

**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 Comment of Agero, Inc.**

Agero, Inc. (Agero), presents this Reply Comment addressing the Commission’s *Further Notice of Proposed Rulemaking (FNPR)* examining the contribution structure of the Universal Service Fund (USF).<sup>1</sup> The USF subsidizes telecommunications and broadband services in rural and high cost areas and relies on monthly assessments ultimately paid by users of telecommunications and other services. The Commission seeks comment on proposals that would change how the USF fee is assessed.

Agero provides automobile manufacturers with telematics technology and services.<sup>2</sup> It is a consumer of telecommunications services. It pays a wireless carrier so telematics equipped vehicles can transmit a voice or data message to and from the Agero response center. While each Agero equipped vehicle is assigned a separate phone number, the vehicle can only

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<sup>1</sup> In the Matter of Universal Service Contribution Methodology et al, *Further Notice of Proposed Rulemaking*, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46, 77 Fed. Register 110 (June 7, 2012) (April 30, 2012).

<sup>2</sup> Agero (formerly the ATX Group), a privately held company headquartered in Medford, Massachusetts, provides advanced in-vehicle connectivity, safety, and driver assistance information to nearly two million vehicle owners. Agero’s telematics services are provided to vehicle owners through the brand names of its customers: BMW, Hyundai, Infiniti, Lexus, Rolls-Royce Motor Cars and Toyota. Agero also manages emergency roadside assistance programs in the US on behalf of automobile manufacturers and US insurance carriers. Services include post-accident scene management and total loss screening services for US insurance carriers. Agero is a member of the Cross Country Group of companies.

communicate with the response center. Its use of the wireless network is miniscule as vehicle/response center engagement is infrequent.

Agero agrees with comments of OnStar, LLC, noting that a unitary monthly USF assessment would be unfair and prejudicial to automotive telematics. It would violate the law. The wide disparity in network access and use between automotive telematics and most other users must be recognized in any USF contribution system. Agero also agrees with OnStar's objection to expanding the USF contribution base to capture users that have historically paid the fee indirectly. Doing so, particularly with regard to users that are not the source of the stresses now confounding the USF, would impose substantial costs and regulatory burdens and is unjust.<sup>3</sup>

The law requires that a contribution structure be equitable and non-discriminatory.<sup>4</sup> Proposals to assess a unitary fee across all services based on phone numbers or connections violate this standard and should not be applied to Agero telematics equipped vehicles.

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<sup>3</sup> Comments of OnStar, LLC, at pages iv, 6-8, and 27 (July 6, 2012) as set forth in WC Docket 05-122 and GN Docket 09-51.

<sup>4</sup> Section 254(b)(4) of the Communications Act of 1934, as amended ("Communications Act").

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### Agero’s Automotive Telematics Technology

Automotive telematics provides a gateway to and from a vehicle’s occupants. From its inception, emergency voice and data communications has been its foundation. Since 1997, automatic crash notification (ACN) technology has been a core feature of Agero’s technology and service. ACN opens a voice communications link and transmits location data to the Agero response center anytime a vehicle’s airbag is deployed or emergency tensioning restraint sensors linked to seat belts are activated. That information is combined with other factors about the vehicle, its owner and is routed to emergency responders.

Several vehicle models now communicate advanced automatic collision notification (AACN) data. AACN is a compilation of crash sensor data from which the risk of severe and potentially life-threatening injury to vehicle occupants can be derived. The information is conveyed by Agero to the 911 Center to assist in determining response resources. Telematics-equipped vehicles also provide timely location-based information to service trucks responding to

stranded motorists. Several vehicle models can remotely disengage a stolen vehicle. The Commission has long recognized the value of telematics technology.<sup>5</sup>

To use the wireless network, each telematics vehicle is assigned a phone number. Agero, or its original equipment manufacturer (OEM) partner, purchases wireless capacity. That capacity is distributed across all telematics vehicles in the OEM's fleet and engaged only when necessary. Vehicle owners or their passengers cannot call or transmit data other than to the Agero response center. Communications are of very short duration. During a monthly period, most telematics vehicles do not engage the response center.

Telematics cost elements include the system's technology and applications, operating the 24/7 response centers so that the facility infrastructure and personnel standards are comparable to 911 Centers, creating and maintaining nationwide 911 Center databases, mapping and location software, speech recognition investment and deploying direct access lines to the 6,092 911 centers in the United States.<sup>6</sup> The wireless capacity for the telematics fleet is but an increment of total costs. With limited exception, Agero relies on subscriptions purchased by the vehicle owner to recoup its investment and costs.

Automotive telematics has evolved to broader and more price sensitive vehicle fleets. Competition within the sector has increased significantly. Verizon recently consummated its acquisition of Hughes Telematics.<sup>7</sup> The sector has aggressive after market offerings. Ford's

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<sup>5</sup> In the Matter of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-290, CC Docket No. 94-102 and IB Docket No. 99-67 at paragraphs 64-90 (December 1, 2003).

<sup>6</sup> The VOIP access lines to the 911 Centers are distinct from the wireless capacity for its telematics fleet. The USF fee imposed on VOIP calls is paid by Agero as part of its provider agreement.

<sup>7</sup> Verizon Completes Acquisition of Hughes Telematics, Inc. (July 26, 2012). <http://newscenter.verizon.com/press-releases/verizon/2012/verizon-completes-acquisition.html>

SYNC provides services via a vehicle owner's individual's mobile device, including 911 Assist, navigation, audible text messaging and ability to call or text anywhere.<sup>8</sup>

Agero's value is found in a direct communication link to the response center, in-vehicle navigation applications, automated, interactive voice/speech technologies and SMS messaging transmitted via a hand-held device or smart phone or tablet application. The competitive environment has expanded services and pushed prices down. A path pursuing a broader base of telematics equipped vehicles embraces low-cost data centric features, with ACN its core feature, and will continue to constrain pricing.

### **The Law Precludes Assessing a Unitary Fee Against Automotive Telematics**

#### *Proposals to Assess a Unitary Fee Against All Services*

Agero objects to proposals assessing a unitary fee against all services based solely on a connection or telephone number.<sup>9</sup> The *FNPRM* summarizes previous iterations, most which propose a \$1.00 monthly assessment.<sup>10</sup> Time has not reversed the inequity, eliminated the discriminatory and arbitrary character or the devastating effect such proposals will have on automotive telematics.<sup>11</sup> Applying a broad based unitary assessment against Agero's telematics service violates the law.

The Commission states that its goal for contribution reform is "greater efficiency, fairness and sustainability."<sup>12</sup> In Part IV of the *FNPRM*, the Commission examines whether to

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<sup>8</sup> <http://www.ford.com/technology/sync/features/>

<sup>9</sup> *FNPRM* at paragraphs 219- 222 and 284-286.

<sup>10</sup> In the Matter of High Cost Universal Service Support *et al.*, *Order on Remand and Report and Order, Further Notice of Proposed Rulemaking*, FCC 08-262 (November 5, 2008) at paragraphs 140-144.

<sup>11</sup> *FNPRM* at paragraphs 315.

<sup>12</sup> *FNPRM* at paragraph 42.

broaden significantly the assessment base. It legitimately questions whether the current model, based on interstate telecommunications and use of the public switch network (PSTN), while relevant, is now but one factor in the diverse nationwide communications system. The reality is that the USF now promotes a broad communications infrastructure, comprised of varied technologies and services. These varied technologies and services constituting the system are difficult to delineate.<sup>13</sup>

Yet, the Commission continues to recognize a critical premise- imposing a contribution obligation requires that the assessed service have a relation to the benefits USF promotes.<sup>14</sup> In addressing what elements of this environment should be subject to contribution and how the assessment should be structured, Agero suggests that preliminary to “greater efficiency, fairness and sustainability,” is whether possible alternatives embrace the law’s equity and non-discrimination standard.

Section 254(b) (4) of the Communications Act establishes the standard by which the Commission may assess a fee to support the USF. The standard requires contribution obligations be "equitable and non discriminatory." This means a contribution mechanism must be fair in allocating the burden. Where there is wide disparity among users, each cannot be assessed the same fee. Unitary assessment proposals using a phone number or connection as the engaging element of responsibility disregard this premise. Such proposals ignore that while automotive telematics is assigned a large quantity of phone numbers, the extent and frequency of each phone number actually engaging the wireless network is extremely confined.

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<sup>13</sup> *FNPRM* at paragraph 32.

<sup>14</sup> *FNPRM* at paragraph 8.

A \$1.00 monthly assessment, tied to a phone number or connection, cannot discern use of the network. The bizarre result is that the USF fee will likely exceed the cost of the wireless access afforded by the phone number or connection. If Agero is forced to pay more than the cost of the underlying wireless service as a USF fee, inequity pervades.

In *Texas Office of Public Utility Counsel v. FCC*,<sup>15</sup> the Court of Appeals for the Fifth Circuit ruled that a universal service fee exceeding a carrier's revenue violates the law's equitable and nondiscriminatory standard. The Court held that where a carrier is assessed a fee in excess of its interstate revenues, the law's premise was violated. There must be fairness in the allocation of contribution duties. It characterized the assessment as a "heavy inequity;" the cost imposed was "prohibitive."

The Fifth Circuit addressed the circumstances where a carrier had minimal interstate traffic and significant international traffic.<sup>16</sup> Agero's circumstance is more egregious. Here, with the ability only to communicate between response center and vehicle, and where most phone numbers in the telematics fleet make no calls, wireless network use is nominal and confined. A fundamental of telematics is the ability to transmit a call or signal to the response center infrequently. Degree of access to and use of the network are critical elements in determining whether the assessment is "equitable and nondiscriminatory." A contribution model must recognize and accommodate such disparity.<sup>17</sup>

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<sup>15</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 431 (CA 5 1999).

<sup>16</sup> While the *FNPRM* appears to question the Court's delineation between intrastate and interstate telecommunications, *FNPRM* at paragraph 129-130, the core of the Fifth Circuit's decision cannot be abandoned- a USF fee meeting the standards of equity and non-discrimination must have a relationship to an entity's access to and use of those services USF supports.

<sup>17</sup> See *In the Matters of the Federal-State Joint Board on Universal Service and Access Charge Reform*, 15 FCC Rcd 1679, FCC 99-290 at paragraphs 23-25 (1999).

In the context of Section 254(b) (4's) standards, the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC* is the law. The Commission implemented the decision by amending its rules and policies. It cannot be that all users, even those who make few or no calls, must equally contribute to universal service. Nor can reliance on the administrative convenience needs of the Commission trump the law's equitable standard. A fee in excess or approaching the cost of the service is wrong. The fee as applied to Agero is a "heavy inequity;" the cost imposed is "prohibitive."

*A Unitary Phone Number or Connection Assessment As Applied to Automotive Telematics Would Fail the Standard of Reasoned Rulemaking*

Section 706 of the Administrative Procedure Act<sup>18</sup> precludes agency decisions and findings that are arbitrary and capricious. An agency is obligated to analyze and explain the reasons for its decision.<sup>19</sup> The Commission must examine the relevant data and relate a satisfactory explanation of its action, including a rational connection between the facts found and the choice made.<sup>20</sup> This analysis and reasoning is integral to apportioning USF obligations on an "equitable and nondiscriminatory basis."<sup>21</sup> Proposals to assess automotive telematics a unitary fee present no analysis of its low usage and limited access and conflict with the Commission's precedent in first determining a service's actual use of the network prior to assessing a fee.<sup>22</sup> The

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<sup>18</sup> 5 U.S.C. 706.

<sup>19</sup> *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943).

<sup>20</sup> *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29,43 (1983).

<sup>21</sup> *Vonnage Holding Corporation v. FCC*, No. 06-1276 (June 1,2007) at 20.

<sup>22</sup> The Commission decision addressing the fee to be assessed against VOIP providers, *In re Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 F.C.C.R. 7518, FCC 06-94 (2006) at paragraphs 55-59, presented extensive analysis of network use.

Commission has recognized that telematics offerings differ considerably from those provided by cellular carriers in servicing handset and other devices with regard to network access and use.<sup>23</sup>

The Commission's reference to its authority to administer phone number resources for the North American Numbering Plan provides no support to assess a unitary fee against Agero.<sup>24</sup> Section 251(e) of the Communications Act does not mention, must less override, the standards established for USF contribution set forth in Section 254. The responsibility to structure an equitable and non-discriminatory fee prevails.

An analysis undertaken consistent with the Administrative Procedures Act and the equitable and non discriminatory standards of section 254 must parallel treatment of other services. In the *FRNPM*, the Commission examines in detail prepaid calling cards and services allowing users to pay in advance.<sup>25</sup> The analysis centers on a revenue based assessment or number of minute's models upon which to base a fee. There is no discussion of possible assessments unrelated to use. The *FNPRM* discussion demonstrates amply that the wide breadth of services and the disparity between them must be recognized in structuring a fair fee that is competitively or technologically neutral.<sup>26</sup>

### **A \$1.00 Monthly Fee Will Block Telematics Deployment**

Automotive telematics is an optional feature, sold on a subscription basis, can be terminated, is not necessary for the vehicle to function and is subject to increasing competition. It highly price sensitive. The substantial additional cost imposed by a \$1.00 monthly fee against

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<sup>23</sup> In the Matter of Revision of the Commission's rule to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 94-102, IB Docket No. 09-67, FCC 03-290 at paragraphs 71-82 (2003).

<sup>24</sup> *FNPRM* at paragraphs 291 to 292.

<sup>25</sup> *FNPRM* at paragraphs 179-192.

<sup>26</sup> *FNPRM* at paragraph 8.

every phone number or connection provides no additional features or efficiency to the vehicle owner, OEM or telematics provider. It must be added to the cost of operating the entire telematics system. That the cost associated with the fee will approach or exceed that related to the airtime presents a confounding contradiction and result in a market determining factor. It will equal the fee assessed on competitors with full access to the nation's communications system.

Proposals addressing a unitary fee ignore the critical direction of the telematics market. The sector has evolved to broader and more price sensitive mass market vehicle. The path is to provide low-cost data centric features, with ACN its core feature, priced significantly lower than today's average subscription; hypothetical models are being examined for approximately \$99.00 per year. The average monthly bill for traditional cellular services is approximately \$50.00 per month.<sup>27</sup> The assessment will be devastating to an offering that does not anticipate a call for virtually all vehicles. The \$1.00 fee will have a profound effect and dictate a decision that otherwise is left to the consumer.

Telematics enhances emergency response and highway safety. It remains the only wireless offering providing the location of every call to the 911 Center. Each call to a 911 Center seeking assistance has been screened for emergency response to be dispatched. Response center personnel are trained to discern the assistance needed and provide the 911 Center the nature of the emergency and where help should be dispatched to. The Commission has recognized telematics value in shaping wireless location obligations.<sup>28</sup> Telematics offerings,

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<sup>27</sup> Consumer Reports, <http://www.consumerreports.org/cro/money/shopping/ways-to-save-on/cell-phone-bills/overview/cell-phone-bills.htm>. See also CTIA's Semi-Annual Wireless Industry Survey at page 8. <http://www.ctia.org/advocacy/index.cfm/AID/10316>

<sup>28</sup> In the Matter of Revision of the Commission's rule to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 94-102, IE Docket No. 09-67 FCC 03-290 at paragraph 72 (2003).

capable of deploying data transmission directly to the PSAP, with critical accident and incident data factors relayed, demonstrate how investment providing innovation and efficient technology at lower costs, will be choked by the disproportionate \$1.00 fee.

The Communications Act aspires to services that promote access to modem technology by all Americans, particularly for public safety purposes. The USF has as one of its principles access to innovative services. A proposed \$1.00 monthly fee on automotive telematics goes in the opposite direction. It should be rejected.

### **Agero Is Not A Telecommunications Provider**

In suggesting a “Value Added Approach to Assessing Contributions,”<sup>29</sup> the Commission examines whether it should assess a USF fee against each facet of the “service value chain” and impose collection and reporting obligations upon each facet. Agero is not a telecommunications provider, it is not an entity required to submit a Telecommunications Report Worksheet. It is a customer, an end user. It uses the wireless capacity it purchases not for purposes of reselling but to meet its responsibilities to its OEM customers and their vehicle owners. Collection and reporting obligations must remain confined to wireless service and other providers.

In this context, the Commission’s characterization of entities offering services, such as access to e-books, as providing telecommunications,<sup>30</sup> is an enormous and unsupported departure from the law and its own rules and policies. Its object, to move collection and reporting responsibilities from wireless carriers, is without foundation. Agero cautions against expansion of collection and reporting obligations (a carrier or “an entity required to submit a Telecommunications Reporting Worksheet”) as to those which are currently customers of wireless carriers- OEMs and telematics providers. It would depart from any reasoned universe

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<sup>29</sup> *FNPRM* at paragraphs 149-161.

<sup>30</sup> *FNPRM* at paragraph 89.

of entities regulated by the Commission who can expect such compliance responsibilities. It would add significant burdens and costs, not readily recouped, and deter investment.

OEMs and Agero purchase airtime and services from wireless carriers. The wireless carriers provide access to the network and administrative services with respect to assigning phone numbers to each vehicle and terminating the number when a subscription expires. The carriers have the information the Commission seeks and are in the best position to collect and pay the USF fee. The record is clear that Agero or its OEM partner pay the carrier for these services. If the carrier is relieved of the responsibility to file reports and pay the USF fees, its reduced costs will not be passed on. It will only cause further distortion and disruption to automotive telematics. Any proposal to expand reporting and payments requirements should be rejected.

### **Conclusion**

Section 254(d) of the Communications Act is grounded on the principle that the Universal Service Fund contribution system be fair.<sup>31</sup> If the law's standard of equity and non discrimination has meaning, the Commission must reject proposals to assess telematics providers a \$1.00 monthly fee. The regressive character of such a fee will inject the Commission's regulatory action into a market determining factor. It will choke meaningful improvements in

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<sup>31</sup> *FNPRM* at paragraph 24.

vehicle safety and emergency response that telematics delivers. A unitary assessment applied to automotive telematics should be rejected.

Respectfully submitted,

Agero, Inc.

Gary Wallace  
Vice President, Corporate Relations  
Agero, Inc.  
8550 Freeport Parkway  
Irving, Texas 75063-2547  
972.753.6230

A handwritten signature in blue ink that reads "John E. Logan". The signature is written in a cursive style and is positioned above the typed name and contact information.

John E. Logan  
Attorney for Agero, Inc.  
1725 I Street, NW  
Third Floor  
Washington, D.C. 20006  
202.349.3767

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