

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
CTIA–THE WIRELESS ASSOCIATION®**

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To: The Commission

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CTIA–THE WIRELESS ASSOCIATION®**

I. INTRODUCTION AND SUMMARY

CTIA–The Wireless Association® (“CTIA”)¹ provides this reply to the comments on the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.²

As discussed in more detail below, the Commission can significantly improve the current contribution process as it moves towards more comprehensive reform. It can make it easier for wireless carriers to allocate their revenues between the interstate and intrastate jurisdictions by lowering the wireless safe harbor to more realistic levels. It can implement a more orderly process for updating the revenue reporting form and its instructions by requiring notice and comment before changes are made, and ensuring that contributors have access to the form and

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (rel. April 30, 2012) (“FNPRM”).

instructions before the reporting year begins. It can reduce burdens on consumers and contributors by adjusting the contribution factor annually instead of quarterly. It can provide reasonable and *symmetrical* deadlines for carrier revisions to their revenue reports. It can implement an effective and timely process for contributors to obtain guidance about unclear questions regarding the contribution requirements and for resolving appeals of Universal Service Administrative Company (“USAC”) decisions. And it can eschew any additional regulation of universal service line item charges.

With regard to comprehensive reform of the contribution methodology, the record includes a range of proposals and positions. All commenters agree, however, that the outcome must be fair and competitively neutral. The Commission therefore should carefully consider the competitive impact of all comprehensive reform proposals before making any decisions. In this regard, the weight of authority strongly demonstrates that imposing unique contribution obligations on wireless carriers’ short messaging service (“SMS”) would *not* be competitively neutral. SMS is an information service, and it primarily competes with other information services that do not contribute to universal service. Initial commenters advocating contributions from SMS portray SMS primarily as a substitute for voice service, or even a telecommunications service, but these characterizations are unavailing from a legal, technical, or marketplace perspective.

II. THE RECORD SHOWS THAT, PENDING COMPREHENSIVE REFORM, THE COMMISSION CAN SIGNIFICANTLY IMPROVE THE CONTRIBUTION PROCESS

A. Lower the Wireless Safe Harbor, Consistent With Traffic Study Data, to Lighten the Burden of Allocating Revenues Between Jurisdictions

As the FNPRM’s discussion shows, few wireless carriers use the safe harbor that the Commission has provided for allocating their revenue between the intrastate and interstate

jurisdictions.³ Instead, wireless carriers are performing expensive traffic studies to analyze the jurisdictional nature of their traffic, which show that wireless carriers' interstate traffic is well below the 37.1% safe harbor.⁴ In fact, the average of the traffic study results is 23%, with the median at 19%.⁵ In other words, in order to be useful to the typical wireless contributor, the safe harbor percentage would have to be reduced by one third to nearly one half.

As CTIA and others pointed out in initial comments, to reduce the burden of allocating revenues between the intrastate and interstate jurisdictions, the Commission should revise the wireless safe harbor to a more realistic level.⁶ This will reduce the burdens on wireless carriers from conducting traffic studies and on USAC in reviewing them, and make the existing system more efficient pending more comprehensive reform.

The Commission now has extensive data on the jurisdictional nature of wireless traffic based on several years of traffic studies that wireless carriers have filed with USAC. These data can form the basis for a more realistic and useful safe harbor rule. For example, Verizon argues that the safe harbor should be adjusted to somewhere in the 20-25% range.⁷ The Commission should seek comment on, and implement, a revised wireless safe harbor level without further delay.

³ FNPRM at ¶ 124 & Chart 3.

⁴ *Id.*

⁵ *Id.*

⁶ *See, e.g.*, RTG comments at 10-11, Universal Service for America Coalition comments at 7-8; Verizon comments at 20-22. Unless specifically indicated otherwise, references herein to parties' "comments" refer to their initial comments in response to the FNPRM filed on or about July 9, 2012.

⁷ Verizon comments at 21.

B. Rationalize the Process for Updating the Form 499 and Its Instructions

The record reflects broad agreement with the FNPRM's sensible proposal to provide a more rational process for updating the revenue reporting form and its instructions.⁸ Notably, it does not appear that any commenter opposed the proposal.

First, the Commission should seek comment in advance on any changes it wishes to make to the Form 499 or its instructions. By seeking comment in advance on changes, the Commission can avoid contributor confusion or unintended consequences.⁹ Perhaps more importantly, however, past changes to the instructions have substantively affected contribution obligations, and such substantive changes to legal requirements must be made pursuant to the notice and comment provisions of the Administrative Procedure Act.

It also is important that the Commission make the full form and instructions available *before* the reporting year begins, instead of after the reporting year, as is currently the practice. It is impossible for contributors to comply with new form instructions if they are not informed of them during the reporting year. Finally, the Commission should clarify that any revisions to the form or its instructions apply only prospectively.¹⁰ It is, of course, impossible for contributors to conform their record-keeping, customer relationships, or bookkeeping to instructions that do not yet exist. Yet, unfortunately, there is a history of USAC attempting to apply instructions to audit

⁸ FNPRM at ¶¶ 346-49. AT&T comments at 41-43; Century Link comments at 7-8; Comcast comments at 30; Earthlink *et al.* at 20; T-Mobile comments at 9-11; USCellular comments at 40-41; USTelecom comments at 9-10; USA Coalition comments at 5; Verizon comments at 6-9; XO comments at 40-42.

⁹ *See, e.g.*, CenturyLink comments at 7-8; Comcast comments at 30; T-Mobile comments at 10.

¹⁰ *See, e.g.*, T-Mobile comments at 10; USTelecom comments at 10.

periods that pre-date the instructions' appearance.¹¹ Thus, it is necessary for the Commission to clarify that changes to the instructions have only prospective effect.

The adoption of a process along these lines for revising the Form 499 will improve the revenue reporting process under the current system, pending more comprehensive reform.

C. Reduce the Frequency of Updating the Contribution Factor

Most commenters agree that the contribution process would be improved if the contribution factor were revised annually instead of quarterly.¹² As the District of Columbia Public Service Commission points out, the current approach is “confusing for end users” when they “see a new rate appear quarterly on their bills.”¹³ These quarterly swings in the contribution factor also create administrative burdens for contributors that must adjust their billing for end-user recovery and handle calls from confused consumers.

An annual contribution factor would reduce these concerns, and also allow both customers and contributors to budget more effectively. Because the contribution factor often goes up and down during the course of a given year, and should become less volatile given the recent adoption of budgets for the high-cost and low-income programs, there is no basis for a few commenters' concerns that an annual adjustment process would result in large year-over-year jumps in the factor.¹⁴ Pending consideration of more comprehensive changes, the Commission should set the USF annual contribution factor on an annual basis.

¹¹ *See, e.g.*, T-Mobile comments at 10 n.34.

¹² *See, e.g.*, ACS comments at 23-24; AT&T comments at 43-44; Cal. PUC comments at 15; CenturyLink comments at 8-9; T-Mobile comments at 11; USTelecom comments at 11; Verizon comments at 11-12.

¹³ D.C. PSC comments at 6.

¹⁴ *See* Comcast comments at 30-31; Level 3 comments at 23-24.

D. Make the Filing Deadlines for Revenue Report Revisions Symmetrical

A range of contributors, including wireless and wireline, competitive and incumbent carriers, agreed with CTIA that the deadlines for revisions to Forms 499 should be the same irrespective of whether they result in increases or reductions in the revenue reported.¹⁵

CTIA and these commenters argue persuasively that the rationales that the Bureau proffered for the one-year downward adjustment rule – greater integrity and predictability in the administration of the fund – apply with equal force to revenue change filings regardless of their direction. The parties also raise serious questions about the validity of the Bureau order adopting the rule, review of which has been pending before the full Commission for several years.

All commenters addressing the issue agree that a reasonable, symmetrical time limit should apply to any type of revisions to contributors' revenue reports, whether they reduce or increase the filer's contribution obligations. The Commission should adopt such a rule without further delay.

E. Implement Better, Timelier Processes for Providing Guidance on Contribution Questions and Resolving Appeals of USAC Decisions

Numerous commenters spanning the entire spectrum of the contributor community argue convincingly that the contribution system would function better if there were a defined process for contributors to obtain timely assistance with difficult questions regarding the application of the contribution rules.¹⁶ Parties propose different precise mechanisms for accomplishing this –

¹⁵ See, e.g., AT&T comments at 46-49; CenturyLink Comments at 8; USTelecom Comments at 10-11; Verizon comments at 12-15; XO comments at 12-14.

¹⁶ AT&T comments at 44-48; COMPTTEL comments at 36-37; ITTA comments at 15-16; Level 3 comments at 11-13; MetroPCS comments at 21-22; T-Mobile comments at 12-13; USCellular comments at 42-43; USTelecom comments at 10; Verizon comments at 9-10; XO comments at 45-50.

for example, MetroPCS and T-Mobile propose a process similar to IRS Letter Rulings,¹⁷ while USTelecom and Verizon urge the Commission to allow contributors to come forward for explicit staff guidance subject to amnesty for the issue raised.¹⁸ All of the proposals in the record share the common thread, however, of seeking a coordinated procedure for contributors to obtain much-needed, timely guidance on complicated questions arising under the contribution rules and the revenue reporting form. The record makes clear that such a process is desperately needed and should be adopted in this proceeding.

Because of the importance of clarity regarding the contribution rules, there also is broad agreement that appeals of USAC decisions must be resolved in a timely fashion.¹⁹ Given that the existing rule requiring the Bureau to resolve appeals within 90 days has not been successful in achieving this goal,²⁰ the Commission should adopt the suggestion of CTIA and others commenters and adopt a rule providing that appeals of USAC decisions are to be deemed resolved in favor of the petitioner after a reasonable period of time.²¹ This will provide a proper incentive structure to ensure that contributors have access to timely resolution of outstanding questions regarding contribution obligations.

¹⁷ USCellular comments at 42-43; T-Mobile comments at 12-13.

¹⁸ USTelecom comments at 10; Verizon comments at 9-10.

¹⁹ *See, e.g.*, AT&T comments at 45; T-Mobile comments at 13; XO comments at 45-48.

²⁰ 47 C.F.R. § 54.724(a).

²¹ *See, e.g.*, CTIA comments at 20 (six month); T-Mobile comments at 13 (six months); XO comments at 46-47 (one year).

F. No Additional Regulation of USF Line Items Is Needed

The comments reflect broad consensus that no additional regulation of line items is needed.²² The record does not support adoption of new rules requiring more detailed description of the calculation of the line item on each bill or the amount against which the contribution factor was applied because, as commenters point out, more detailed line items would simply confuse consumers and preclude the kind of clear, simple bills that consumers demand.²³

Moreover, there is broad agreement that a rule prohibiting USF line items would distort competition and inhibit transparency. For example, the California PUC opposes a rule prohibiting USF line items because it would “contradict[] CPUC policies which require transparency of program surcharges on customer bills.”²⁴ As AARP points out, eliminating line items would prevent consumers and regulators from monitoring reductions in consumer charges if the contribution rate decreases.²⁵ Because line items promote transparency, NASUCA is simply mistaken in asserting that line items “make competitive comparisons among services difficult.”²⁶ Rather, comparison would be more difficult if USF charges had to be rolled into

²² See, e.g., ACS comments at 24-25; ACA comments at 11-13; AT&T comments at 49-51; Cal. PUC comments at 15-16; Cincinnati Bell comments at 23-24; COMPTTEL comments at 37-40; Earthlink *et al.* comments at 21; Level 3 comments at 25-26; NCTA comments at 7-8; T-Mobile comments at 12; USCellular comments at 45-51; Verizon comments at 49-52; XO comments at 50-51.

²³ See, e.g., Verizon comments at 49.

²⁴ Cal. PUC comments at 16.

²⁵ AARP comments at 51-52.

²⁶ NASUCA comments at 22. NASUCA’s implication that such charges should be “forbidden” in the absence of a clear reason why they should be allowed, *id.*, also blithely ignores the Commission’s longstanding policy of allowing market forces to govern pricing and charges, particularly in a competitive market like the wireless sector.

rates. The Commission should continue to allow contributors to recover their USF contributors from end users through explicit line items.

In sum, neither more extensive description requirements nor a ban on line items would serve the public interest. No additional regulation of USF line items is necessary.

III. COMMENTERS AGREE THAT COMPREHENSIVE REFORM MUST BE IMPLEMENTED IN A FAIR, EFFICIENT, AND SIMPLE WAY

A. Carefully Consider the Competitive Impacts of Any New Contribution Methodology

The comments reflect a range of perspectives regarding the best course for comprehensive reform of the contribution system, but parties agree that the Commission must carefully consider the competitive impact of any revised contribution methodology. Thus, the record reflects strong support for reform that is fair, efficient, and simple.²⁷

Stakeholders as diverse as state utilities regulators, an organization of large buyers of communications services, mid-sized ILECs, cable companies, edge service providers, large diversified telecommunications companies, and an association of small and rural wireless carriers all agree that the reformed contribution methodology should be competitively neutral and, particularly, impose like contribution obligations on substitutable services.²⁸ Not surprisingly, it does not appear that any commenter argued that the system should be competitively biased or weighted in favor of any one competitor over another.

Thus, the Commission should carefully consider the information in the comments regarding the potential competitive impacts of various policy choices before making

²⁷ CTIA comments at 5-8.

²⁸ Mass. Dept. of Telecom. and Cable comments at 10; Ad Hoc Telecom. Users Committee comments at 6-7; CenturyLink comments at 11-12; Google comments at 5; AT&T comments at 11-12; RCA comments at 3-5.

comprehensive reform decisions. The reform path chosen must be fair, as well as efficient and simple.

B. Imposing Unique Contribution Obligations on SMS Would Not Be Competitively Neutral

As CTIA and several other parties observed, carrier text messaging is an information service, and increasingly competes with a wide range of other information services that do not contribute to universal service, including particularly mobile, Internet-based messaging platforms.²⁹ The record reflects that carrier text messaging revenues are declining as a result of these competitors.³⁰

In this environment, it would be a profound violation of competitive neutrality to impose unique contribution obligations on carrier text messaging services. Such obligations would only drive consumers towards other information services, while increasing the cost of a service that remains useful to a large number of consumers. Indeed, the burden of a unique contribution obligation on carrier text messaging is likely to fall hardest on lower-income consumers and other consumers that are trying to control their communications expenditures by not purchasing smartphone devices or larger data plans that enable access to competing information services.

Commenters advocating for contributions from text messaging primarily focus on a limited and outdated view of text messaging as a competitor to voice service.³¹ In fact, as other commenters pointed out, the primary competition to text messaging today comes from other

²⁹ See, e.g., AT&T comments at 14-15; MetroPCS comments at 15-17; RCA comments at 7-9; RTG comments at 7-8; Sprint comments at 35; Verizon comments at 33-40.

³⁰ See, e.g., AT&T comments at 14; Verizon comments at 40 & n.51.

³¹ See, e.g., AARP comments at 20-24; Cal. PUC comments at 5-6; COMPTTEL comments at 11-13; NTCA *et al.* comments at 12-13; Time Warner Cable comments at 6-7.

information services that provide the same functionality as carrier text messaging.³² Even to the extent that carrier text messaging may compete with voice service, other information services such as email, chat, and social networking sites compete against voice service just as aggressively, if not more so. Thus, imposing specific contribution obligations on carrier text messaging cannot be justified under the statutory “equitable and nondiscriminatory” standard.³³

Commenters arguing that text messaging should contribute because it is a telecommunications service are simply incorrect.³⁴ As CTIA and other parties have shown in their initial comments and previously in this proceeding, text messaging has all of the fundamental legal and technical characteristics of an information service: Sending and retrieving text messages involves the storage and retrieval of information; the transformation of information, including through net protocol conversion; and interaction with stored information.³⁵ No information service currently is subject to USF contribution obligations, and SMS should not be the only one to be so burdened.

Finally, to the extent that commenters are concerned that some wireless carriers contribute based on their SMS revenues while others do not,³⁶ this can be remedied by making clear that SMS is not subject to contribution obligations. This is certainly no basis for imposing contribution obligations on all carrier text messaging revenues.

³² AT&T comments at 14; CTIA comments at 25-26; Verizon comments at 40.

³³ 47 U.S.C. § 254(d).

³⁴ *See, e.g.*, NTCA *et al.* comments at 10; XO comments at 24-27.

³⁵ *See, e.g.*, CTIA comments at 23-25; Verizon comments at 33-38.

³⁶ Cal. PUC comments at 5-6; COMPTTEL comments at 11-13.

Carrier text messaging services are information services that primarily compete against other information services. They are not now subject to contribution obligations, and should not be uniquely subjected to such obligations in a reformed contribution system.

CONCLUSION

CTIA requests that the Commission implement contribution reform consistent with its initial comments and these reply comments.

Respectfully submitted,

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