BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Universal Service Contribution Methodology	WC Docket No. 06-122
A National Broadband Plan for Our Future	GN Docket No. 09-51

REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

FRANK R. LINDH
HELEN M. MICKIEWICZ
SINDY J. YUN
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1999
Fax: (415) 703-4592
Email: sjy@cpuc.ca.gov

Attorneys for the People
of the State Of California and the
California Public Utilities Commission

August 6, 2012

586718

I. INTRODUCTION AND SUMMARY

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these Reply Comments in response to comments filed in the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC or Commission) on April 30, 2012, in the above captioned dockets.[1] In this *FNPRM*, the FCC seeks comments on proposals to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered in light of the transformations in the "telecommunications ecosystem" since 1996.[2] In these Reply Comments, California addresses the question of how the Commission should apportion revenues from bundled services that include both assessable and non-assessable services for the purpose of USF contribution assessments. We also comment on the most appropriate method to allocate revenues between interstate and intrastate jurisdictions for such purpose.

II. DISCUSSION

A. Apportioning Revenues from Bundled Services

In our comments filed in this proceeding, the CPUC recommended that the FCC broaden the USF contribution base to include all services that touch the public communications network. We also recommended that the Commission continue to utilize a revenue-based contribution system as the most effective way to assess

[1] *In the Matter of Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122; GN Docket No. 09-51 (filed Apr. 30, 2012). (*FNPRM*)

[2] *Id.,* at para. 4.

contributions.[3] In the *FNPRM,* the FCC asked whether and how it should modify its current bundling apportionment rules should it decide to continue to use a revenue-based contribution system. Specifically, it asked for comment on how to apportion revenues from bundled services that include both assessable and non-assessable services if a revenues-based system were maintained.[4] In particular, the FCC sought comment on "adopting a revised apportionment rule that would codify a modified version of the two safe harbors provided under the *CPE Bundling Order* for apportioning revenues from bundled service offerings and eliminate providers' discretion on how to apportion revenues derived from bundled services. Specifically, we seek comment on the following rule for USF contributions purposes:

> *If an entity bundles non-assessable services or products (such as customer-premises equipment) with one or more assessable services, it must either treat all revenues for that bundled offering as assessable telecommunications revenues or allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services or products (with any discounts from bundling assumed to be discounts in non-assessable revenues)."*[5]

In its comments filed in this proceeding, AT&T advocated limited contributor's flexibility should the FCC continue to use a revenues-based contribution methodology:

> AT&T supports limiting the unbridled flexibility that contributors have under today's bundling rules to allocate assessable revenue, which many have abused to avoid contributions altogether. Specifically, the Commission could

[3] *See* Comments of The California Public Utilities Commission and The People of The State of California (filed July 9, 2012). (California PUC).

[4] *Id.,* at paras. 101-120.

[5] *Id.,* at para. 106.

> require a contributor to apportion assessable revenue from a bundled offering based on the price that the contributor charges for 'stand-alone offerings of equivalent services or products (with any discounts from bundling assumed to be discounts in non-assessable revenues).' In the event that the contributor does not offer the assessable components on a stand-alone basis, the contributor should be permitted to rely on objectively verifiable stand-alone prices of other providers.[6]

AT&T disagrees, however, that the Commission should assess contributions on the full retail price of a bundle if that bundle includes non-assessable information services. AT&T states:

> If the Commission decides to expand its contribution base by including information services that provide interstate telecommunications, it should apply its bundling apportionment methodology to determine what portion of the revenues from such services should be included in a provider's contribution base. An information service provider should not be penalized via a relatively larger contribution assessment because it offers customers a more feature rich information service than its competitors. To address this concern, the Commission should reject its proposal to require such providers to contribute based on their entire retail revenue and, instead, it should limit these providers' assessable revenues to amounts associated with the interstate telecommunications component.[7]

The National Association of State Utility Consumer Advocates ("NASUCA") also supports the Commission's proposed rule, cited above.[8] NASUCA disagrees, however, with AT&T regarding the assessment of contributions on "information services." NASUCA notes that the Commission also addresses whether it should assess only the

---

[6] Comments of AT&T at p. 25 (filed July 9, 2012) (footnotes omitted).

[7] *Id.*, at p. 27.

[8] Comments of The National Association of State Utility Consumer Advocates on The USF Contribution Mechanism Further Notice Of Proposed Rulemaking, at p.16 (filed July 9, 2012). (NASUCA)

telecommunications component of services that also include an information service component. "NASUCA submits that the line between the two components is sufficiently blurred that it would be appropriate to treat the entire service as assessable for USF purposes, federal and state."[9] Sprint Nextel Corporation (Sprint) also filed comments in support of assessing the total bundle: "If a revenue-based approach is adopted, Sprint recommends the entire bundle be subject to a USF contribution. Any separation of services will be difficult and subject to manipulation. Assessing the entire bundle will eliminate any decision on how to split the bundle or any verification of a proposed bundle split."[10]

The National Telecommunications Cooperative Association, the Organization For The Promotion And Advancement Of Small Telecommunications Companies, and the Western Telecommunications Alliance (The Rural Associations) also support the FCC's proposed rule.[11]

California agrees with NASUCA, Sprint, and The Rural Associations, and, in part, with AT&T. In general, the CPUC supports the FCC's proposed rule (FNPRM at ¶ 106) regarding assessment of bundled services. We agree that an entity should treat as assessable all revenues from the bundled offering. At the same time, we agree with AT&T that an entity should have the option of apportioning assessable revenue from a

---

[9] *Id.,* at p. 17 (footnotes omitted).

[10] Comments of Sprint Nextel Corporation at p.17 (files July 9, 2012). (Sprint)

[11] Comments of The National Telecommunications Cooperative Association, The Organization For The Promotion And Advancement Of Small Telecommunications Companies, And The Western Telecommunications Alliance, at p. 39. (filed July 9, 2012).

bundled offering based on the price that the entity charges for stand-alone offerings of equivalent services or products.

The CPUC acknowledges that where a bundled service offering includes an information service and the provider does not offer the bundled services on a stand-alone basis, it could be possible for the information service to be assessed as part of the bundle. However, we think that this possibility would encourage providers to offer all services on a stand-alone basis. Currently, in California, providers are required to offer voice services on a stand-alone basis, a policy that benefits consumers who may only be able to afford or desire a single service on a stand-alone basis. We urge the FCC to adopt regulations that would also encourage such a policy. California does recommend one modification to the FCC's proposed rule. The word "telecommunications" should be deleted, as noted below.

> *If an entity bundles non-assessable services or products (such as customer-premises equipment) with one or more assessable services, it must either treat all revenues for that bundled offering as assessable ~~telecommunications~~ revenues or allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services or products (with any discounts from bundling assumed to be discounts in non-assessable revenues).*

The CPUC recommends this modification because the FCC has not resolved how IP-enabled services and VoIP services should be classified for regulatory purposes. The Commission has not determined whether VoIP or IP-enabled services are "telecommunications" services. But, those services likely would be included in a bundled offering, thus potentially creating another conundrum where services not classified are "treated" as if they have been classified.

B. Allocating Revenues Between Inter- And Intrastate Jurisdictions

In the *FNPRM,* the FCC sought comment on "ways to simplify the allocation of interstate and intrastate revenues for USF contributions and reporting purposes."[12] Specifically, the Commission sought comment "on modifying or eliminating the requirement that carriers are assessed based on interstate and international revenues."[13] In the alternative, the FCC asked whether it should "adopt bright-line rules for how companies should allocate revenues between jurisdictions for broad categories of services.[14]

The United States Telecom Association (USTelecom) filed comments in support of using safe harbors, including extending safe harbor reporting to wireline service. However, USTelecom states: "The Commission should make better use of reporting safe harbors. It can do this by revising the safe harbor percentages based on the historical data it now has available to it…."[15] Time Warner Cable, Inc. (Time Warner) also supports the use of safe harbors. It states that "one of the primary challenges associated with the current approach is the need to allocate revenues between the interstate and intrastate jurisdictions. This issue, however, can be substantially mitigated through the use of

[12] *FNPRM* at para. 121.

[13] *Id.*, at para. 127.

[14] *Id.*, at para. 132.

[15] Comments of United States Telecom Association at p. 13 (filed July 9, 2012)

additional safe harbors or fixed jurisdictional allocations for specific categories of services."[16] The Rural Associations "suggest the establishment of safe harbors to delineate between interstate and intrastate services. These introduce administrative ease and meet that mandate of 'predictability' by offering a course to define what otherwise may require intensive consumer usage and traffic-type studies. This approach creates an environment in which only overall revenues would serve as the variable on any given year."[17] Sprint and COMPTEL both also support a bright line rule for voice services,[18] with COMPTEL noting:

> …that if the Commission were to adopt such bright-line rules, it should not adopt separate allocators for fixed local services, mobile services, toll services, and VoIP services. All voice services should be subject to the same intrastate/interstate allocators regardless of the technology used to provide the service and all data services should be subject to the same intrastate/interstate allocators regardless of whether the data is provided using circuit-switched or packet-switched technology. Avoiding the use of different allocators for voice services provided using different technologies would be far more competitively neutral than adopting separate allocators for different transmission technologies.[19]

The CPUC agrees with US Telecom, Time Warner, Sprint, and COMPTEL. We support the adoption of a single bright line or the use of a safe harbor to determine how companies should allocate revenues between interstate and intrastate jurisdictions for the purpose of applying respective jurisdictional surcharges for voice services. Adoption of a

---

[16] Comments of Time Warner Cable Inc. at p.12. (filed July 9, 2012).

[17] Comments of The National Telecommunications Cooperative Association, The Organization For The Promotion And Advancement Of Small Telecommunications Companies, And The Western Telecommunications Alliance, at pp. 43-44 (filed July 9, 2012).

[18] Sprint at pp. 18-19.

[19] Comments of COMPTEL at p. 27. (filed July 9, 2012)

bright line will ease both administrative burdens and compliance costs. Such a single bright line should be justified based on provider traffic studies the FCC compiles for all voice services: wireline, wireless, and VoIP. Further, any future changes to the bright line should be predicated on updated traffic studies.

The FCC also seeks comment on how to allocate revenues from Internet access service should the Commission declare such service to be an assessable for USF contribution purposes, as follows:

> In other contexts, the Commission has recognized that Internet access services are jurisdictionally interstate because end users access websites across state lines.[20] We seek comment whether a similar finding should be made for USF contribution purposes. Specifically, if we use our permissive authority to expand or clarify USF contribution requirements to include enterprise communications services, text messaging services, and broadband Internet access services (both fixed and mobile), should we find that for USF contribution purposes, revenues from such services should be reported as 100 percent interstate? Alternatively, should we use an allocator lower than 100 percent interstate for contribution purposes, to preserve a revenue base that could be assessed for state universal service funds?[21]

The CPUC agrees with NASUCA, which "opposes a 100% interstate allocation for Internet access services."[22] In our earlier comments in this proceeding, the CPUC recommended that Internet access service providers be required to contribute to the USF.[23] The CPUC believes that if broadband Internet access service is included in the

[20] Footnote omitted.

[21] FNPRM at para. 133.

[22] NASUCA at p. 17.

[23] Comments of California PUC at pp.6-7.

contribution methodology, states should be entitled to surcharge a portion of the revenues. Section 254 of the Communications Act of 1934, as amended, (Act) clearly delegates a role to the states to help ensure universal service,[24] and Subsection 254(b)(2) of the Act states that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation." And Subsection 254 (f) authorizes states "to adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." This subsection also gives states authority to "adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."

As one of the nation's broadband leaders, California is strongly committed to the deployment of broadband services to all California residents. California and the CPUC have vigorously pursued the goal of statewide broadband deployment and adoption through both legislative and regulatory measures. In 2006, California spurred the deployment of broadband through the enactment of the Digital Infrastructure and Video Competition Act (DIVCA),[25] which created a mechanism for awarding statewide video service franchises. DIVCA enhanced the state's efforts to map and promote statewide broadband deployment by requiring state franchisees to regularly report deployment information to the CPUC. The statute also requires that franchise holders meet certain

---

[24] 47 U.S.C. 254.

[25] *See* California Public Utilities (P.U.) Code § 5890.

benchmarks for building out their broadband networks. Beginning in June 2008, the CPUC has successfully launched the California Advanced Service Fund, a grant program to promote the deployment of broadband in unserved and underserved areas in the state.[26] And as far back as 1996, the CPUC established the California Teleconnect Fund which has been providing monthly subsidies for broadband Internet-access service to qualifying K-12 schools, libraries, community-based organizations (CBOs), and rural health facilities. More recently, the CPUC added California community colleges to the list of eligible recipients of CTF-subsidized services. Given all of these state-sponsored and state-funded activities, California should be permitted to assess a percentage of broadband service revenues to help support these state efforts.

As noted in the comments of The Nebraska Rural Independent Companies:

> The *FNPRM* indicates that the Commission's positions regarding contribution mechanisms have been informed by its desire to fund the expansion of broadband availability. Yet the Commission's prior rulings that broadband connections are "information services" and are "interstate" create barriers to federal universal surcharges on either broadband service revenues or on broadband connections. These same Commission rulings create additional barriers for state universal service programs. …
>
> If the Commission does decide to use its permissive authority to impose federal surcharges on broadband facilities or services, the Commission should also construe subsection 254(f) so that states may impose similar state surcharges, on the same basis, to support state universal service programs. Specifically, the Commission should declare that a state may adopt regulations prescribing additional definitions and standards that impose surcharges on broadband connections

[26] Pursuant to P.U. Code § 701, the Commission established the CASF on December 20, 2007, in D.07-12-054.

> or services on the same basis that the Commission ultimately imposes surcharges on those connections or services.[27]

The CPUC agrees with NASUCA and the Nebraska Rural Independent Companies, that the FCC should construe 254(f) to permit states to impose similar surcharges. Further, for administrative ease, we propose that a bright line ratio also be used to allocate revenues between the states and federal levels.

III. CONCLUSION

The CPUC supports the Commission's proposal to treat all services in a bundle as assessable, or allocate revenues associated with the bundle consistent with the price the provider charges for stand-alone offerings of equivalent services or products (with any discounts from bundling assumed to be discounts in non-assessable revenues). We also recommend that the FCC adopt bright line or safe-harbor rules, based on market studies, for allocation of voice revenues between the interstate and intrastate jurisdictions. Lastly, we urge the FCC to construe subsection 254(f) of the Act to permit states to impose surcharges on broadband services in order to help fund state broadband deployment and adoption programs. We appreciate the opportunity to comment on these matters.

---

[27] Comments Of The Nebraska Rural Independent Companies In Response To Further Notice Of Proposed Rulemaking Released April 30, 2012, at pp.8-10 (filed July 9, 2012).

Respectfully submitted,

FRANK R. LINDH
HELEN M. MICKIEWICZ
SINDY J. YUN

By: /s/ SINDY J. YUN

SINDY J. YUN

505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1999
Fax: (415) 703-4432

Attorneys for the California
Public Utilities Commission and
the People of the State of California

August 6, 2012