

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.**

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I. INTRODUCTION AND SUMMARY

Texas Statewide Telephone Cooperative, Inc. (TSTCI) submits these reply comments in response to the Federal Communications Commission’s (Commission’s) request for input on various approaches to reform the Universal Service Fund (USF) contribution system.¹ TSTCI is an organization representing 38 small, rural incumbent local exchange companies and cooperatives in Texas, all operating under rate-of-return regulation. (See Attachment 1.)

In these Reply Comments, TSTCI addresses the areas of who should contribute to the USF and how contributions should be assessed. TSTCI supports expanding the base of contributors to the USF by assessing all retail broadband Internet Access Service providers and one-way VoIP service providers. As the focus of universal service support has expanded to ensure the universal availability of affordable broadband to all Americans, it is not only fair but necessary to sustain the USF to expand the contribution base to include retail broadband Internet Access Service providers. One-way VoIP service providers meet the definition of telecommunications and benefit from access to the PSTN in the same way as interconnected

¹ See *Universal Service Contribution Methodology, Further Notice of Proposed Rulemaking*, WC Docket No. 06-122, FCC No. 12-46 (rel. April 30, 2012) (FNPRM).

VoIP providers. There is no justification for excluding one-way VoIP providers from the contribution base.

TSTCI also urges the Commission to retain a revenue-based contribution methodology. There is a clear definition of revenues, this method is competitively neutral, and is administratively efficient given that billing systems are already designed for revenue-based assessments.

II. EXPAND CONTRIBUTION BASE BY INCLUDING ALL RETAIL BROADBAND INTERNET ACCESS SERVICE PROVIDERS

In its FNPRM the Commission seeks comment on expanding the contribution obligation to include providers of four services: (1) enterprise services that include an interstate telecommunications component; (2) text messaging services; (3) one-way VoIP services; and (4) broadband Internet access services. TSTCI has advocated for many years that the Commission expand the base of contributors to the universal service fund, not only to ensure that contributions are made on an equitable and non-discriminatory basis, but to help sustain the viability of the USF.² As the Commission expands its universal service focus to include broadband access, TSTCI believes it is now imperative that the Commission expand the base of USF contributors to include at the very least all retail broadband Internet access services.

TSTCI agrees with the Rural Associations' position that all retail broadband Internet access services should be assessed equitably. The Rural Associations state that retail broadband Internet access providers "...will benefit from the 'network effect' that results from the expansion of broadband networks and subscribership nationwide, which the High-Cost program

² See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Reply Comments of TSTCI, September 21, 2004, pages 14-15; *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, Comments of TSTCI, June 8, 2009, page 12.

now explicitly seeks to achieve.” An equitable assessment on all who benefit from the universal service fund is not only fair, but in the public interest, as it will lower the contribution factor and more properly distribute the cost of the USF among consumers.³

NASUCA also agrees that those who benefit from the ubiquitous national network should and must contribute to the USF, with very few exceptions. According to NASUCA, if USF supports broadband, then broadband should support the USF. NASUCA further states that retail broadband Internet access services must be assessed rather than a few providers of “stand-alone broadband telecommunications services [offered] on common carrier basis” as in now the case.⁴

Other organizations also have called upon the Commission to assess broadband Internet access services. The consumer organization AARP states “it is absolutely essential that broadband services are assessed” given that broadband services will be provided universal service support. Failure to assess broadband services will be highly inequitable, make the fund more difficult to sustain and undermine the Commission’s broadband deployment goals.⁵

The Ad Hoc Telecommunications Users Committee (Ad Hoc) contends that if a revenue-based contribution methodology is retained, the base of assessable providers must be broadened to include all forms of broadband Internet access services regardless of the type of technology (wireline, wireless, satellite or cable) or end user (consumer or enterprise). Ad Hoc argues there is no justification for requiring one class of end user or one type of broadband Internet access “to assume disproportionate obligations to fund universal service.” To do so is not only inefficient and practically unworkable, but also creates an opportunity for arbitrage, and violates the

³ See *Comments of the National Telecommunications Cooperative Association, The Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance*, (Rural Associations) July 9, 2012, page ii

⁴ Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking, page 7.

⁵ Comments of AARP, page iv.

requirements of Section 254(b) prohibiting discrimination.⁶ Likewise, United States Cellular Corporation favors assessing all forms of broadband, arguing that fairness would be undercut by sending high-cost support to broadband providers without requiring them to contribute to the USF.⁷

In the FNPRM the Commission notes that some parties “have expressed concern that assessing broadband Internet access could discourage broadband adoption” and seeks comment on the overall effect assessing or not assessing broadband may have on broadband deployment.⁸ TSTCI believes from comments filed that there is no empirical evidence to prove that assessing broadband will adversely affect broadband deployment. To the contrary, the Rural Associations point to the Commission’s own report⁹ that shows an explosion in subscribership for residential interconnected VoIP, even after USF contribution obligations were extended to interconnected VoIP providers.

For example, the Commission reported a 49 percent increase in residential subscribership to interconnected VoIP over 2 ½ years, even with an increase in the USF contribution factor of 3.5 percent over the same time frame. This indicates that assessing broadband is not likely to have an adverse reaction on broadband adoption. Further, it is hard to imagine that a nominal fee like the USF assessment would be the determining factor as to whether or not a potential customer will subscribe to what is an increasingly essential service.

Infusing revenues into the USF by expanding the base of contributors to include broadband will better ensure the USF has sufficient funds (as required by statute) to support the goals of broadband deployment in rural areas. TSTCI agrees with U.S. Cellular’s position that it

⁶ Comments of the Ad Hoc Telecommunications Users Committee, page 39.

⁷ Comments of United States Cellular Corporation, page 24.

⁸ FNPRM, at para. 67.

⁹ Rural Associations, page 23

is more reasonable for the Commission to adopt a broadband contribution obligation and revisit this decision at a later date if there is an accumulation of actual evidence that the contribution obligation is linked to low broadband adoption, than to discard the policy with no evidence. If evidence materializes, the Commission can then take action as appropriate.¹⁰

TSTCI urges the Commission to act expeditiously and expand the base of contributors to include all retail broadband Internet access service providers.

III. INCLUDE ONE-WAY VOIP SERVICE IN THE USF CONTRIBUTION BASE

TSTCI believes that one-way VoIP service should also be included in the contribution base of providers. As the Rural Associations explained, one-way VoIP meets the definition of “telecommunications” and relies on and benefits from access to the PSTN in the same way as interconnected VoIP providers. The fact that one-way VoIP providers only allow “calls out” rather than “calls in” does not change the benefit derived from a series of robust interconnected networks.¹¹ Sprint Nextel posits that including one-way VoIP services in the base of contributors should not be controversial because it would “...close an unintended loophole and a major competitive inequality in the current system.”¹² Many other commenters¹³ are also urging the Commission to extend contribution obligations to one-way VoIP services, and TSTCI agrees that the Commission should take this step as promptly as possible. There is no justification for continuing to exempt one-way VoIP providers from obligations to contribute to the USF.

¹⁰ US Cellular Corporation, page 28.

¹¹ Rural Associations, page 14.

¹² Comments of Sprint Nextel Corporation, footnote 8.

¹³ AT&T, p.15; AARP, p. 24; United States Cellular Corporation, p. 31; Verizon, p. 28; XO Communications Services, LLC, p. 27.

IV. RETAIN REVENUE-BASED CONTRIBUTION SYSTEM

TSTCI urges the Commission to retain a revenue-based contribution system. TSTCI agrees with the Rural Associations' position that implementation of the revenue-based contribution system provides clarity in definition, is competitively neutral, and is much more administratively efficient. The definition of revenue is not ambiguous, and once a determination is made on assessable services, revenues can be verified through the accounting process and accounting statements. In contrast, there is no standard definition for "connections" and neither numbers nor connections "are subject to the sort of known and standardized processes by which revenues may be accounted as of specific periods and time."¹⁴

The revenue-based system does not differentiate by the technology used and is the best way to ensure technological neutrality.

Because billing systems are already designed for revenue-based assessments, the cost to providers of implementing a revenue-based assessment will be minimized. However, implementation of a new complex contribution system is more likely to require expensive overhauls of existing processes, untested systems, and much longer time frames to actually implement the new systems.¹⁵ TSTCI asks that the Commission consider the important point made by XO Communications Services that economic burdens would be felt most acutely by smaller companies who would have to revamp billing systems and reports and retrain staff to comply with more changing regulatory requirements.¹⁶

Sprint Nextel presents a three-step process for transitioning to a reformed contribution methodology that includes the Commission releasing an order adopting the methodology to be used for the mass market (residential and small business retail customers) and concurrently

¹⁴ Rural Associations, page 36.

¹⁵ Ibid.

¹⁶ XO Communications Services, page 31.

issuing two supplemental NPRMs – one to address implementation issues and another to address the contribution methodology that should be used with the large business enterprise market. Sprint Nextel supports either a connections-based approach or a “total bill” revenue-based approach¹⁷ (where regulatory allocations are minimal, clearly defined, and established by the FCC).

As described previously, TSTCI does not support a connections-based methodology, nor does TSTCI support a total retail bill revenue-based approach. A total retail bill revenue-based approach will only further delay implementation. Sprint Nextel explains that this method will require the FCC to address certain issues including the legal question of whether the FCC possesses the legal authority to impose USF charges on revenues generated from intrastate voice services. In addition, there is the issue of whether the Commission can require contributions from providers of competing information services if these providers require their customers to bring their own broadband connection.¹⁸

TSTCI supports the Rural Associations’ premise that the Commission should first issue an order that retains the current revenue-based methodology and resolves the major issues that must be addressed expeditiously, such as expansion of the contribution base and assessment of bundled services and information services. Later, as necessary, the Commission can issue clarification orders or initiate further rulemakings to address issues or circumstances that cannot be resolved “in an equitable and competitively neutral manner in a pure revenues-based system.”¹⁹

¹⁷ Sprint Nextel describes a total retail bill revenue-based methodology as consumers paying USF charges based on a set percentage of their total bill for services provided over their network connections. See Comments at p. 3.

¹⁸ *Id.*

¹⁹ Rural Associations, p. 45.

V. PARTNERSHIP BETWEEN STATE AND FEDERAL UNIVERSAL SERVICE PROGRAMS IS ESSENTIAL

In the USF/ICC Transformation Order the Commission states, “We recognize the USF and ICC are both hybrid state-federal systems, and it is critical to our reforms’ success that states remain key partners even as these programs evolve and traditional roles shift.”²⁰ Some commenters addressed the importance of state universal service funds to achieving the nation’s universal service goals and have called upon the Commission to avoid actions that might put the state funds in jeopardy. These commenters encourage the Commission to declare the promotion of state universal service contribution and support mechanisms as an additional goal of contribution reform.²¹ As explained by NRIC this goal requires that the Commission “avoid jeopardizing state USFs or creating new legal issues regarding the ability of states to continue to operate existing USFs.... The Commission should properly interpret statutory provisions to protect state USFs.”²² If the Commission imposes surcharges on broadband connections or services using its permissive authority under section 254(d), the Commission should declare that state universal service programs may under subsection 254(f)²³ adopt regulations prescribing additional definitions and standards that impose surcharges on broadband to support state USFs on the same basis the Commission imposes surcharges for federal programs. This declaration should also construe that imposing contribution requirements on the same basis as the federal program does not violate the “equitable and nondiscriminatory” requirement of the Telecommunications Act.

²⁰ Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, Released November 18, 2011, para. 15.

²¹ Rural Associations, p. 42; Nebraska Rural Independent Companies (NRIC), p. 4.

²² NRIC, p. iii.

²³ Section 254(F) State Authority –states, “A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications service shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.”

TSTCI agrees with the Nebraska Rural Independent Companies (NRIC) and the Rural Associations that there must be a fair allocation of the contributions assessment base to sustain state universal service funds.

NRIC contends that if the contribution base is jurisdictionally divided (e.g., split broadband revenues according to regulatory jurisdiction), the Commission should not claim an unduly large share for federal assessments, but preserve a substantial share for state USFs to continue their substantial role in supporting universal service. When allocating assessments among jurisdictions, the Rural Associations advocate the establishment of safe harbors as a default with carriers permitted to “make a particularized showing that a higher percentage of their traffic is intrastate.”²⁴

TSTCI also supports NRIC’s position that if the Commission determines that contributions will not be made on a jurisdictional basis, but will be made on a connection-based or number-based contribution mechanism, the Commission should make declarations that states have the broad authority to follow the same path. The Commission should not adopt rules that will hinder the ability of states to sustain their own universal service funds as these funds play a crucial part in the delivery of ubiquitous broadband.²⁵

²⁴ NRIC, p. 11; Rural Associations, p. 44.

²⁵ For example, there is a pending rulemaking in Texas to expand the contribution base to include VoIP service.

VI. CONCLUSION

TSTCI urges the Commission to take reasonable steps to reform the USF contribution system. TSTCI contends that the contribution mechanism should be expanded to include at least all retail broadband Internet access service providers and one-way VoIP service providers. TSTCI urges the Commission to retain the current revenue-based contribution system and to declare the promotion of state universal service contribution and support mechanisms as an additional goal of contribution reform.

Respectfully submitted,

A handwritten signature in black ink that reads "Cammie Hughes". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

Cammie Hughes
Authorized Representative
Texas Statewide Telephone Cooperative

August 6, 2012

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company
Brazoria Telephone Company
Brazos Telecommunications, Inc.
Brazos Telephone Cooperative, Inc.
Cameron Telephone Company
Cap Rock Telephone Cooperative, Inc.
Central Texas Telephone Cooperative, Inc.
Coleman County Telephone Cooperative, Inc.
Colorado Valley Telephone Cooperative, Inc.
Community Telephone Company, Inc.
Cumby Telephone Cooperative, Inc.
E.N.M.R. Telephone Cooperative, Inc.
Eastex Telephone Cooperative, Inc.
Electra Telephone Company
Etex Telephone Cooperative, Inc.
Five Area Telephone Cooperative, Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Cooperative, Inc.
Nortex Communications, Inc.
Panhandle Telephone Cooperative, Inc.
Peoples Telephone Cooperative, Inc.
Poka Lambro Telephone Cooperative, Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Cooperative, Inc.
South Plains Telephone Cooperative, Inc.
Tatum Telephone Company
Taylor Telephone Cooperative, Inc.
Wes-Tex Telephone Cooperative, Inc.
West Plains Telecommunications, Inc.
West Texas Rural Telephone Cooperative, Inc.
XIT Rural Telephone Cooperative, Inc.