

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| 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 SPRINT NEXTEL CORPORATION

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August 6, 2012

Summary of Sprint's Reply Comments

1. The FCC should remain focused on adopting comprehensive reform: There is an urgent need to address the current dysfunctional revenues-based contribution system. Sprint, like Google, Microsoft and others, believes that administrative efficiency and the public interest would be best served if the FCC remains focused on adoption of an entirely new contributions methodology. The FCC should decline some parties' suggestion that the FCC first extend, on an "interim" basis, the current, admittedly broken system to additional services and service providers.

First, "interim" measures will exacerbate, not fix, three of the four major flaws with the current system. Expanding the contribution base would address one of the major flaws with the current system: funding stability. But such action would do nothing to address the other flaws with the system: it is consumer unfriendly, it facilitates competitive distortions and it imposes large administrative costs on all. Furthermore, expanding the base on an "interim" basis would only exacerbate these problems by extending them to new services and service providers – and thereby in the process, would create an entirely new set of problems and controversies requiring FCC intervention.

Second, "interim" action would be costly and would only delay the complete overhaul that is required. The FCC has finite resources, and any time and resources it expends on further "interim" measures necessarily will divert its attention and resources from consideration of sorely needed comprehensive reform. Moreover, these interim fixes would be wasted if the FCC later decides to adopt a connections-based or telephone numbers-based methodology. In addition, the industry would be required to make costly modifications to their systems if the FCC adopts a new contribution methodology. "Interim" action would require new contributors to revise their systems twice in a short time period: first to comply with the interim requirements and later to comply with the new long-term methodology. Sprint submits this proposal defies common sense – especially for those firms like Facebook and Twitter that may be subject to the proposed "interim" measures but not subject to the new methodology.

Third, comprehensive reform could be implemented in about the same time frame that would be required to implement "interim" reform. If "interim" steps and comprehensive reform can be implemented in about the same timeframe, there is no reason not to proceed with comprehensive reform.

2. Revenues-based approaches are problematic: There are two revenues-based methodologies that potentially could be used with USF contributions – total revenue and "less than" total revenue, but the comments make apparent there are problems with both approaches and that as a result, revenues is not a workable solution for comprehensive reform.

A. The comments make clear there are two major hurdles with use of a total revenues approach. First, some parties contend that any inclusion of intrastate voice revenues in the contribution base would "not be legal" because of "TOPUC's finding that the FCC lacks authority to assess intrastate revenues in the federal USF." While Sprint does not share this legal conclusion, it is concerned by the addition of yet another uncertainty over the legitimacy of comprehensive reform during the pendency of any court appeal.

Second, Verizon and others state that a total revenue approach is a “non-starter from a competitive standpoint” and the FCC “cannot adopt it.” This is because the information services offered by broadband access connections would be assessed, while competing information services offered by over-the-top providers would not be assessed.

B. *Any revenues-based approach that assesses less than all billed revenues is as inherently flawed as the current broken system.* The only “reform” proposals made by parties advocating expansion of the *status quo* is for the FCC to adopt additional safe harbors for additional services. This is not reform. The only way an assessment methodology based on “less than total revenues” can be competitive neutral is for the FCC to prescribe the allocation percentages that all contributors must use. But no one has proposed an approach that would achieve this result while withstanding a legal challenge alleging arbitrary and capricious decision making.

3. A connections-based approach makes the most sense for a broadband USF. A diverse array of parties – including cable companies, the Fiber-to-the-Home Council, the high tech industry, ILECs, large businesses, major Internet providers and wireless carriers – support use of connections for comprehensive reform. What is more, six of the firms that today pay over 75% of all USF contributions support, or would consider supporting, the use of a flat, per-unit methodology such as network connections. Sprint demonstrates that a connections-based approach not only eliminates all of the flaws with the current revenues-based system, but also has many other benefits as well.

4. There is no evidence that any additional regulation of USF line item surcharges is necessary. Sprint submits that consumers have a right to know what portion of their bill is being used to subsidize other carriers and services provided to others. Sprint agrees with the California and D.C. Commissions that this information is “vital” and promotes basic concepts of transparency.

5. There are common sense changes the FCC can take to improve the administration of the contributions system. Sprint agrees with other major USF contributors that the FCC can improve the current system (regardless of what methodology is utilized for the system), including (a) adopting contribution factors (or assessment amounts) on an annual, rather than quarterly, basis; (b) changing the worksheet instructions only following APA notice and comment; and (c) addressing expeditiously disputes and requests for clarifications, in compliance with current FCC rules.

Table of Contents

Summary of Sprint’s Reply Comments i

I. THE COMMISSION SHOULD FOCUS ON COMPREHENSIVE REFORM NOT AD HOC, INTERIM STEPS 1

II. REVENUE-BASED APPROACHES TO COMPREHENSIVE REFORM REFORM ARE PROBLEMATIC 7

 A. THERE ARE TWO MAJOR HURDLES FOR A TOTAL REVENUES METHODOLOGY 8

 B. ANY REVENUE-BASED APPROACH THAT ASSESSES LESS THAN ALL BILLED REVENUES IS INHERENTLY FLAWED, AS THE CURRENT BROKEN SYSTEM CONFIRMS 10

III. A CONNECTIONS-BASED APPROACH MAKES THE MOST SENSE FOR A USF DESIGNED TO EXPAND THE AVAILABILITY OF BROADBAND CONNECTIONS 12

 A. A CONNECTIONS-BASED APPROACH ELIMINATES ALL OF THE MAJOR FLAWS WITH THE CURRENT REVENUE-BASED SYSTEM – AND HAS MANY OTHER BENEFITS AS WELL 13

 B. A RESPONSE TO OPPONENTS OF A CONNECTIONS-BASED METHODOLOGY 16

IV. THERE IS NO EVIDENCE THAT ANY ADDITIONAL REGULATION OF USF LINE ITEM CHARGES IS WARRENTED 19

V. THERE ARE COMMON SENSE CHANGES THE COMMISSION CAN TAKE TO IMPROVE THE ADMINISTRATION OF THE CONTRIBUTION SYSTEM 21

 A. THE ASSESSMENT FACTOR SHOULD BE DONE ANNUALLY, NOT QUARTERLY 21

 B. CHANGES TO THE INSTRUCTIONS SHOULD BE MADE ONLY FOLLOWING APA NOTICE AND COMMENTS 22

 C. THE COMMISSION MUST ADDRESS EXPEDITIOUSLY DISPUTES AND REQUESTS FOR CLARIFICATION 24

VI. CONCLUSION 25

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REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) replies to the comments submitted in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”), where the Commission sought comment on reforming and modernizing the rules governing contributions to the Universal Service Fund (“USF” or “Fund”).¹

I. THE COMMISSION SHOULD FOCUS ON COMPREHENSIVE REFORM NOT *AD HOC*, INTERIM STEPS

Everyone agrees the current contribution system is broken and in dire need of reform.

The four core problems with this system are:

1. Consumer Impacts. The current system is not consumer friendly, because customers have no means to predict the size of the USF charge that will be imposed on them in a given month or to understand the regulatory basis upon which this charge is determined;
2. Competitive Neutrality. The current system distorts competition because of the lack of clear and timely guidance concerning the treatment of assessable services and the complete lack of transparency as to the treatment of services by competitors;
3. Efficiency. The current system is not efficient because it imposes significant administrative and compliance costs on everyone, which harms con-

¹ See *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Further Notice of Proposed Rulemaking*, FCC 12-46, 27 FCC Rcd 5357 (April 30, 2012), *summary published in* 77 Fed. Reg. 33896 (June 7, 2012)(“*Further Notice*”). Citations to parties in footnotes refer to the comments they filed on July 9, 2012.

sumers in particular, as all such costs ultimately are passed on to them;
and

4. Funding Stability. The contribution base is shrinking, resulting in an ever increasing – and now extraordinarily high – contribution factor.

The commenting parties have vastly different views, however, over how the Commission should proceed, at least in the immediate future. Some parties want the FCC to focus initially on “interim” action, whereby additional services (those with a “significant niche” in today’s market²) would be subjected to the current system.³

In contrast, other parties recommend that the FCC focus on comprehensive reform. For example, Microsoft “urges” the Commission to focus on “more fundamental changes in approach that would produce a more robust and stable system for USF contribution funding over the long term”:

More fundamental reform is more likely to produce a contribution framework that will achieve the Commission’s stated goals and survive the continuation of ongoing trends in the relationship between communications networks and the applications that use them.⁴

Similarly, large enterprise customers state that the FCC “needs to implement [comprehensive] reform quickly and develop a system that can *accommodate* changes in the marketplace,” because “[f]ixes to the current system . . . cannot solve the inherent flaws of a revenues-based system.”⁵

² See *Further Notice*, 27 FCC Rcd at 5378 ¶ 38.

³ See, e.g., National Telecommunications Cooperative Association, *et al.* (“Rural Associations”) at 47 (FCC “should immediately . . . broaden the contribution base.”); RCA – the Competitive Carriers Association at 2 (FCC “should act swiftly to broaden the funding base.”); Rural Telecommunications Group (“RTG”) at 3 (FCC “should take immediate action to broaden the base of providers and services that must contribute to the” USF); United States Cellular Corporation (“USCC”) at 8 (FCC “must immediately adopt reforms to expand the contribution base.”); XO Communications at I (FCC “should take several immediate, interim steps.”).

⁴ Microsoft at 15.

⁵ Ad Hoc Telecommunications Users Committee (“Ad Hoc”) at 8 and 37 (*italics in original*).

Sprint submits that the reasons the Commission in the immediate future should focus on comprehensive long-term reform, rather than making *ad hoc* “interim” changes to the current broken system, are compelling:

A. “Interim” action will not fix three of the four major flaws with the current system, but would rather exacerbate these problems. Expanding the contribution base by applying the current broken system to additional services would address superficially one of the major flaws of the system, funding stability (by lowering the contribution factor), although such action would not reduce the overall burden on consumers as more of their services would be subjected to assessment. Such action, moreover, would do nothing to fix the other three flaws of the current system discussed above as those problems would continue until comprehensive reform is adopted and then implemented.

In fact, expanding the base on an “interim” basis, as some parties propose, would only exacerbate these remaining problems by extending them to new services and new service providers – and in the process, create an entirely new set of problems and controversies (that almost certainly would require additional FCC intervention and would result in court appeals).

Take, for instance, wireless text messaging. Some parties, none of which provide wireless services, urge the FCC to subject wireless text messaging to the broken system⁶ – even though wireless services (and their customers) are already paying a disproportionate share of all funding.⁷ But if the Commission takes this step, it would only create new, more significant market distortions if it does not concurrently impose the same obligation on other, competing text

⁶ See, e.g., Comptel at 11-13; Rural Associations at 9-13; Time Warner Cable at 6-7; XO at 24-27.

⁷ See CTIA at 6-7 (“[W]ireless carriers and their customers now bear 44 percent of the nine billion dollar USF contribution burden . . . contribut[ing] nearly \$4 billion per year.”). In contrast, wireless carriers are eligible to receive only a small fraction of total CAF subsidies (as mobility funding is capped at \$500 million, which is 11% of the total CAF budget).

messaging services, such as Comcast’s Voice2Go and Internet-based services like Facebook, Twitter, Google+ Messenger and Apple’s iMessage.⁸ Moreover, as Microsoft observes, the FCC cannot rationally impose a contribution obligation on text messaging services without imposing the same obligation on “functionally similar information services like email.”⁹

B. “Interim” action would constitute a complex undertaking that necessarily will delay adoption and implementation of comprehensive reform – which could moot any “interim” action taken. The Commission has finite resources, and any time and resources it expends on “interim” steps necessarily will divert its attention and resources from consideration of sorely needed comprehensive reform – and the more time and resources expended on “interim” action, the later that comprehensive reform will be adopted and implemented.

Adoption of “interim” action will be no simple matter; it will rather be complex – and controversial.¹⁰ Returning to text messaging as an example, Sprint submits that the Commission cannot, under the Act or consistent with its principle of competitive neutrality, impose a USF contributions obligation on some text messaging services (wireless), but not on other text messaging services (landline and over-the-top).¹¹ Should the FCC exempt from a contribution obligation those providers of text messaging services that do not charge customers for use of their

⁸ See CTIA at 25. See also Sprint at 34-35; AT&T at 14-15; MetroPCS at 15-17; RCA at 7-8; RTG at 7-8; T-Mobile at 7-8; Verizon at 33-40.

⁹ Microsoft at 13.

¹⁰ In contrast, the MPLS Industry Group interim proposal for MLPS-based networks is not controversial and will not require any material diversion of FCC resources (because the proposal is both straightforward and complete). See Sprint at 40-44. Moreover, unlike the other “interim” proposals being considered, the MPLS proposal would not involve a continuation of the other flaws with the current contribution system. This is largely because of the proposal to use third-party proxies for the assessment amount, which would ensure competitive neutrality among all MPLS providers, while minimizing administrative costs.

¹¹ Section 254(d) of the Act specifies that providers of interstate telecommunications “may” be required to contribute “if the public interest so requires,” which, at minimum, requires that contributions be imposed on “an equitable and nondiscriminatory basis.”

services (even though such action would not be competitively neutral)? Should the FCC adopt new “safe harbor” percentages that text messaging service providers can use to minimize the burden of performing the regulatory allocations that the current system requires (and if so, how would the FCC develop these factors since the record contains no evidence of traffic patterns for messaging services)? Should the FCC exempt certain text messages from a contribution obligation and if so, which ones (*e.g.*, software notices, family locator, bill reminders, legal notices, messages sent at the request of State regulators)?

It is important to point out that *all of the time and resources that the Commission expends on “interim” action on the broken revenue-based system would be wasted if* the FCC later determines that going forward, USF contributions should be based on network connections or telephone numbers. This is because with either a connections- or number-based methodology, the services or applications that ride over the network become irrelevant for purposes of USF contributions.

C. “Interim” action would impose significant new costs on industry (and thereby, their customers) which could become unnecessary depending on the comprehensive reform ultimately adopted. Imposing a USF contribution obligation on all providers of text messaging and email services would result in massive confusion and would impose hefty compliance costs on hundreds (if not thousands) of firms. Most such providers today have little familiarity with the USF program, much less understand the details of what they would have to do to file Form 499s (and thereby begin modifying their systems to begin making USF contributions). If the FCC begins imposing USF contributions on all providers of text messaging services for purposes of the federal USF, it is reasonable to assume that some States with their own USF programs will attempt

to impose contribution obligations on these providers as well. Experience teaches this will result in a new round of litigation throughout the country.

All contributors will likely need to modify their systems to implement comprehensive reform. However, the proposals of some parties would require many contributors to revise their systems twice: first to implement “interim” measures and then again to implement comprehensive reform. Such proposals are extremely cost inefficient. Further, it is especially senseless to require non-contributors today to undertake the costs needed to implement “interim” measures if they will not be contributors under the new, long-term contribution system.

D. Comprehensive reform is likely to take no more time to implement than “interim” action. It will likely take a minimum of 18 months before any “interim” action could be implemented. Sprint assumes the Commission will need at least six months to adopt an “interim contribution expansion” order and that industry will thereafter require one year or more to implement that order.

But it is also possible that “comprehensive reform” could be implemented in 18 months as well, at least for the mass market (residential customers and small businesses).¹² Sprint assumes the Commission will need six months to adopt a “reform methodology” order and then another six months to commence and complete a supplemental NPRM to address the implementation details of the reform methodology chosen.¹³ But, since industry can begin revising their

¹² Given the diversity and complexity of services provided to large business enterprises, Sprint has recommended that the FCC consider this subject in a separate, supplemental NPRM devoted exclusively to this subject. *See* Sprint at 39.

¹³ Sprint’s recommended two-phased approach for addressing comprehensive reform is described in its comments. *See* Sprint at 37-39.

systems once the FCC releases its “reform methodology” order,¹⁴ Sprint is hopeful industry would need only six months or so to finalize their systems revision work to meet the final requirements specified in the “reform methodology implementation” order.¹⁵

If “interim” steps and comprehensive reform can be implemented in about the same time, comprehensive reform (which, if done correctly, could eliminate all four problems) would be the superior alternative.

* * *

In summary, Sprint agrees with Google that the Commission should focus on “true modernization, rather than piecemeal reform, to create an optimal contribution framework” because interim steps “will only divert agency and industry resources from the task at hand”:

Rather than attempting to “fix” the revenues-based system through piecemeal (yet significant) changes as to who is assessed and how, the FCC should focus scarce and valuable agency and industry resources on creating a comprehensive, sustainable long-term solution.¹⁶

Simply stated, focusing in the near term on comprehensive reform would be, by far, the most efficient approach for everyone.

II. REVENUE-BASED APPROACHES TO COMPREHENSIVE REFORM ARE PROBLEMATIC

There are two revenue-based methodologies that potentially could be used with USF contributions: assessments based on (a) total billed, retail revenues; or (b) a portion of total billed revenues that are less than total revenues. As discussed below, there are major hurdles with the

¹⁴ As soon as such an order is released, contributors can identify their experts and resources needed to oversee and manage the systems revision effort; identify impacted business practices and software systems; and begin to document needed changes to these practices and systems.

¹⁵ Once the implementation order is released, contributors can identify additional changes that must be made to practices and systems; begin to implement these changes; develop and then implement a plan to test the changes; and develop training materials to train of all employees who will work with the new systems.

¹⁶ Google at 2, 10 and 11.

“total revenues” approach, and any “less than total revenues” approach is inherently flawed, as the problems with the current system confirm.

A. THERE ARE TWO MAJOR HURDLES FOR A TOTAL REVENUES METHODOLOGY

The *Further Notice* sought comment on a proposal made by the State Members of the Joint Board to assess contributions on the “total retail bill,”¹⁷ and in response, Sprint agreed this approach is “appealing in many ways” because it would eliminate many of the problems with the current system.¹⁸ Sprint noted, however, there are two issues the Commission would have to address before a “total bill” approach could be considered as the methodology for comprehensive reform. The comments confirm that both of these issues present hurdles.

1. Inclusion of Intrastate Voice Revenues in the Federal Contribution Base. Sprint believes it is entirely reasonable to include revenues generated from intrastate services in the federal contribution base given the national framework that now applies to all of the USF programs. Nevertheless, some parties predictably contend that the inclusion of intrastate revenues would “not be legal” because of “*TOPUC*’s finding that the FCC lacks authority to assess intrastate revenues for the federal USF.”¹⁹

Sprint does not share this legal conclusion. But whether a legal challenge ultimately would be successful (or not) is, in Sprint’s judgment, not the critical factor. Rather, as AARP explains, “the practical question becomes whether the Commission wants to add another layer of uncertainty to the overall process of reforming universal service” while any legal challenging is pending:

¹⁷ See *Further Notice*, 27 FCC Rcd at 5391 ¶ 69 and 5403 ¶ 113.

¹⁸ See Sprint at 22.

¹⁹ National Association of State Utility Consumer Advocates (“NASUCA”) at 14-15. See also Kansas Corporation Commission (“KCC”) at 2-4 (same).

If the Commission decides to go forward by violating the provision of *TOPUC*, an already complicated puzzle gets more complicated.²⁰

2. Disparate Treatment Between Competing Providers of Information Services Based on Whether They Also Provide Broadband Access Connections. Verizon states that a total bill (or total revenues) approach is “a non-starter from a competitive standpoint,” and the FCC “cannot adopt” it.²¹ This is because the information services offered by providers of broadband access connections would be assessed while competing information services offered by “over the top” providers would not be assessed. Verizon states such disparate treatment would “only exacerbate the Commission’s concerns with competitive neutrality” because broadband network owners would be placed at “untenable disadvantage in the marketplace”:

Requiring some providers but not their competitors to contribute to the USF on these [information] services will force contributing providers to pass through additional contributions to their customers or to slash margins – either of which could clearly (and substantially) impact their ability to innovate in new and important market segments. Any assessment on such services offered by providers simply because they are carriers or provide telecommunications is unfair and would skew the marketplace to the detriment of consumers.²²

AT&T similarly states that the FCC must “reject” an “entire retail revenue” approach because it would simply “trad[e] in one set of challenges for another,” by creating competitive inequity among information service providers rather than telecommunications carriers.²³

²⁰ AARP at 38 ¶ 66.

²¹ See Verizon at 5 and 43.

²² *Id.* at 5 and 45.

²³ See AT&T at 26-27.

B. ANY REVENUE-BASED APPROACH THAT ASSESSES LESS THAN ALL BILLED REVENUES IS INHERENTLY FLAWED, AS THE CURRENT BROKEN SYSTEM CONFIRMS

If a “total revenues” (or “total retail bill”) approach is not viable, then all remaining revenue-based methodology proposals necessarily would be based only on a portion of the total revenues billed to the end user – the very arrangement used with the current system that is broken. Any approach using “less than total revenues” requires some means to allocate revenues between assessable and non-assessable services, and it is these allocations that are the source of the major problems with the current system, including:

1. Consumer Impact. Consumers have no means of knowing how their USF fees are calculated;
2. Competitive Neutrality. Competitive distortions will occur so long as each contributor can determine how to conduct these allocations; and
3. Efficiency. Significant costs are incurred in performing these allocations and in participating in USAC audits.

Parties advocating use of “less than total revenues” as the methodology for comprehensive reform offer few suggestions for how to eliminate all of the problems with the current system. The most popular “reform” proposal submitted is greater use of safe harbors.²⁴ However, these parties emphasize that their support for this “reform” is conditioned on safe harbor allocation percentages remaining “optional,” so they can continue to have the discretion (*via* traffic studies) to use a lower allocation percentage – and thus pay lower USF contributions than their competitors.²⁵

²⁴ See, e.g., Time Warner Cable at 12 (Costs of performing regulatory allocations can be “substantially mitigated through the use of additional safe harbors.”); RCA at 10 (FCC can establish safe harbors on “a service-by-service basis to determine the portion of retail revenues that correspond to the telecommunications component being assessed.”); National Cable & Telecommunications Association (“NCTA”) at 9 (same); Rural Associations at 39-44 (same).

²⁵ See, e.g., Alaska Communications Systems (“ACS”) at 21 (Even with safe harbors, “each provider should be free” to determine to use a lower percentage and accordingly, pay a lower contribution.); NCTA at 8-9 (Safe harbors would be an “option, but not a requirement,” and FCC must

This safe harbor proposal is not reform; it is merely a continuation of the *status quo* – and the problems attendant with the current system. Sprint has already demonstrated that use of safe harbors coupled with contributor discretion to pay contributions lower than specified in the safe harbor does not work. Specifically, as the FCC’s own data of the current safe harbors shows:

- “[S]ome wireless providers are able to contribute nothing towards the USF, while other wireless providers currently are paying 15.7 percent on the revenues generated by 30 percent of their voice traffic;” and
- “[S]ome VoIP providers . . . contribute nothing towards the USF, while other VoIP providers are paying 15.7 percent on the revenues generated by up to 60 percent of their VoIP traffic.”²⁶

Given these facts, it is unrealistic to expect that the adoption of yet more safe harbors for other services (*e.g.*, broadband Internet access) will be effective.

In the end, the *only* way an assessment methodology based on “less than total revenues” can be competitively neutral – and thereby “protect robust competition on service and price”²⁷ – is for the Commission to prescribe the allocation percentages that all contributors must use. As Comptel correctly acknowledges:

[C]ontinuing the practice of allowing providers unlimited discretion in deciding what portion of bundled packages are assessable with no Commission oversight will only perpetuate the competitive inequities in the current contribution process.²⁸

Is the FCC willing to prescribe such allocation percentages on a service-by-service basis and potentially, on a bundle-by-bundle basis? And if so, how would the FCC establish such percentages? Will it require all 3,700 USF contributors to submit traffic studies for each service and

“preserve the flexibility of providers to allocate revenues across jurisdictions in any reasonable manner.”); Rural Associations at 44 (Safe harbors would be a “default” only and carriers must be “permitted to make a particularizes showing” that they can use lower percentages.); Time Warner Cable at 12.

²⁶ Sprint at 11-12. See also *Further Notice*, 27 FCC Rcd at 5406-07 ¶¶ 125-26, Charts 3 and 4.

²⁷ See *Further Notice* at 5374 ¶ 24.

²⁸ Comptel at 23-24.

service bundle they offer so the FCC has some factual basis for the allocation percentages it adopts? If not, how would the FCC establish these percentages and withstand a legal challenge alleging arbitrary and capricious decisionmaking?

While FCC prescription of allocation percentages could help ensure competitive neutrality, such an approach would do little to promote a major goal for reform: make “compliance with and administration of the contribution system more efficient.”²⁹ And such an approach would do little to help consumers understand how their USF line item surcharges are calculated.³⁰

III. A CONNECTIONS-BASED APPROACH MAKES THE MOST SENSE FOR A USF DESIGNED TO EXPAND THE AVAILABILITY OF BROADBAND CONNECTIONS

A diverse array of parties – including cable companies;³¹ the Fiber-to-the-Home Council;³² the high tech industry;³³ incumbent LECs;³⁴ large business enterprises,³⁵ major Internet providers;³⁶ and wireless carriers³⁷ – support replacing the current revenues-based methodology with one based on network access connections. What is more, six of the firms that pay over 75

²⁹ See *Further Notice* at 5373 ¶ 23.

³⁰ Sprint opposes AT&T’s proposed value-added approach for use with a revenues-based methodology. See AT&T at 33. Among other things, it would impose significant new administrative costs on resellers by requiring them to track all of their bills for services or facilities they purchase from wholesalers. The reseller may also not receive the wholesalers’ bills timely, which could result in a reseller contributing more than the “value added.”

³¹ See, e.g., Comcast at 18-20.

³² See FTTH Council at 7-8.

³³ See, e.g., The Information Technology Industry (“ITI”) Council at 3-5.

³⁴ See, e.g., AT&T at 17-24; Independent Telephone & Telecommunications Alliance (“ITTA”) at 19-25.

³⁵ Ad Hoc Telecommunications Users Committee at 29 (“Ad Hoc could support a non-numbers connection-based methodology,” but it prefers a numbers-based methodology). While Sprint favors use of connections over numbers, it does agree with Ad Hoc that both of these methodologies are far superior to the current revenue-based methodology.

³⁶ See, e.g., Google at 5-9; Microsoft at 13-15.

³⁷ See, e.g., Sprint at 25-28; AT&T at 17-24.

percent of all USF contributions – AT&T, CenturyLink, Comcast, Sprint, T-Mobile and Verizon – support , or would consider supporting, use of a flat, per-unit based methodology such as network connections because of the many flaws with the current system.³⁸

The comments demonstrate that *a properly constructed connection-based approach would eliminate the flaws of the current system*, while providing additional tangible and important benefits. Furthermore, many of the concerns expressed over such a connection-based mechanism are not directed to the methodology itself, but to concerns over *possible* implementation of the methodology.

A. A CONNECTIONS-BASED APPROACH ELIMINATES THE MAJOR FLAWS WITH THE CURRENT REVENUE-BASED SYSTEM – AND HAS MANY OTHER BENEFITS AS WELL

A connections-based methodology would eliminate all four of the major problems with the current revenue-based system:

- Consumer Impact. Use of connections would be “easy for consumers to understand,”³⁹ and be “more transparent than a revenue-based system, providing consumers with the ability to better understand the collection method.”⁴⁰
- Competitive Neutrality. Use of connections would be competitively neutral because “[a]ll technologies are treated the same . . . and no discriminatory assessments are placed on certain access connections over others.”⁴¹ Importantly, current opportunities to engage in arbitrage would be “eliminated.”⁴²
- Efficiency. Use of connections would reduce dramatically the sizable administrative costs and compliance burdens with today’s system.⁴³ This is

³⁸ See AT&T at 17-24; CenturyLink at 18; Comcast at 18-20; Sprint at 25-28; T-Mobile at 6; Verizon at 48 .

³⁹ ITI Council at 5

⁴⁰ Comcast at 19. See also Microsoft at 14.

⁴¹ Google at 9. See also Microsoft at 15.

⁴² ITTA at 4. See also Comcast at 18.

⁴³ See, e.g., Google at 7-8; Microsoft at 14.

because the use of connections would “avoid the need for difficult line-drawing between assessable and non-assessable services.”⁴⁴

With a connections approach, contributors would no longer be required to perform regulatory allocations each quarter.⁴⁵ Perhaps more importantly, with a connections approach, the FCC would no longer need to get involved whenever a new service (or service bundle) is introduced in the market because the services that “ride” a broadband network become irrelevant for purposes of the USF contribution system. Put another way, all of the proceedings and actions that proponents of a revenues-based methodology acknowledge would be necessary with their position would become *irrelevant*.

- Funding Stability. Use of connections would provide “the predictability and sustainability necessary for long-term health of the Fund, and is significantly less vulnerable to changes in the marketplace and evolution of services to which a service-by-service revenue approach is susceptible.”⁴⁶

A connections-based methodology would provide additional benefits as well:

- USF Funding Would be Directly Tied to the USF’s Purpose. “Adopting an interstate telecommunications connection-based assessment is consistent with the overall direction of the Fund (*i.e.*, repurposing the high-cost program to require support recipients to offer broadband and creating a Lifeline broadband pilot program) and is a logical choice given the industry’s move away from the public-switched telephone network as all interstate telecommunications connections would be captured irrespective of technology.”⁴⁷
- Better Fit with Current Business Models. Unlike the current revenues-based system, a connection-based approach is “a good fit with the increasingly favored charging model of grouping different kinds of services and features into price bundles.”⁴⁸
- Better Fit with the Layered Nature of Current Networks and Services. “A connection-based contribution system is also more consistent with the increasingly layered nature of communications, in which carriers communi-

⁴⁴ See Verizon at 47.

⁴⁵ While a reseller certification form may still be necessary with a connections approach, the FCC could lighten the burden by adopting Verizon’s proposal to develop a database of carriers that contribute into the Fund. Sprint also suggests that the FCC both develop the certification form that contributors must use and require by rule that all resellers provide this form annually to the FCC by a specified date. Sprint opposes any requirement for additional information, such as service-by-service certifications.

⁴⁶ ITI Council at 4.

⁴⁷ AT&T at 22-23. See also Microsoft at 15.

⁴⁸ Microsoft at 14.

cations applications and services are independent of the transmission networks over which they are used.”⁴⁹

- Consumers Would Not be Penalized for Making Maximum Use of Their Broadband Connection. A revenues-based system penalizes consumers who maximize their use their broadband connection; in contrast, use of connections would “free [consumers] to utilize as many services ‘riding on top’ of the network as they wish without incurring additional USF charges.”⁵⁰
- The Least Regulatory Intrusive Approach. Use of connections would reduce regulatory controversies because the FCC and service providers will no longer be “required to review every new service introduced into the marketplace to determine whether or not an additional contribution may be owed.”⁵¹
- Virtually Future Proof. “In contrast to other contribution mechanisms, [a connection-based] approach embraces evolving broadband and IP networks, diminishing the likelihood the system will become obsolete as technology evolves.”⁵² Specifically, use of connections would be “better suited to an industry that is characterized by ongoing, rapid changes in service offers, because it would focus on physical connections with a communications network rather than the services provided over those connections.”⁵³
- Virtually Appeal Proof. Adoption of a connections approach should raise few (if any) issues for appeal. Indeed, appellate courts have already ruled that fixed prices for a connection are consistent with the Act and neither arbitrary nor capricious.⁵⁴

In short, a connection-based approach is a far superior methodology to the current revenue-based system – which all parties concede is broken.

⁴⁹ Microsoft at 15.

⁵⁰ Google at 7.

⁵¹ Google at 6-7.

⁵² Google at 2 and 5.

⁵³ Comcast at 19. *See also* ITI Council at 3-4; Google at 6..

⁵⁴ *See* Sprint at 27-28.

B. A RESPONSE TO OPPONENTS OF A CONNECTIONS-BASED METHODOLOGY

The criticism some parties make to a connections-based methodology fall into three categories. None of these concerns has merit.

1. Implementation Details. Some parties, while not questioning the benefits of a connections-based methodology, nevertheless claim that the Commission should not consider this approach because it supposedly would pose “implementation challenges” and “complicated transition issues.”⁵⁵ According to these parties, the FCC would find it challenging to “create a definition of ‘connection’ for purposes of moving to a new connections-based mechanism” (although they notably do not question the definition contained in the *Further Notice*).⁵⁶ These parties further contend the FCC would also “need to resolve difficult questions of whether to base contribution obligations on advertised maximum connection speeds, the speed of service as actually delivered, capacity used by the customer, or some other metric.”⁵⁷

The adoption of a connections-based methodology need not be so complex. For the mass market, as an example, it might be possible to have only two connection tiers: one tier for broadband connections, and another tier for standalone voice and other services (*e.g.*, paging) that use narrowband connections. With such a straightforward system, issues such as whether to use advertised or actual speeds become irrelevant. The point is that developing a workable connections-based system need not be unduly complex – and such a system certainly would be more manageable than expanding the current broken system to additional services, where the FCC would need to address for each service whether it is assessable and if so, what allocation percentages contributors should use.

⁵⁵ EarthLink at 17 and Alaska Communications Systems (“ACS”) at 11.

⁵⁶ Rural Associations at 38.

⁵⁷ ACS at 12.

Some parties express concern that the adoption of any new assessment methodology will result in “substantial costs to overhaul their billing systems and internal processes.”⁵⁸ Of course, contributors will incur costs in revising their systems if the FCC adopts a new methodology. But contributors will also incur costs in revising their systems if the FCC instead expands the current system to additional services and additional service providers (and then revise their systems again following adoption of comprehensive reform). More significantly, all of industry would realize significant savings in *recurring* administrative costs with a connections-based system because, unlike the current revenues-based system, contributors would be freed from having to prepare traffic studies and to make other regulatory classification allocations.

2. Competitive Neutrality. Two parties assert that use of connections “would be inequitable” because such a methodology would “allow certain services to dodge contribution obligations”:

Certain services, such as one-way/non-interconnected VoIP, would not be assessed because they do not provide a connection, but ride on top of a connection.⁵⁹

Contrary to these arguments, the use of a connections methodology would be competitively neutral. While services offered by over-the-top providers would not be assessed, neither would any of the services offered by broadband network owners be assessed. With a connections-based approach, the number and type of services that ride over an access connection become irrelevant for purposes of the USF contribution system. Simply put, all service providers would be treated equitably with a connections approach because all service providers, regardless of their identity, would be able to “dodge” contribution obligations.

⁵⁸ EarthLink at 17. *See also* Rural Associations at 38; RTG at 8.

⁵⁹ Rural Telecommunications Group (“RTG”) at 9. *See also* XO at 36-37 (Use of connections would be “highly inequitable” because “any provider of over-the-top VoIP services could be exempted from contribution.”).

3. Public Interest. A handful of parties complain that that use of connections for USF assessments would be contrary to the public interest. NASUCA asserts that such an approach “unfairly assesses consumers based on their access to, rather than usage of, the network.”⁶⁰ AARP contends that use of connections would be patently regressive and unfair.⁶¹ The concern is that low-income customers supposedly would be penalized by paying the same per-connection USF surcharge as more affluent customers.

The simple response, as even AARP recognizes, is that the FCC has already begun to modify the Lifeline program to address broadband affordability issues for low-income customers.⁶² Sprint agrees with the overwhelming majority of commenters that no USF surcharges should be imposed on Lifeline customers. In addition, Sprint would support a proposal by NASUCA, AARP or anyone else to expand the Lifeline program – so long as the FCC maintains discipline over total USF disbursements.

Sprint disagrees with AARP’s view that a flat, per-connection USF surcharge is regressive. The benefit of broadband is access to the global Internet. Low-income customers have as much interest in maximizing their use of this access as higher income customers. In this light, it would be a USF surcharge that is based on the total bill that would be regressive, because it would discourage low-income customers from taking full advantage of all the benefits that a broadband connection provides.

Finally, extending the broken revenues based system to text messaging services would not be in the interest of lower income Americans.⁶³ Lower income people make far greater use

⁶⁰ National Association of State Utility Consumer Advocates (“NASUCA”) at 19-20.

⁶¹ AARP at 43 ¶ 77.

⁶² See AARP at 46 ¶ 85.

⁶³ See AARP at 21 ¶ 36 (“[T]ext messaging should be assessed.”).

of wireless services than landline services, yet wireless customers pay a disproportionate share of the total USF program (44 percent) while receiving a disproportionate and increasingly smaller proportion of CAF subsidies (eventually, 11 percent). Simply put, wireless customers (including low income customers) are being “asked” to subsidize the availability of landline broadband connections (that low income customers may not use).

IV. THERE IS NO EVIDENCE THAT ANY ADDITIONAL REGULATION OF USF LINE ITEM CHARGES IS WARRANTED

Sprint agrees with the vast majority of commenters that the Commission should not – and cannot under the First Amendment – prohibit service providers from recovering from their customers the USF “contributions” they are required to pay. As the District of Columbia Commission notes, USF line items provide “vital information to end users” and accordingly, “should not be eliminated.”⁶⁴ The California Commission similarly opposes a prohibition on line item charges because such action would “contradict CPUC policies which require transparency of program surcharges on customer bills.”⁶⁵

The *Further Notice* itself recognizes that the USF line item “inform[s] the end user of the extent to which his or her payments are contributing to the preservation and advancement of universal service”:

Preventing such publication would obscure, from the consumer’s standpoint, the nature of the contribution burden that each end user bears.⁶⁶

Sprint submits that consumers have a right to know what portion of their bill is being used to subsidize other carriers and services provided to others. A government rule prohibiting consumers from being told what part of their bill constitutes government-mandated subsidies to

⁶⁴ District of Columbia Public Service Commission at 5.

⁶⁵ California Public Utilities Commission at 16.

⁶⁶ *Further Notice*, 27 FCC Rcd at 5490 ¶ 391.

third parties would be incompatible with the Commission’s “Truth-in-Billing” policies as well as its commitment to “empower[] consumers.”⁶⁷

Sprint does agree with the Commission that ideally, consumers would be told “how the [USF] charge on [their] bill is calculated.”⁶⁸ This could be done if the Commission begins using network connections, telephone numbers or total billed revenues as the methodology to assess contributions. But this calculation detail cannot be provided with the current system, which applies the contribution factor to “only a fraction of the total end user revenues.”⁶⁹ As CTIA notes, given the complexity of the current system, it is “impossible to explain in a concise and clear manner which portions of a customer’s bill are subject to assessment,” which depends in part on “legal distinctions (e.g., telecommunications vs. information services) that are irrelevant to most customers.”⁷⁰ The communications bar often cannot agree whether a particular service is assessable or not. Given this, how can anyone reasonably expect that a service provider’s sales and customer care employees can explain this complex system to consumers – much less in a clear and concise manner?

Finally, Sprint agrees with Clearwire that the Commission should not adopt the “dedicated trust account” proposal discussed in *Further Notice*.⁷¹ The size of unrecovered assessments has been materially insignificant – depending on the year, ranging from “0.088% to 0.133% of the Fund” over the past decade.⁷² Imposing a costly new bureaucratic requirement on all 3,700 USF contributors because a handful of providers go bankrupt makes no sense and would harm all

⁶⁷ See Chairman Genachowski, Remarks to the FCC Staff, at 4 (June 30, 2009).

⁶⁸ *Further Notice*, 27 FCC Rcd at 5489 ¶ 390.

⁶⁹ *See id.*

⁷⁰ CTIA at 27.

⁷¹ *See Further Notice*, 27 FCC Rcd at 5492 ¶ 400.

⁷² Clearwire at 13.

consumers, as they “will ultimately bear this [new] cost.”⁷³ The far more efficient way to address this matter is, as Clearwire recommends, for USAC to “estimate the expected undercollection due to bankruptcies and include that amount within the existing bad debt reserve in the Fund.”⁷⁴

V. THERE ARE COMMON SENSE CHANGES THE COMMISSION CAN TAKE TO IMPROVE THE ADMINISTRATION OF THE CONTRIBUTION SYSTEM

Sprint agrees with other major USF contributors (and their associations) that the Commission should, in the near future, make several common sense changes that would improve considerably the USF collection system (regardless of the assessment methodology utilized). Specifically, the changes discussed below would “provide greater transparency and clarity regarding contribution obligations, reduce costs associated with administering the contribution system, and improve the operation and administration of the contributions system.”⁷⁵

A. THE ASSESSMENT FACTOR SHOULD BE DONE ANNUALLY, NOT QUARTERLY

Sprint, like many other parties, agrees that contribution factors (or assessment amounts if the FCC adopts a non-revenues-based methodology) should be established annually rather than quarterly. This simple step unquestionably would “increase[e] efficiency, fairness and sustainability of the Fund.”⁷⁶

AT&T is correct in observing that the volatility in the quarterly contribution factor has been “confusing to consumers, expensive to carriers, and unnecessary”:

Consumers have no chance of making sense of the ever-changing USF line-item charge on their bills and, for consumers with limited means, it is challenging for them to budget their communications expenses when the contribution

⁷³ *See id.*

⁷⁴ *Ibid.*

⁷⁵ *See Further Notice*, 27 FCC Rcd 5477 ¶ 342.

⁷⁶ *Further Notice*, 27 FCC Rcd at 5480 ¶ 354.

factor fluctuates by several percentage points between quarters. Such wild fluctuations are not only anti-consumer, they impose unnecessary costs on carriers.⁷⁷

The Commission chose to use quarterly adjustments in the contribution factor to meet “any changes in demand” for USF subsidies.⁷⁸ But if the Commission adheres to the discipline it exercised in establishing a cap on total USF high cost fund disbursements, there should be much less volatility in the demand for such disbursements. As Verizon notes, to the extent the Commission is concerned that a shortfall could occur if the annual factor failed to raise sufficient funds to meet obligations, it can revise its rules to “establish a reserve fund, allow for mid-year-corrections if a material shortfall appears likely, or permit USAC to borrow against future fund contributions.”⁷⁹

Annual contribution factors have already been used successfully with the support mechanisms for TRS, NANP and LNP administration programs. Given the cap on USF disbursements, there is now no reason why an annual adjustment cannot also be similarly used in the USF context.

**B. CHANGES TO THE INSTRUCTIONS SHOULD BE MADE ONLY FOLLOWING
APA NOTICE AND COMMENTS**

Sprint, like other parties, agrees with the Commission’s proposal to amend Rule 54.711 by directing the Wireline Bureau to seek comment on proposed revisions to the USF worksheets and instructions (collectively, “worksheets”) and to publish the finalized worksheets at least 60 days before the annual filing date.⁸⁰

⁷⁷ AT&T at 43.

⁷⁸ *Further Notice*, 27 FCC Rcd at 5480 ¶ 354.

⁷⁹ Verizon at 12.

⁸⁰ *See Further Notice*, 27 FCC Rcd 5478-79 ¶ 346.

Historically, the Bureau has revised the worksheet without seeking public comment and has stated that its revisions constitute “non-substantive changes” only and that it is at most providing “guidance on issues of rule interpretation.”⁸¹ But as Comcast has pointed out, USAC, in conducting audits, has “rejected the ‘contention that the [Form 499] Instructions are merely guidance’ and has asserted that the Commission ‘has consistently treated the instructions as binding.’”⁸² As a legal matter, however, CTIA correctly explains that to the extent “any revisions to the Worksheets or Instructions constitute substantive rules, they are subject to notice and comment requirements under the APA”:

Thus, for such revisions to be valid, the Commission must provide a notice-and-comment process.⁸³

CTIA is also correct that use of formal procedures for notice and comment would be useful even with regard to proposed non-substantive changes. Large USF contributors in particular understand the contribution process well, and obtaining their input will improve the end product – to the benefit of industry, the Commission, and ultimately to consumers (through improved efficiencies):

For example, comments can provide valuable insight regarding the potential impact of any provisions revisions, which would help ensure that the revisions reasonably can be implemented by service providers and that they accurately reflect market conditions before they go into effect. Moreover, it would provide contributors with the ability to seek clarification about the terms and scope of the proposed revisions in a proactive, rather than reactive, way so that contributions can be accurately collected.⁸⁴

⁸¹ See *id.* 27 FCC Rcd at 5478 ¶ 345.

⁸² See Comcast at 30.

⁸³ CTIA at 15. Consistent with the requirements of the APA, even with notice and comment, new substantive requirements can be imposed prospectively only. See, e.g., AT&T at 42; T-Mobile at 10; Verizon at 9.

⁸⁴ CTIA at 15-16.

Adoption of this proposal should impose no undue burden on the Wireline Bureau. Indeed, as T-Mobile observes, the FCC has already successfully implemented a similar process for collecting and considering comments before publishing the E-Rate eligible services list.⁸⁵ What industry input would do is enable the Bureau to adopt better revisions which, in turn, should reduce the number of future ambiguities and disputes.

C. THE COMMISSION MUST ADDRESS EXPEDITIOUSLY DISPUTES AND REQUESTS FOR CLARIFICATION

Appeals of USAC decisions are a critical component in the USF contribution process. With such appellate decisions, the entire industry can learn of the Commission's interpretations of its USF contribution rules as applied to a specific factual context. The Commission also understands the importance of USAC appeals in the contributions process, stating nearly 14 years ago: "We expect that the Bureau and Commission will act promptly to resolve appeals of USAC decisions."⁸⁶ The FCC accordingly adopted Rule 54.724, which specifies that the Wireline Bureau or the Commission "shall issue a written decision in response to a request for review of an [USAC] decision . . . within ninety (90) days."⁸⁷ Unfortunately, as noted by certain commenters, the Commission has not met with the rule requirements in recent years.⁸⁸ As former Chairman Kennard and Commissioner Copps have stated, "justice delayed is justice denied."⁸⁹ Sprint urg-

⁸⁵ See T-Mobile at 9; see also Rule 54.522.

⁸⁶ *Eighth USF Reconsideration Order*, 13 FCC Rcd 25058, 25094 ¶ 70 (1998). Rule 54.724(a) authorizes the Bureau to extend this deadline for an additional 90 days, and subsection (b) authorizes the FCC to extend the deadline indefinitely, which the FCC adopted to "facilitate our administrative processes." See *USF Order*, 15 FCC Rcd 4840, 4841 ¶ 1 (2000).e

⁸⁷ See *id.* at 25131; 47 C.F.R. § 54.724(b)(1998).

⁸⁸ See, e.g., COMPTEL at 36-37, T-Mobile at 13, and XO at 45-46.

⁸⁹ See Chairman Kennard, *Remarks before the Competitive Carrier Summit 2000 Conference*, 2000 FCC LEXIS 301 at *9 (Jan. 19, 2000) ("In these markets, where changes happen at lightening speeds, we can't allow important decisions to languish on a docket somewhere. We can't issue long and confusing decisions that raise more questions than they answer. In the world where you compete everyday, justice delayed is justice denied."); Concurring Statement of Commissioner Copps, *Second 700 MHz Order*, 22

es the Commission to address these appeals on a timely basis or limit the exposure of Applicants while such an appeal is pending.

VI. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission take action consistent with Sprint's comments and these reply comments.

Respectfully submitted,

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August 6, 2012

FCC Rcd 15289, 15562 (2007)(“Justice delayed is often justice denied, the old adage says, and that is why I am happy that we announce today a 180-day shot clock for Commission enforcement decisions.”).