it must make certain that the reforms correct the existing flaws and advance the agency's central policy goals. It is particularly important that the Commission ensure that competing services are treated in a competitively neutral manner for USF contribution purposes, regardless of technology. The record also demonstrates that the Commission should reject its bundling and value-added proposals, each of which likely would be burdensome and create competitive inequities without solving the problems they are intended to rectify. Finally, commenters in the proceeding have shown that the Commission should implement only those administrative reform proposals that would increase transparency and minimize compliance burdens.

## **II. THE RECORD SHOWS THAT THE CURRENT CONTRIBUTION MECHANISM REQUIRES FUNDAMENTAL REFORM**

The record confirms that a fundamental overhaul of the existing contribution methodology is needed.<sup>3</sup> As Sprint notes, the “problems with the current system are structural, and these problems cannot be fixed by the adoption of more band-aid remedies.”<sup>4</sup> As discussed

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<sup>3</sup> See, e.g., Comments of Ad Hoc Telecommunications Users Committee at 36 (the revenues-based system is “unfit to adapt to changing market conditions and should be replaced by a more stable and predictable methodology”) (“Ad Hoc Comments”); Comments of Google Inc. at 11 (“Rather than attempting to ‘fix’ the revenues-based system through piecemeal (yet significant) changes . . . , the FCC should focus scarce and valuable agency and industry resources on creating a comprehensive, sustainable long-term solution.”) (“Google Comments”); Comments of the Voice on the Net Coalition at 2 (“there is almost unanimous agreement that reliance on interstate revenues to fund USF will not be sustainable”). (Unless otherwise indicated, all comments cited herein were filed in WC Docket No. 06-122 on July 9, 2012.)

<sup>4</sup> Comments of Sprint Nextel Corporation at 13 (“Sprint Comments”).

below, in fashioning its new contribution regime, the Commission must reject reform proposals that would create new competitive distortions and administrative burdens.

#### **A. Determining Assessable Services**

Commenters suggest a variety of changes to the existing revenues-based scheme that are designed to bring greater clarity and certainty to the process of determining the services that are subject to a USF assessment. These proposals, however, only highlight one of the fundamental problems with the current approach: the continuing need to identify the contribution status of innovative services that do not fall neatly into traditional categories.<sup>5</sup> For that reason, among others, Comcast urged the Commission in its initial comments to give serious consideration to alternative contribution methodologies.

If, notwithstanding the difficulties that afflict the current revenues-based system, the Commission nonetheless decides to continue with a similar methodology,<sup>6</sup> the initial comments underscore the importance of ensuring that services that compete with one another are subject to

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<sup>5</sup> See, e.g., Comments of Alaska Communications Systems Group, Inc. at 4 (“the jurisdictional boundaries and regulatory service classifications that once defined the current contribution base have blurred”); Comments of Frontier Communications Corporation at 6 (“Frontier supports contribution reform that recognizes the changed communications marketplace that lacks clear divisions between supported services.”) (“Frontier Comments”); Comments of T-Mobile USA, Inc. at 6 (“classifying services and determining whether traffic is inter- or intrastate . . . are becoming increasingly difficult as the broad adoption of differing technologies . . . obscures such distinctions”) (“T-Mobile Comments”).

<sup>6</sup> If the Commission eventually adopts a new revenues-based regime or another mechanism that requires the determination of assessable services, Comcast also urges the Commission to ensure that assessable services are clearly identified. Uncertainties about the status of particular services for USF contribution purposes have plagued the current assessment mechanism and undermined the efficient implementation of the FCC’s universal service policies. See, e.g., Google Comments at 3-4 (“Although the Commission has attempted incrementally to modify the USF contribution system, these measures have made the system less efficient, more burdensome, and subject to variable determinations by contributors and potential contributors.”); Comments of RCA – The Competitive Carriers Association at 6 (“Making the rules clearer and technology-neutral not only will benefit the resource-starved support mechanisms but also will promote more efficient competition by eliminating the distortions that flow from providers’ varying interpretations of their contribution obligations.”).

the same USF assessment,<sup>7</sup> consistent with its statutory mandate.<sup>8</sup> As ADTRAN notes, “[a] carrier’s decision as to what technology to deploy, or a customer’s decision as to which service they will subscribe, should not be driven by an arbitrarily-assigned USF contribution cost.”<sup>9</sup> Any reforms that would result in competing services being treated differently for contribution purposes would create market distortions,<sup>10</sup> run afoul of the statutory directive,<sup>11</sup> and undermine the Commission’s goals of fairness and competitive neutrality.

## **B. Allocating Revenues From Bundled Services**

The initial comments also confirm that the Commission’s proposals for the USF treatment of revenues generated by “bundled” service offerings are problematic<sup>12</sup> and

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<sup>7</sup> See, e.g., Comments of CTIA – The Wireless Association at 6 (arguing that “the contribution methodology must not impose unequal burdens on entities that compete with one another” and noting that “there is now a vast marketplace of similar or substitutable services, the categories of which should not be subject to unequal burdens”) (“CTIA Comments”); Frontier Comments at 7 (“Another fundamental tenet of reform is that it must be competitively and technology neutral . . .”).

<sup>8</sup> See 47 U.S.C. § 254(d) (contributions must be assessed “on an equitable and nondiscriminatory basis”); see also *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009).

<sup>9</sup> Comments of ADTRAN, Inc. at 3. See also Comments of CenturyLink at 11-12 (“CenturyLink Comments”) (“the underlying technology should not be the driver of the contribution obligation” and “[a]rtificial distinctions and special treatment for certain technologies should be limited”).

<sup>10</sup> See, e.g., FNPRM ¶ 24; T-Mobile Comments at 4-5 (“Fairness is an especially relevant concern here because different treatment for substitutable services creates unintended market distortions that harm competition and consumers.”); Frontier Comments at 7 (“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”).

<sup>11</sup> See, e.g., Sprint Comments at 6 (“the FCC does not, under the Act, have the flexibility to adopt a contribution methodology that is inequitable or discriminatory”).

<sup>12</sup> Comments of the American Cable Association at 7 (“the [bundling] proposal is arbitrary and inequitable”) (“ACA Comments”); Comments of the Satellite Industry Association at 19 (“adoption of the modified rule would . . . discourage or limit businesses from offering bundled discounts that would otherwise benefit consumers”) (“SIA Comments”); Comments of Verizon

unnecessary.<sup>13</sup> Vonage, for example, correctly observes that “the Commission’s proposed apportionment rule . . . will distort the market, impose inequitable contribution requirements, and potentially force providers . . . to offer services on a stand-alone basis regardless of actual consumer demand.”<sup>14</sup> Regulatory requirements that interfere with the efficient operation of a competitive marketplace and may discourage the offering of service packages that consumers desire clearly do not serve the public interest.

Moreover, contrary to the suggestion that the current rules permit unbridled discretion in allocating bundled revenues, the comments show that providers typically employ allocation methods that are consistent with established accounting standards that govern the preparation of financial reports and tax returns.<sup>15</sup> As Verizon explains, “[a] carrier’s consistent adherence to established accounting guidance in apportioning revenues for bundled offerings should alleviate any concern on the Commission’s part that carriers lack ‘specific standards’ [for] making

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at 22 (“This proposed modification . . . would ‘create unintended market distortions’ by virtue of ‘treating similar or substitutable services differently,’ contrary to the Commission’s objectives in this proceeding.”) (“Verizon Comments”).

<sup>13</sup> ACA Comments at 7 (“the Commission does not provide evidence in the *FNPRM* that bundles offered to residential subscribers are a problem”); Comments of the National Cable & Telecommunications Association at 8 (“When multiple services are provided in a bundle over the same network, there is no inherently correct manner of allocating revenues across services or jurisdictions.”) (“NCTA Comments”); Comments of Harris CapRock Communications, Inc. at 10 (“The proposed changes are . . . unnecessary.”) (“Harris CapRock Comments”); SIA Comments at 18 (“there seems to be no demonstrable need for such a rule modification”).

<sup>14</sup> Comments of Vonage Holding Corp. at 4.

<sup>15</sup> *See, e.g.*, Harris CapRock Comments at 10 (“As part of a publicly-traded corporation, Harris CapRock must comply with generally accepted accounting principles (‘GAAP’) and countless financial reporting laws and regulations to collect and remit taxes consistent with applicable law. Part and parcel of these obligations is a consistent, logical allocation of revenues to the appropriate service and equipment categories for purposes of revenue recognition and collection and payment of government taxes on equipment and services, domestically and globally.”); Verizon Comments at 23.

apportionment decisions.”<sup>16</sup> Consequently, if the Commission ultimately adopts new rules governing the allocation of bundled service revenues,<sup>17</sup> it must ensure that those requirements do not conflict with U.S. Generally Accepted Accounting Principles (“GAAP”) or other widely accepted accounting requirements. Inconsistent FCC allocation rules would impose tremendous administrative burdens on contributors and “may have inadvertent consequences in other areas, such as taxes.”<sup>18</sup>

### **C. Excluding Wholesale Revenues**

The record shows widespread opposition to the Commission’s “value-added” proposal for wholesale services. Comcast described in its initial comments some of the considerable practical difficulties, economic costs, and potential distortions that the FCC’s proposed value-added approach could produce. Numerous other commenters agree that the value-added proposal would be extremely complex to administer.<sup>19</sup> For example, CenturyLink aptly notes that the approach “would retain all the existing complexities and arbitrage opportunities [and] would add the difficulty of developing a fair method of calculating the ‘value added’ by an entity . . . and/or each entity’s share of the relevant market.”<sup>20</sup> Any system that requires such difficult

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<sup>16</sup> Verizon Comments at 23.

<sup>17</sup> Moving away from a revenues-based contribution methodology would mitigate the need to allocate bundled service revenues.

<sup>18</sup> NCTA Comments at 8.

<sup>19</sup> ACA Comments at 10-11 (“Such a system could be even more confusing and burdensome than the current process of relying on exemption certifications.”); Comments of Level 3 Communications, LLC at 19 (“The VAT proposal, while nice in theory, is unworkable in practice.”) (“Level 3 Comments”); SIA Comments at 7-8 (the value-added system would “only make an already complicated contribution system even more complicated” and would “increase the total administrative burden of operating the fund”); Verizon Comments at 18 (“this approach would remain administratively burdensome (at least from the reseller’s perspective) and does not represent a significantly more efficient process than what exists today”).

<sup>20</sup> CenturyLink Comments at 17.

determinations and calculations would be burdensome for contributors and create arbitrage opportunities.<sup>21</sup> The record, thus, demonstrates that the Commission should reject its “value-added” proposal for wholesale services.

### **III. THE COMMISSION’S ADMINISTRATIVE REFORMS SHOULD MINIMIZE CONSUMER AND CONTRIBUTOR BURDENS**

Comcast and other commenting parties agree that the Commission should implement reforms to the USF administrative process that increase transparency and reduce compliance and consumer burdens.<sup>22</sup> To advance these goals, the Commission should maintain quarterly contributions, adopt a more transparent process for updating the Form 499 instructions, and decline to limit or condition contributors’ ability to pass through USF contribution charges to end users.

*Quarterly Contribution Factor Adjustments.* Comcast expressed concern in its initial comments that revising the USF contribution factor on an annual rather than quarterly basis could harm consumers, because it could lead to significant fluctuations in the factor from one year to the next. Some parties, however, suggest that the Commission’s proposal to extend the

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<sup>21</sup> *Id.* See also SIA Comments at 7 (“This rule change would not meet the Commission’s goal of ensuring efficiency or fairness because it would inject substantial complexity and uncertainty into the Universal Service contribution process and distort competition.”); Sprint Comments at 20 (the value-added system “could result in competitive distortions”).

<sup>22</sup> Ad Hoc Comments at 5 (“the contribution rules should be simpler for contributors to understand and apply”); CTIA Comments at 7-8 (“With the proposed reforms, the Commission should seek to minimize administrative complexity and simplify processes where possible. This will reduce unnecessary burdens on service providers and USAC, and attendant costs to consumers.”); *id.* at 13 (“the success of any comprehensive contribution reforms that ultimately are adopted in this proceeding will be thwarted if the administrative mechanisms that implement the system are not transparent, clear, efficient and effective”); NCTA Comments at 6 (“Transparency has been a critical policy goal of the current Commission and it should not stray from that goal in reforming the universal service contribution regime.”); Comments of the United States Telecom Association at 6 (“[T]he Commission should make changes to the USF contributions system that minimize[] burdens on providers and maximize[] administrative efficiency. Ease of administration would reduce costs on providers that must be passed through to consumers in the form of higher rates.”) (“USTA Comments”).

time period over which an annual change in the factor is introduced would address the consumer “sticker shock” issue.<sup>23</sup> As Comcast previously explained, that proposal may reduce, but would not eliminate, the risk of a significant change in a consumer’s USF assessment from one assessment period to the next. Moreover, extending the period would require yet another set of calculations in a system that is already complicated and difficult to administer. In Comcast’s view, the most effective way to protect consumers against the risk of USF “sticker shock” is to maintain the current practice of quarterly adjustments.

*Form 499 Instructions Updates.* The record contains broad support for implementing a more transparent process for modifying the Form 499 and its instructions. Numerous parties specifically agree with Comcast that the Commission annually should identify any proposed changes to the Form 499 Worksheet and instructions, explain the reasons for the proposed changes, and seek comment on the revisions.<sup>24</sup> As CTIA notes, “establishing formal procedures for notice and comment would help ensure that the USF reporting and contribution process is more transparent, equitable, and efficient.”<sup>25</sup>

*USF Contribution Pass-Through Charges.* Comcast concurs with the view of numerous commenters that the Commission should not restrict providers’ ability to recover USF contributions from their end users, consistent with the Commission’s Truth-in-Billing rules.<sup>26</sup>

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<sup>23</sup> See, e.g., Comments of the California Public Utilities Commission at 15; Level 3 Comments at 23.

<sup>24</sup> See, e.g., Comments of CenturyLink at 7-8 (it “would be more prudent to make sure that changes to the Form 499-A worksheet and instructions are clear from the start and consider the full range of potential ramifications they may engender”); T-Mobile Comments at 9-10; USTA Comments at 10.

<sup>25</sup> CTIA Comments at 15.

<sup>26</sup> See, e.g., Level 3 Comments at 25; NCTA Comments at 6; T-Mobile Comments at 12; Verizon Comments at 49-52 (highlighting the administrative burdens that would stem from implementing the FCC’s proposals and noting that a line-item pass-through prohibition “is

The record reflects that the proposals discussed in the Further Notice, designed to improve transparency, would “merely increase customer confusion and frustration.”<sup>27</sup> Moreover, the Commission itself appeared to recognize a key drawback of such proposals when it observed that prohibiting a line item pass-through on end user bills “would obscure, from the customer’s standpoint, the nature of the contribution burden that each end user bears.”<sup>28</sup> The Commission, consequently, should not modify its existing rules governing the pass-through of USF assessments.

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inconsistent with the purpose of the Commission’s Truth-in-Billing rules”); Comments of XO Communications Services, LLC at 50-51 (“The FCC’s Truth-in-Billing rules already afford carriers maximum flexibility in billing customers, limited only by common sense principles that bills be truthful, non-misleading and clearly presented to customers.”).

<sup>27</sup> CTIA Comments at 27.

<sup>28</sup> FNPRM ¶ 391.

#### IV. CONCLUSION

For the reasons explained above, the Commission should: (1) ensure that any necessary determination of whether specific services are assessable is implemented in a competitively neutral manner; (2) reject the bundling and value-added proposals set forth in the Further Notice; and (3) implement only those limited administrative reforms that will increase transparency and reduce compliance and consumer burdens.

Respectfully submitted,

*/s/ Kathryn A. Zachem*

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Kathryn A. Zachem

Mary P. McManus

*Regulatory Affairs*

Lynn R. Charytan

Brian A. Rankin

Andrew D. Fisher

*Legal Regulatory Affairs*

COMCAST CORPORATION

300 New Jersey Avenue, NW, Suite 700

Washington, DC 20001

(202) 379-7134

(202) 379-7141

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