Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

Mark A. Stachiw
General Counsel, Secretary
& Vice Chairman
Christopher M. Miller
Staff Vice President, Taxes
John R. Barnes, Jr.
Director, Transaction Taxes
2250 Lakeside Boulevard
Richardson, TX 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Carl W. Northrop
Andrew Morentz
Telecommunications Law Professionals PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Its Attorneys

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its reply to the comments filed in response to the *Further Notice of Proposed Rulemaking* ("*FNPRM*")[2] released by the Federal Communications Commission (the "FCC" or "Commission") in the above-captioned proceedings which solicited input on the best way to reform and modernize the manner in which contributions towards the Universal Service Fund ("USF") are calculated and collected.

I. INTRODUCTION AND SUMMARY

The industry has responded positively to the Commission's proposal to address the inefficiencies and inequities extant in the current USF contribution system. The initial comments – which are extensive and include input from a broad cross section of the telecommunications and information services industries – reflect some emerging areas of consensus upon which the

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

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

Commission may act promptly. For example, viewed as a whole, the comments provide substantial support for: (i) the exclusion of Messaging Services[3] from the contribution base unless and until all competing services are brought into the fold; (ii) the inclusion of enterprise and MPLS services as assessable services; (iii) the need for prompt and regular guidance from the Commission on USF contribution issues; (iv) less-frequent adjustments to the USF contribution factor; and (v) increased fairness and parity in the mechanics of USF contribution, including eliminating the asymmetry in revising revenue projections and recouping overpaid contributions. Given the broad support for each of these proposals, the Commission can and should implement these changes to the existing contribution system immediately. These improvements are an important interim step towards comprehensive USF contribution reform, and will promote the Commission's goals of efficiency, sustainability and fairness pending comprehensive reform of the USF contribution system.

On the key issues of who and what classes of service should contribute to the USF and the underlying contribution methodology that should be the basis of those contributions (*i.e.*, revenue-based, numbers-based, connection-based, etc.), each commenter has predictably supported approaches that offer it an economic and/or competitive benefit. In order to quickly gather the "low hanging fruit" and also generate a more constructive dialogue on a comprehensive solution, the Commission should bifurcate this proceeding by: (1) issuing an *Order* on the above-identified issues where consensus has emerged; and (2) charter a federal advisory committee to provide the Commission with recommendations on a comprehensive reform package on which the Commission can then solicit further comment from interested

[3] The term "Messaging Services" includes SMS and other messaging services, such as MMS. MetroPCS does not include short code messages in its definition of Messaging Services.

parties. This will allow the Commission to refine its proposal in a manner that will avoid unintended consequences and reduce opportunities for gamesmanship.

Based on the record of the proceeding, the Commission also should tentatively conclude: (1) that the USF contribution base should be expanded to include all telecommunications-related businesses and services that benefit from the universal connectivity promoted by the USF; and, (2) the public interest will be best served by maintaining – while modifying and improving – the revenue-based contribution system, rather than implementing a radically altered approach that could be fraught with peril.

MetroPCS also advocates that, rather than trying on its own to fashion a hybrid proposal from the diverse and, in some instances, diametrically opposed comments, the Commission should use the procedures available to it in the *Federal Advisory Committee Act* to bring all stakeholders together to formulate a comprehensive USF reform proposal that meets the Commission's goals. The advisory committee should be comprised of a wide range of universal service beneficiaries, including: incumbent and competitive wireline facilities- and non-facilities-based carriers; small, rural and regional wireless carriers and resellers; wired and wireless broadband providers; satellite companies; ISPs; edge service providers; state commissions, and consumer groups among others. The specific proposal of the Commission following the recommendations of this committee should be released for public comment, after which the Commission should adopt final rules with the benefit of a full record. By taking this approach, the Commission can adopt a fair and reasoned set of USF contribution reforms that will have the backing of a broad cross section of industry players, will be sufficiently vetted to reduce the prospects of unintended consequences and gamesmanship, and will meet the Commission's goals of efficiency, fairness, and sustainability.

II. THE COMMISSION SHOULD PROMPTLY ENACT REFORMS WHERE INDUSTRY CONSENSUS IS EMERGING

A review of the comments indicates that substantial support exists for a number of reforms, including: (i) the exclusion of Messaging Services unless and until all competing services are brought into the contributor fold; (ii) the inclusion of enterprise and MPLS services as assessable services; (iii) the need for prompt and regular guidance from the Commission on USF contribution issues; (iv) less-frequent adjustments to the USF contribution factor; and (v) increased fairness and parity in the mechanics of USF contribution, including eliminating the asymmetry in revising revenue projections and recouping overpaid contributions. Given the fact that these common sense reforms enjoy considerable and widespread support across a broad cross-section of the industry – and would not require drastic revision to be implemented – the Commission should quickly pluck this "low-hanging fruit" in order to provide immediate interim improvements to the USF contribution system while additional reforms are being designed and implemented.[4] By implementing these reforms immediately, the Commission will provide additional stability to the existing system, will promote fairness by ensuring a level playing field among competitive services, and will make the current system more sustainable while the Commission implements further reforms.

---

[4] MetroPCS disagrees with Google and Sprint Nextel, who favor comprehensive reform without interim measures. *See* Google Comments at 11; Sprint Nextel Comments at 35-37. These positions are based upon a concern that comprehensive reform is necessary and the Commission's resources are finite. MetroPCS appreciates this concern but is forced to conclude that comprehensive reform is sufficiently complex and is certain to take longer than anticipated. On balance, the entire industry will be better off if the interim reform measures recommended by MetroPCS, which should be able to be implemented fairly promptly, are given immediate attention. Just as the industry would have been better off if the Commission had tackled the long-standing problems of traffic pumping and phantom traffic earlier rather than awaiting comprehensive intercarrier compensation reform, MetroPCS submits that the areas of USF reform outlined below deserve prompt attention prior to comprehensive reform.

A. The Commission Should Exempt Messaging Services From Assessment Unless Other Competing Services Are Required to Contribute

As MetroPCS explained in its Comments, "[i]f the USF contribution base is expanded to include each of the other categories that MetroPCS advocates (broadband and edge providers, Internet backbone providers, Internet Service Providers, one-way VoIP and enterprise services) including Messaging Services would eliminate confusion and promote fairness."[5] However, "should the Commission determine that competing services – such as broadband Internet access, Internet backbone providers, Internet Service Providers, email, Internet chat, among others – need not pay into the USF, including Messaging Services would result in substantial inequity."[6] The view that Messaging Services should not be included within the scope of USF assessments at the present time found wide support across a broad array of industry commenters.

For example, AT&T "suggest[ed] that the Commission should not require providers of SMS text messaging services to contribute to the base" in large part because Messaging Services "are rapidly yielding to (non-contributing) Internet apps that provide the same functionality as SMS text messaging at a price of essentially zero."[7] Indeed, "recent data show that Internet-based applications already are beginning to erode wireless providers' text messaging revenues."[8] This echoes MetroPCS' concern that other services that compete with Messaging Services may be gaining a competitive advantage by having lower costs if Messaging Service providers are forced to pay the cost of ensuring the ubiquitous connectivity from which all providers benefit. Verizon also agreed that "[r]equiring text messaging services to contribute to universal service

---

[5] MetroPCS Comments at 16.

[6] *Id.*

[7] AT&T Comments at 14.

[8] Verizon Comments at 40.

also would be inconsistent with the Commission's 'fairness' goal when other communications alternatives that customers may use instead are not subject to a similar contribution requirement."[9] A similar sentiment also was communicated by numerous other providers of Messaging Services,[10] many of whom expressed serious concerns that the assessment of Messaging Services – and not by competing services – could lead to a competitive imbalance in the industry. The Commission should heed these concerns and refrain from assessing Messaging Services until such time as all competing services can be brought into the fold. Doing so quickly also will resolve the confusion that currently reigns in the industry as a result of the Commission's failure to issue the long-standing clarification request made by USAC as to the proper classification of SMS and other messaging services.[11]

B. Enterprise and MPLS Services Must Be Required to Contribute to the USF

Another area the Commission can address immediately is to include enterprise and MPLS service revenues among those revenues that are subject to USF contribution assessment. As MetroPCS has stated, "As enterprise service providers have begun to offer more IP-based services, there is significant uncertainty as to which of these services qualify for inclusion in the USF contribution base."[12] Rather than getting lost in a morass of changing technology, it is important that the Commission recognize that "each of these enterprise services – whether provided via IP-based infrastructure or traditional switched circuits – benefits from the ubiquity

---

[9] *Id.*

[10] *See, e.g.,* T-Mobile Comments at 7-8; Sprint Comments at 34-35; RCA Comments at 7-8.

[11] The MetroPCS Comments discuss the difficulties that have arisen from the lingering ambiguity that exists with regard to the permissible classification of Messaging Services. *See* MetroPCS Comments at 22.

[12] MetroPCS Comments at 20.

of the national communications network."[13] AT&T reports that its "analysis of the statutory definitions as interpreted by the Commission has caused it to conclude over the years that certain enterprise services are assessable but others are exempt, at least in part" while "some of AT&T's competitors have concluded that any MPLS-enabled service is an information service without regard to whether the competitor is providing customers with a net protocol conversion or any enhanced features or functionalities."[14] Such inconsistencies and confusion create an uneven playing field among competitors, which the Commission must correct as it supports the Commission's goals of fairness and sustainability. As US Cellular notes, classifying "various enterprise communications services as assessable would likely increase the size of the contribution base, which would have a positive effect on the Commission's efforts to achieve broadband deployment goals."[15] Further, "assessing all enterprise services that include a telecommunications component, regardless of classification, will go a long way toward eliminating the existing classification-related concerns."[16] MetroPCS urges the Commission to adopt the sensible recommendation put forth by many commenters to make enterprise and MPLS services assessable for the purposes of USF contribution.

C. The Commission Must Improve the Guidance Process for Contributors

Transparency in the USF contribution process is critical – and improved guidance will go a long way towards improving process transparency. At present, carriers face substantial risks if they seek guidance from the Commission or USAC. A provider with a legitimate question regarding a complex USF contribution issue may find itself on the wrong end of an enforcement

---

[13] *Id.*

[14] AT&T Comments at 16.

[15] US Cellular Comments at 30.

[16] RCA Comments at 10.

proceeding, when it simply was trying to do the right thing by clarifying its approach. Providers should not fear seeking guidance – rather the Commission should welcome the opportunity to bring clarity if the USF contribution waters are muddied. The current opaque guidance system results in different service providers paying USF assessments on widely varying revenue streams. This lack of guidance often means that competing service providers are paying differing amounts on the same or similar services which, contrary to the public interest, results in an unlevel competitive playing field. It goes without saying that USF contribution methodology should not be used as a competitive differentiator, and providing all contributors with access to the same clear guidance will limit the ability to use it as such. Further, by driving decisions on the proper application of USF contributions underground, the Commission does not have the benefit of these views in trying to determine whether its current system is reaching all appropriate revenues.

In its Comments, MetroPCS urged the Commission to adopt a robust process for providing guidance to carriers on USF contribution methodology. Many other commenters agreed that the USF contribution guidance process is in need of reform, stating that the current procedure of releasing instructions is "a less than perfect means of providing filing parties with assistance in complying with the Commission's revenue reporting and USF contribution requirements."[17] Level 3 also urged the FCC to adopt a private ruling system under which guidance is given within 90 days or else the request is deemed granted in the manner proposed by the proponent.[18] There also was general agreement that formal changes to the USF contribution instructions should be made in the context of a notice and comment proceeding, and

---

[17] U.S. Cellular Comments at 40.

[18] Level 3 Comments at 11-13.

MetroPCS supports such a recommendation. However, MetroPCS believes that "fairness and sustainability will be best achieved if the Commission manages the USF system based upon the model applied by the government to the U.S. federal tax system."[19] As discussed in MetroPCS' Comments, a multi-faceted approach to guidance would allow carriers to receive a range of guidance from informal guidance letters to full notice and comment rulemakings. This robust guidance system will allow providers to have timely access to guidance on a complicated process, and it will also increase the probability that all providers are contributing in a uniform manner.

Further, the Commission should assure contributors that, if a contributor asks the Commission for clarification about its contribution obligation, the Commission will not use the information exchange to initiate an enforcement proceeding against the contributor. Other governmental agencies have such programs that allow interested parties to seek guidance on a no-name basis. The Commission also should allow contributors to make corrective filings based upon such advice, and penalties for non-payment should be reduced or waived based upon voluntary disclosures of this nature. Such an approach here would promote accurate filings and self-reporting.

D. The USF Contribution Factor Should Be Adjusted Only Annually

MetroPCS also calls for the Commission to "revise the frequency of contribution factor adjustments in order to reduce burdens on contributors, to reduce confusion for consumers, and to fluctuations in the factor."[20] The quarterly fluctuations in the USF contribution factor create substantial problems for both providers and consumers alike. Consumers frequently are

---

[19] MetroPCS Comments at 21.

[20] CTIA Comments at 17.

confused by changes in their monthly bills, which creates customer dissatisfaction and causes providers to spend resources explaining the volatile nature of the USF contribution factor to those customers. Indeed, at least one state regulatory agency, the California Public Utilities Commission ("CPUC"), weighed in favor of a six month or annual interval rather than quarterly adjustments.[21] As AT&T correctly observes, "[c]onsumers 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 factor fluctuates by several percentage points between quarters."[22] Indeed, this monthly uncertainty surrounding bills for communications services led MetroPCS to adopt "all-in" plans, which include all taxes and regulatory fees, including any applicable USF contribution. While consumers get the benefit of certainty with MetroPCS' tax- and fee-inclusive plans, the uncertainty regarding USF contribution amounts simply is transferred to MetroPCS. The quarterly change in USF contribution factors increases the complexity of MetroPCS' financial forecasting, which places it at a competitive disadvantage vis-à-vis its competitors that pass USF charges directly through to their customers.

MetroPCS agrees with other commenters that the Commission "correctly identifies the quarterly contribution factor as ripe for reform."[23] An annual USF contribution factor adjustment will increase certainty for industry stakeholders, while at the same time still allow the

---

[21] CPUC Comments at 15.

[22] AT&T Comments at 43. MetroPCS disagrees with those commenters who call for an end to the separate USF contribution line item. Eliminating the requirement that USF be recouped, if at all, only with a specific line item limited to the direct pass through amount will inevitably lead to higher prices for consumers. This is because carriers will be able to increase prices as much as they want without regard to their actual USF payment obligation.

[23] Verizon Comments at 11.

Commission the flexibility that it needs to efficiently administer the USF. Importantly, the Commission already uses an annual contribution factor for other funds, such as the Telecommunications Relay Service. As T-Mobile points out, "[h]istorically, quarter-to-quarter variations in the factor have tended to average out, and after so many years the Commission and USAC have sufficient experience and information to predict funding needs over a longer period of time."[24] As a result, MetroPCS recommends that the Commission immediately proceed with a move to annual contribution factor adjustments in order to reduce the burden on contributors while the Commission pursues the ultimate goal of overall contribution methodology reform.

E. The Commission Must Resolve the Unfair Asymmetries in the Contribution Revision and Refund Process

The Commission should also take the earliest opportunity to resolve the unfair asymmetries in the contribution revision and refund process. In its Comments, MetroPCS advocated that the Commission revise the policy disparity that allows for upward revisions to contribution obligations for a period of three years, while requiring that downward revisions be made within one year. As MetroPCS noted, " [g]iving carriers a much shorter window than the Commission to revise reportable revenues encourages carriers to take aggressive positions, lest they lose the opportunity to recapture incorrectly-designated revenue."[25] A number of other commenters also made similar proposals, recommending that the Commission increase the time for carriers to revise their reported assessable revenues. As Verizon points out, "[t]here are often very good reasons why a carrier cannot meet the deadline for amending its Form 499. For example, government agencies – such as state public service commissions, taxing authorities,

---

[24] T-Mobile Comments at 11.

[25] MetroPCS Comments at 22.

and even the Commission itself – and internal and external auditors may make decisions that require restatements of revenues extending beyond one year."[26] AT&T also asks the Commission to reverse the asymmetrical revision deadlines.[27] To promote fairness and predictability in the USF contribution system, the Commission should promptly adopt a symmetrical three-year period for revising revenue numbers, whether they increase or decrease a provider's USF contributions.

The Commission also must reform the manner in which refunds are issued to carriers that have overpaid their quarterly USF contributions. As it stands, it can take as long as *eighteen months* after a provider has overpaid a USF contribution in order for that provider to receive a refund. This can result in millions of dollars – properly owed by USAC as a refund to a provider – being held in limbo for an extended period of time. For many small, rural, and regional providers who have particularly limited access to capital, this is money that could be spent on expanding their network or other beneficial innovations. Instead, due to an archaic refund process, this money simply sits in the USAC coffers, waiting to be returned. As part of its near-term reforms, the Commission should implement a system by which overpayments are returned to contributors no later than the following quarter. This will allow USAC to maintain an adequate cushion in its accounts, while also enabling carriers to have faster access to the refunds to which they are rightfully entitled.

---

[26] Verizon Comments at 14.

[27] AT&T Comments at 46-49.

III. THE RECORD SUPPORTS BROADENING THE CLASS OF ASSESSABLE SERVICES

A key question posed in the *FNPRM* is who and what services should be required to contribute to the USF fund. Not surprisingly, many who provide services which benefit from universal telephone connectivity, but do not now pay into the fund, argue against changing the rules in a manner that would require them to pay.[28] And, equally unsurprising, many who now pay into the fund argue that the base should be expanded as widely as possible.[29] However, there are a number of commenters that are not service providers and not potential USF contributors whose comments on this point deserve particular attention since they are in a better position to be objective and in many cases are, or represent, the ultimate end-users who ultimately have to pay any USF contribution amount. Overwhelmingly, these commenters agree that the class of assessable services and service providers should be expanded to the extent possible in order to broaden the contribution base and reduce, to the extent possible, the burden on individual contributors for specific services. For example:

- The American Association of Retired Persons (AARP) submits that the contribution base should be broad and include all "mass-marketed broadband services," and all "telecommunications and information services associated with

---

[28] *See, e.g.,* Microsoft Comments at 5-6 (contribution obligations should not be extended to "over the top" networks or to communications products used independent of a particular network); Wireless Internet Service Providers Association Comments at 4 (opposing imposition of contribution requirements on broadband Internet access services).

[29] *See, e.g.,* Frontier Communications Comments at 3 (the base should be expanded as widely as possible, for example, by including broadband Internet access service); US Cellular Comments at 21 (advocating the inclusion broadband Internet access service, one-way VoIP services, and certain enterprise services); Verizon Comments at 27-31 (include MPLS, one-way VoIP, and non-revenue producing voice services such as Magic Jack and Google Voice).

the delivery of content" and services and which enable users, service, and content providers to benefit from the network, such as Netflix and Google.[30]

- The Ad Hoc Telecom Users Committee urges the Commission to reduce the burden on contributors by spreading the contribution obligation more broadly and equitably across services.[31]
- The CPUC recommends that the FCC broaden the contribution base to include all services that touch the PSTN including broadband and closely related services (i.e. DSL, cable, and wireless broadband).[32]
- The National Association of State Utility Consumer Advocates ("NASUCA") argues that a broad contribution base will reduce the competitive distortions that can arise from disparate USF contribution obligations.[33]

The Commission should give substantial weight to these commenters, not only because they are in a better position to be objective, but because they have the better side of the argument. As a matter of fairness, all services that use or benefit from universal service and ubiquitous connectivity should contribute.[34] MetroPCS recognizes that making this change requires comprehensive reform and cannot be done easily on an interim basis. However, the Commission should act as soon as possible to broaden the class of contributors and assessable services so that all competing service providers pay their fair share. The key is to establish a process to ensure that all interested parties are brought together so that comprehensive reform can be undertaken

---

[30] AARP Comments at 8-10, 13-14.

[31] Ad Hoc Telecom Users Committee Comments at 38-39.

[32] CPUC Comments at 3-5.

[33] NASUCA Comments at 4-6.

[34] *See, e.g.,* CenturyLink Comments at 9; COMPTEL Comments at 6.

and unintended consequences can be reduced. As MetroPCS discusses in Section V below, an industry advisory committee is the best vehicle in which to undertake such comprehensive reform.[35]

IV. THE COMPREHENSIVE REFORM SHOULD BE BASED UPON A REVENUE MODEL

The second key issue teed up in the *FNPRM* is what basic methodology (*i.e.* contributions based upon revenues, numbers, connections, etc.) the Commission should adopt. Once again, contributors to the system tended to favor a methodology that would reduce their contribution obligations or spread them over a broader base.[36] Notably, however, the more independent commenters generally support retention of the revenue-based system, with modifications and improvements. For example, AARP submits that assessments based on revenue will be more equitable, administratively efficient, and will provide fewer opportunities for gaming the system.[37] The CPUC recommends that the FCC maintain a revenue-based system both because it is more fair and because it will present far fewer implementation problems than would either a numbers-based or a connection-based system.[38] Similarly, the Coalition for Rational Universal Service and Intercarrier Reform argues that a revised revenue-based system

---

[35] *See, infra,* Section V.

[36] *See, e.g.,* Verizon Comments at 46 (a numbers-based system has "many potential benefits"); AT&T Comments at 17 (abandonment of the revenue system is long past due). Because Verizon and AT&T tend to have higher revenue per number than other carriers with which they compete, they could benefit competitively from a numbers-based, rather than a revenue-based system. *See also* Vonage Comments at 2 (contributions should be "based upon the capacity of physical network connections"); Comcast Comments at 28-29 (advocating a hybrid connections/numbers system that it claims will least discourage the adoption of broadband services).

[37] AARP Comments at 11, 32-34.

[38] CPUC Comments at 8-14.

presents fewer risks of market distortions.[39] NASUCA also advocates an improved revenue-based system because a numbers- or connection-based system charges for consumer access, rather than usage, and could increase opportunities for arbitrage.[40]

MetroPCS agrees with these commenters and urges the Commission to give substantial weight to their comment, not only because they are in a position to be more objective, but because they have the better side of the argument. A revenue-based assessment system is fair in that it assesses contributions based on the tangible revenue benefit received by the contributor. Revenue received is a good surrogate for the benefit received since contributors (and the market) determine the amount that such contributors can charge for the use of the resource. MetroPCS agrees with those commenters that point out that a numbers- or connection-based approach would not be competitively neutral.[41] In addition, a revenue approach eliminates the line drawing exercises which would be necessary in using a numbers- or connection-based approach. For example, if numbers are used, are all services which use the numbers assessed charges in the same way? Should an 800 toll-free number pay the same as a local telephone number assigned to a residential subscriber? Would all connections, regardless of speed of service be assessed the same, or would the Commission have to decide whether faster speeds, or particular services (such as voice vs. data) would be assessed differently? It goes without saying that each contributor would argue for an assessment that benefits its particular mix of offerings to the determent of others. This will unnecessarily complicate the process.

---

[39] Coalition for Rational Universal Service and Intercarrier Reform Comments at 9.

[40] NASUCA Comments at 20.

[41] *See, e.g.,* Tracfone Comments 5-6.

A revenues-based approach also makes compliance much easier. Most contributors have audited financials, and these financials can be used by the Commission to determine whether the appropriate amounts are being paid. Further, if financial revenues are used, difficult line drawing around bundled services can also be avoided because Generally Accepted Accounting Principles (GAAP) provides standards by which bundled services may be broken into constituent parts for accounting purposes and the Commission can rely upon that process if it uses a revenues-based approach.

Further, a revenues-based approach is more sustainable in that it relies less on current uses of numbers or connections. Using numbers or connections invites contributors to reduce their use of numbers or connections to minimize their burden. On the other hand, contributors would be less likely to reduce revenues to avoid contribution liability. Additionally, revenues associated with telecommunications and information services have been growing, which means that the USF fund can be sustained over time, will be more stable and will ultimately lead to lower burdens for the industry and consumers.

There also is a serious risk of unintended consequences and gamesmanship if the Commission radically alters the current system by using an entirely new contribution methodology. Additionally, here is a greater prospect that the reform will impose undue administrative burdens on smaller companies. While the current contribution system is complicated, it is the “Devil we know.” Contributors have become generally familiar with the requirements of a revenue-based contribution system, and there is a considerable benefit to maintaining consistency. Inevitably, a drastically revised system, even if well-crafted and well-implemented, will require inordinate attention from contributors in the early going. This being the case, a radical reform will not pass the "cost-benefit" analysis that the Commission has made clear should be a cornerstone of its regulatory action.[42]

In sum, the Commission should conclude, based upon the record evidence, that a modified and improved revenue-based contribution system will be utilized as it best meets the Commission's goals of efficiency, fairness and sustainability.

V. THE COMMISSION SHOULD CONVENE AN INDUSTRY ADVISORY COMMITTEE TO MAKE RECOMMENDATIONS TO THE COMMISSION ON A COMPREHENSIVE REFORM PROPOSAL AND THEN RELEASE PROPOSED RULES FOR PUBLIC COMMENT

The *FNPRM* understandably took comment on a broad array of USF contribution issues. As noted above, many commenters advocated comprehensive reform proposals that, if adopted, would benefit them economically or competitively. They cannot be faulted for doing so. The problem is that, unless and until the core issues are decided as to who will contribute to the system and what the general contribution methodology will be, commenters will not be offering all of the input the Commission needs. For example, parties who favor a numbers-based or connection-based system do not devote much – if any – attention to how the revenue-based system should be modified to make it clearer and fairer. Similarly, parties who contend that their offered services should not be subject to assessment have not spent much time in their comments describing the optimal means for calculating assessments if they did contribute. The bottom line is that the comments in this proceeding, though voluminous, are inadequate for the Commission

---

[42] President Barack Obama issued an Executive Order on July 11, 2011 which called on federal agencies, *inter alia*, to use the "least burdensome tools for achieving regulatory ends," by conducting both quantitative and qualitative cost-benefit analyses. Exec. Order No. 13579, 76 FR 41587 (Jul. 14, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf; *See* also News Release, Statement from FCC Chairman Julius Genachowski on the Executive order on Regulatory Reform and Independent Agencies (Jul. 11, 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf.

to craft a successful comprehensive reform because the number of options under consideration in the *FNPRM* was too great.

There are two possible approaches the Commission should consider taking to move the ball forward. First, the Commission could put out a *Second Further Notice of Proposed Rulemaking* (the "*Second Notice*") which makes tentative conclusions – along the lines set forth above by MetroPCS – on the key issues as to who will contribute and what the contribution methodology will be. Any such *Second Notice* also should contain draft rules and draft instructions for the USF reporting forms (currently the FCC Forms 499) so that interested parties can comment. This approach would enable the Commission to assemble a sufficient record to engage in reasoned decision-making. However, such an approach would require the Commission to make tentative decisions without the benefit of specific and quantifiable data.

Alternatively, the Commission could take steps under the *Federal Advisory Committee Act*[43] to set up an advisory committee composed of a wide cross-section of the industry and other interested parties to make recommendations regarding proposed contribution rules and procedures – again with the understanding that the base of contributors and assessable services would be expanded and that a revenue-based contribution system would be utilized. For the reasons set forth below, MetroPCS favors the second approach.

One thing that is clear from reading the comments in this proceeding is that there are many complex and difficult issues that need to be resolved in order for a comprehensive reform proposal to emerge. For example, the comments raise complicated issues about the manner in

---

[43] Federal Advisory Committee Act, 5 U.S.C. Appendix – Federal Advisory Committee Act; 86 Stat. 770, as amended.

which resellers and wholesalers should be treated,[44] the manner in which bundled services and bundle discounts should be assessed,[45] the appropriate treatment of intrastate versus interstate revenues,[46] possible categories of revenue that should not be assessable (*e.g.* equipment revenue; information service revenue, etc.),[47] and the need for safe harbors to make the system easier to administer,[48] just to name a few. These are complex issues which would benefit from thoughtful consideration by a broad cross-section of industry representatives and interested parties with detailed knowledge of the manner in which networks and service plans operate, how services are accounted for and how consumers will likely react. Based upon these considerations, MetroPCS favors the formation of an advisory committee of a broad cross-section of industry representatives and other interested parties under the *Federal Advisory Committee Act* to make recommendations to the Commission.

As the Commission knows well, advisory committees often are useful in helping the government manage and solve complex and potentially divisive issues. For example, the Commercial Mobile Service Alert Advisory Committee recommended technical requirements by which Commercial Mobile Service emergency alerts could be transmitted to subscribers. The work of this committee led to the launch of the Commercial Mobile Alert System (CMAS). The Communications Security, Reliability, and Interoperability Council has been formed to provide

---

[44] *See, e.g.,* AT&T Comments at 30-32 (the existing reseller certification system is untenable); Comments of CTIA at 11-12 (the reseller process is unworkable); NTCA, OPASTCO, and WTA Comments at 45-46 (replace the reseller certification system with a registration system).

[45] American Cable Association Comments at 7; Comcast Comments at 10-13; Satellite Industry Association Comments at 18-19.

[46] NASUCA Comments at 14-15; Verizon Comments at 45.

[47] Verizon Comments at 43-45; Wireless Internet Service Providers Association Comments at 10-11; Level 3 Comments at 13-17.

[48] USTelecom Comments at 12; Verizon Comments at 20-22.

recommendations to the Commission to ensure security and reliability of communications systems. These committees demonstrate the point that advisory committees with broad industry representation are well-suited to address technically complex issues. The Commission also recently formed the Open Internet Advisory Committee to track and evaluate the effect of the Commission's Open Internet rules. This committee provides an example of an Advisory Committee which has been formed to provide information to the Commission on a potentially divisive issue since the Open Internet rules have been challenged in court by multiple carriers (including MetroPCS) and have been a topic of concern in Congress.

Given the nature of the difficult issues that need to be resolved in order to reform the USF contribution system in a fair and comprehensive manner, MetroPCS recommends that the Chairman, as the head of the agency, exercise his prerogative under Section 9(a)(2) of the *Federal Advisory Committee Act*, after due consultation with the Act's administrator, to establish the USF Contribution Reform Advisory Committee. Membership on the committee should be open to qualified representatives of the broad cross-section of constituents who have actively participated in this proceeding including wireline telephone companies (ILECs, RLECs, and CLECs), facilities- and non-facilities-based wireless carriers (nationwide, regional and local), and resellers, cable companies, satellite companies, Internet service providers, domestic and international interexchange companies, VoIP service providers, edge service providers, federal and state consumer groups, state public service commissions, and others whose business is directly related to the universal connectivity that is the goal of the USF. The charter of the committee should be to make a comprehensive reform recommendation to the Commission that expands the contribution base to include all benefitted companies and assesses contribution on a revenue-based model.

Such an advisory committee need not slow down progress towards a solution and in fact could allow the Commission to make a quicker decision with more input from interested parties. The Commission could adopt a timetable that requires the first meeting to be held within days of the establishment of the committee with a recommendation to the Commission by a specific date. The process would result in considerable discussion and proposals that would provide a fulsome view of the possible solutions. Such a process would also allow for quicker responses to specific proposals which would not only speed the process up but should also reduce the possibility of unintended consequences.

If the Commission accepts this recommendation, it still should plan to issue a *Second Further Notice* setting forth its recommended reform proposal after it has taken into consideration the recommendations of the advisory committee. Given that the notice and comment process is a bedrock principle of administrative rulemaking, the proposal the Commission comes up with, with the benefit of the advisory committee recommendations, deserves to be thoroughly vetted. This process will allow the Commission to adopt a comprehensive USF contribution reform unlikely to be marred by unintended consequences and gamesmanship.

VI. THE COMMISSION SHOULD REJECT CALLS FOR A "VALUE ADDED" APPROACH

MetroPCS disagrees with commenters who promote a value-added approach as a solution to USF contribution reform. Rather than help fix a broken system, a value-added approach will simply inject additional complexity, confusion, and opportunities for gamesmanship into the system. Even AT&T, which finds some merit in such an approach, recognizes that a value-added approach "may prompt resellers to reprice their offerings so that the interstate telecommunications component of a service offering is identical to the price assessed by the wholesale provider in order to avoid a direct contribution obligation on that component."[49] Further, such a system creates disparities between facilities-based and non-facilities-based competitors and unduly favors non-facilities-based competitors. This is precisely the type of manipulative gamesmanship that the Commission should strive to avoid in the context of comprehensively reforming the USF contribution system. The Commission should not introduce more loopholes into a system where too many already exist. A value-added approach would also increase administrative burdens on many providers as, for example, "a reseller . . . would have to track and retain records supporting its claimed credit for purchases of services subject to assessment."[50] As noted above, the industry largely has centered around reforming the current system rather than a radical methodological overhaul fraught with unintended consequences. A value-added approach represents just this sort of danger, and it should be dismissed. Finally, a value added approach would be very confusing to consumers because different providers would have different assessments based on the costs they incurred to provide the service. A competitor which buys a facility for $1 and sells it for $2 would have a different end user assessment than a carrier that bought a facility for $1.50 and sold it for $2.00. This confusion would be the exactly wrong direction for the Commission to head.

VII. CONCLUSION

The foregoing premises having been duly considered, MetroPCS strongly recommends that, consistent with MetroPCS' recommendations in its Comments and these Reply Comments, the Commission immediately undertake reforms including: (i) the exclusion of Messaging Services unless and until all competing services are brought into the contributor fold; (ii) the

---

[49] AT&T Comments at 33.

[50] Verizon Comments at 18.

inclusion of enterprise and MPLS services; (iii) the need for prompt and regular guidance from the Commission on USF contribution issues; (iv) less-frequent adjustments to the USF contribution factor; and (v) increased fairness and parity in the mechanics of USF contribution, including eliminating the asymmetry in revising revenue projections and recouping overpaid contributions. Further, in order to adopt a comprehensive contribution methodology that is fair to all stakeholders, MetroPCS urges the Commission to create an working industry group to facilitate the creation of a specific proposal that can be submitted for public comment in this proceeding. Finally, the Commission should not adopt a value added approach.

Respectfully submitted,

MetroPCS Communications, Inc.

By:
Carl W. Northrop
Andrew Morentz
TELECOMMUNICATIONS LAW
PROFESSIONALS PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Mark A. Stachiw
General Counsel, Secretary
& Vice Chairman
Christopher M. Miller
Staff Vice President, Taxes
John R. Barnes, Jr.
Director, Transaction Taxes
MetroPCS Communications, Inc.
2250 Lakeside Blvd.
Richardson, Texas 75082

Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Its Attorneys

August 6, 2012