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VIA ECFS

The Honorable Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Universal Service Contribution Methodology*, WC Docket No. 06-122

Dear Chairman Genachowski:

The Universal Service for America Coalition ("USA Coalition" or "Coalition") writes to urge the Federal Communications Commission to retain the current revenues-based contribution mechanism for the Universal Service Fund and to reject recent calls to implement a numbers-based contribution mechanism.[1] No compelling justification exists for abandoning the current revenues-based contribution mechanism, and the proposed numbers-based contribution mechanism suffers from numerous flaws. Rather than expend its efforts identifying a new mechanism, the Commission should instead reform the current revenues-based mechanism to function more efficiently.

I. A Numbers-Based Contribution Mechanism Would Unjustly Shift The Universal Service Burden Away From Heavy Users Of The Network

Regardless of the contribution mechanism employed by the Commission, consumers ultimately bear the cost of funding universal service expenditures. Under the current revenues-based universal service contribution mechanism, carriers contribute into the Universal Service Fund based upon revenues from interstate services and pass those costs onto consumers. This system is fundamentally fair because carrier revenues from telecommunications services correlate with the benefits that consumers receive from those services.

Telephone numbers, by contrast, are a poor proxy for the benefit associated with telecommunications services. Under a numbers-based proposal, carriers (and ultimately consumers) would contribute to the Fund based on the quantity of telephone numbers they used, instead of on the actual use of the network. As a result, an individual who subscribes to a barebones residential or mobile service solely to have access to emergency services would contribute to the Universal Service Fund in the same amount as an enterprise customer using a PBX – a fundamentally unfair proposition.

A numbers-based proposal could also facilitate arbitrage of the contribution rules by sophisticated consumers of communications services. If the Commission were to adopt a numbers-based contribution

[1] *See, e.g.,* Letter from Andrew Brown, Ad Hoc Telecommunications Users Committee, to Marlene Dortch, FCC, WC Docket No. 06-122 (Oct. 5, 2012).

mechanism, both the telecommunications industry and large businesses would use alternative technologies to reduce the quantity of numbers used. For example, enterprise customers could move to PBX-style extensions using a single telephone number, rather than traditional telephone numbers, in order to reduce their contribution obligation. Alternatively, providers may offer various forms of IP-based addressing systems as an alternative to traditional telephone numbers. By making use of these options, sophisticated consumers could significantly reduce the universal service costs they bear, and providers would have the incentive to facilitate these cost savings by their customers.

This type of arbitrage is particularly problematic because the largest consumers of telecommunications – *e.g.*, large business, call centers, *etc*. – would be best positioned to make these types of changes. By contrast, residential consumers and wireless consumers will not have these options available to them. Instead, these consumers, which include many low-income and fixed-income consumers, would remain subject to the full contribution requirement. As a result, wireless, residential, and small business customers would bear an even greater share of the contribution burden than under the current mechanism.

The Commission should not attempt to address this problem by exempting certain vulnerable classes of customers (*e.g*., low usage). While proposals to exempt certain vulnerable consumers from contribution obligations may be well-intentioned, such proposals will shift an even greater burden onto those who would continue to be required to contribute to the Fund. The problem, which the Commission cannot address from within the confines of a pure numbers-based contribution mechanism, is that too many large users of telecommunications services will effectively opt-out of their contribution obligations. Exemptions for specific subclasses will only exacerbate that problem for those subscribers that remain subject to contribution requirements.

II. The Imposition Of A Numbers-Based Contribution Mechanism Would Likely Exceed the FCC's Authority

The Commission lacks jurisdiction to regulate intrastate services or to impose universal service contribution obligations on intrastate services absent "unambiguous language showing that the statute [at issue] applies to intrastate matters."[2] However, there are many services which are purely intrastate in nature that would become subject to universal service contribution obligations under a numbers-based contribution mechanism. For example, under a numbers-based contribution mechanism, technologies such as alarm systems, voice mail services, and in-car telematics services would face dramatically higher contribution obligations based upon their heavy use of telephone numbers, despite the fact that these offerings often make use of little or no interstate services.

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[2] Section 152(b) of the Act denies the Commission "jurisdiction with respect to ... charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service." 47 U.S.C. § 152(b). *See also Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 447-48 (5th Cir. 1999) (citing *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 380-81 (1999) (*TOPUC*). The courts have rejected claims that rely upon the Commission's plenary powers or upon statutes that fail to explicitly authorize intrastate action by the Commission. *TOPUC*, 183 F.3d at 447-48; *Qwest v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001); *Vonage v. FCC*, 489 F.3d 1232, 1236 (D.C. Cir. 2007).

Ultimately, any numbers-based contribution obligation would represent an impermissible assessment on intrastate revenues because the proposed mechanism would improperly assess contributions on all phone connections, regardless of whether or not they generate interstate revenue. As the Commission has acknowledged, under *TOPUC*, the Commission has no authority to mandate contributions to the federal Universal Service Fund for purely intrastate activities.[3] Regardless of the correctness of that decision, any universal service contribution mechanism that attempts to assess contributions on all numbers will be subject to challenge, further delaying meaningful reform. For this additional reason, the USA Coalition urges the Commission to work within the existing contribution framework.

III. The FCC Should Improve the Current Revenues-Based Contribution Mechanism

While the current revenues-based contribution mechanism must be reformed to make it simpler to administer, a revenues-based contribution mechanism remains the best mechanism for collecting universal service contributions without causing unintended consequences. Specifically, by assessing contributions based on revenues rather than on some aspect of the underlying technology (*e.g.*, the use of numbers or the capacity of connections), the Commission can avoid creating obstacles to the deployment of new technologies or encouraging carriers and consumers to engage in regulatory arbitrage.

Indeed, Commission adoption of a numbers-based or connections-based contribution has the potential to delay the deployment of important new technologies, including:

- in-car telemetry services;
- advanced security systems;
- machine-to-machine communications;
- remote monitoring systems; and
- smart grid services and devices.

These services typically make relatively little use of the network, often transmitting only a small amount of information per month. Imposing a flat-contribution obligation on the use of these services by assessing contributions based upon the use of a telephone number or the capacity of a consumer's connection may make deployment of these services prohibitively expensive and limit their deployment or the ability of low-income users to afford them.

By contrast, assessing contributions from carriers based on carrier revenues from telecommunications services ensues that contributions will be collected from heavy users of the network in proportion to their use of that network and in a manner that will not unfairly impact new technologies. To the extent that these new technologies require either the provider or the consumer to purchase telecommunications services, then revenues from those services can be assessed in a manner proportionate to the consumer's actual use of the network. Importantly, however, it will be the use of the

[3] *Universal Service Contribution Methodology*, WC Docket No. 06-122, FNPRM, 27 FCC Rcd. 5357, ¶ 129 (rel. 2012).

network (which the Universal Service Fund supports), and not the use of the new technology, that will drive the amount of the contribution obligation.

If the Commission chooses to proceed with a numbers-based or connections-based mechanism, the Commission should exercise its permissive authority to exempt certain providers of interstate telecommunications that generally do not compete directly with common carriers, including those that serve important public safety functions.[4] Further, in the event that the Commission adopts either of these two mechanisms, despite the objections discussed above and elsewhere in the docket, the Commission should also exercise its permissive authority to exempt the emerging technologies discussed above from universal service contribution obligations.

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The USA Coalition remains committed to working with the Commission to accomplish universal service contribution reform. Please contact the undersigned if you have any questions or would like additional information.

Sincerely,

Todd D. Daubert
J. Isaac Himowitz

Counsel for the USA Coalition

cc: Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel
Mr. Zachary Katz
Mr. Michael Steffen
Ms. Christine Kurth
Ms. Angela Kronenberg
Ms. Courtney Reinhard
Ms. Priscilla Delgado Argeris
Secretary Marlene Dortch

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4 The Commission has exempted this class of providers in the past. *See Universal Service Contribution Methodology*, WC Docket No. 06-122, FNPRM, FCC 12-46 ¶ 9 & n.20 (rel. 2012).