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**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
)	

FURTHER NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. Today we seek comment on proposals to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered. In doing so, we take the next step in the Commission’s ongoing efforts to modernize its universal service programs to efficiently bring the benefits of 21st century broadband networks, and the economic growth, jobs and opportunities they provide, to all Americans.¹

2. The universal service contribution system is the system by which the Commission’s various universal service programs are funded. The total amount of money that must be collected each year is determined based on quarterly projections of demand for each of the four universal service

¹ See *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010) (identifying comprehensive universal service reform as an essential goal for the Commission).

programs.² In October 2011 and January 2012, the Commission adopted sweeping reforms to modernize the High-Cost (now known as the Connect America Fund) and Low-Income components of the Fund to ensure that robust, affordable voice and broadband service are available to Americans throughout the nation. These reforms also adopted, for the first time, a budget for the Connect America Fund, and set a savings target of \$200 million for 2012 for the USF Lifeline program.³ Along with the existing caps for the Schools and Libraries (commonly referred to as the E-Rate) and Rural Health Care components of the Fund, these reforms will assist in limiting the overall contribution burden.

3. Building on our efforts to limit the overall contribution burden, in this Further Notice of Proposed Rulemaking (Notice) we seek comment on a variety of proposals to reform the system by which universal service demand is met. Since the adoption of the current contribution system after the Telecommunications Act of 1996,⁴ the communications ecosystem has undergone extensive changes that have brought tremendous benefits to consumers. Consistent with the pro-competitive goals of the 1996 Act, many firms have entered into the telecommunications marketplace and given consumers and businesses many more choices for purchasing communications services. Most consumers now subscribe to mobile wireless services. Many service providers now offer Internet Protocol-based (IP) services that deliver voice, data, and video functionality to consumers and businesses. Meanwhile, the Commission's universal service contribution system has not kept pace with some of these changes.

4. The evolution in the communications ecosystem has led to a series of stresses on the contribution system. The contribution system has become increasingly complex for the Commission and the Universal Service Administrative Company (USAC) to administer and burdensome for contributing telecommunications providers to comply with. Some aspects of today's contributions methodology may result in competitive distortions because different contribution obligations may apply to similar services depending on how a service is provided. Furthermore, the USF contribution base, largely comprised of assessable telecommunications service revenues reported by companies,⁵ has recently begun to shrink as residential and business customers have begun to migrate to communication services that do not contribute to the Fund.

5. This Notice seeks comment on ways to reform the USF contribution system in an effort to promote efficiency, fairness, and sustainability. In particular, we seek comment on:

- *Who Should Contribute.* We seek comment on clarifying or modifying the Commission's rules on what services and service providers must contribute to the USF in order to reduce uncertainty, minimize competitive distortions, and ensure the sustainability of the Fund. In particular, we seek comment on two alternative approaches to defining what services or providers should be subject to contribution obligations: (1) using our permissive authority, and/or other tools to clarify or modify on a service-by-service basis whether particular services or providers are required to contribute to the Fund; or (2)

² 47 C.F.R. § 54.709(a)(2).

³ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Lifeline and Link Up Reform and Modernization Order et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (*Lifeline and Link Up Reform and Modernization Order*).

⁴ See 47 U.S.C. § 254(d); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 (Communications Act or Act).

⁵ As discussed later in the Notice, *see infra* paras. 9-10, certain provisions of telecommunications, like private line service, do not constitute a telecommunications service as that term is defined in the Act, but are included in the USF contribution base. See 47 C.F.R. § 54.706(a).

adopting a more general definition of contributing interstate telecommunications providers that could be more future proof as the marketplace continues to evolve.

- *How Contributions Should Be Assessed.* We then seek comment on how contributions should be assessed – specifically, what methodology we should use to determine the relative contribution obligations among those providers who are required to contribute. In particular, we seek to refresh the record and update proposals to assess based on revenues, connections, numbers, or a hybrid approach. For each alternative, we ask parties to address the current and projected impact on the relative contribution burden for consumers and businesses in light of marketplace trends.
- *How the Administration of the Contribution System Can Be Improved.* We also seek comment on potential rule changes that would reduce the costs associated with complying with contribution obligations and promote the transparency and clarity of the contribution system. For example, we seek comment on whether to adopt an annual review of the instructions and content of the form that telecommunications providers must submit to determine the scope of their contribution obligations (FCC Form 499). We also seek comment on ways to improve administration of the contribution system, such as setting performance goals for timely reporting by contributors and prompt payment of contributions.
- *Recovery of Universal Service Contributions from Consumers.* Finally, we seek comment on whether the Commission could promote fairness and transparency by modifying the methods by which providers recover the costs of universal service contributions from consumers. In particular, we seek comment on whether to require additional information on customer bills about contributions, whether to limit the flexibility of contributors to pass through contribution costs as a separately stated line item on customer bills, and whether to extend to non-incumbent eligible telecommunications carriers our existing rules that preclude incumbent carriers from recovering from their Lifeline subscribers universal service contributions for Lifeline offerings. We also seek comment on measures to ensure contributions are made by contributors that become insolvent.

6. We encourage detailed input from all stakeholders on our efforts to reform the universal service contribution methodology. Input from contributors, potential contributors, consumers (both individuals and business users, who ultimately pay for USF),⁶ and consumer advocacy groups will be crucial in fully evaluating the impact of potential reforms to the contribution system. We also specifically solicit input from state governments, with whom we have had an historic partnership in ensuring universal service, and Tribal governments, who play a crucial role in overseeing telecommunications services provided on Tribal lands.⁷

⁶ See *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17682-83, para. 57; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at 22, para. 37.

⁷ Throughout this Notice, “Tribal lands” include any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat. 108, *et seq.*, as amended (1921). This definition is consistent with the definition of Tribal lands recently adopted in our orders establishing the Connect America Fund and reforming the Low-Income universal service support mechanism. *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17739, para. 126, n.197; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at 5-6, para 4, n.4.

II. BACKGROUND

A. Today's Contribution System

7. The Commission's authority to require contributions to the USF derives from section 254(d) of the Act, which provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."⁸ Under this mandatory contribution provision, every provider of interstate telecommunications services must contribute,⁹ although the Commission has authority to exempt a carrier or class of carriers if their contributions would be *de minimis*.¹⁰ Section 254(d) also vests the Commission with broader, permissive authority to assess contributions, such that "[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."¹¹

8. Several concepts historically have guided the Commission's approach to universal service contributions. First, since the initial implementation of section 254 after passage of the 1996 Act, the Commission has held that the universal service rules should be competitively neutral and should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."¹² Thus in developing the existing contribution methodology in 1997, the Commission endeavored to reduce the "possibility that carriers with universal service obligations [would] compete directly with carriers without such obligations."¹³ Second, the Commission found it appropriate to extend universal service contribution obligations to providers that compete with common carriers, because common carriers are subject to mandatory contributions. In reaching that conclusion in 1997, it noted that those who benefit from access to the public switched telephone network (PSTN), which is supported by the universal service fund, should contribute.¹⁴ As the U.S. Court of Appeals for the Fifth Circuit has explained, "Congress designed the universal service scheme to exact

⁸ 47 U.S.C. § 254(d).

⁹ Section 254(d) refers to "telecommunications carriers," which are defined as "any provider of telecommunications services." 47 U.S.C. § 153(51).

¹⁰ 47 U.S.C. § 254(d).

¹¹ *Id.*

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para. 47 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); see also *Federal-State Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3759, para. 15 (2002) (*2002 First Contribution Methodology Order and FNPRM*) (identifying the following goals in considering reform to the USF contribution system: ensuring stability and sufficiency of the universal service fund as the marketplace continues to evolve; ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner; and minimizing the regulatory costs of complying with universal service obligations).

¹³ *Universal Service First Report and Order*, 12 FCC Rcd at 9183-84, para. 795.

¹⁴ *Id.* at 9184-85, paras. 796-97 (extending contribution obligations to payphone aggregators because they interconnect with the public-switched telephone network); see also *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7540, para. 43 (2006) (*2006 Contribution Methodology Order*).

payments from those companies benefiting from the provision of universal service.”¹⁵ Third, the Commission has sought to ensure that the contribution rules are easy to comply with and administer.¹⁶

9. *Contributors.* The current system requires contributions both from common carriers¹⁷ (under the Act’s mandatory contribution requirements), and certain other providers of telecommunications (under the Commission’s permissive authority). Specifically, in 1997, the Commission exercised its permissive authority to require payphone aggregators and private carriers (*i.e.*, companies that sell services on an individualized contractual basis) to contribute to the Fund.¹⁸ More recently, in 2006, the Commission exercised its permissive authority to require interconnected Voice over Internet Protocol (VoIP) providers to contribute as a means of ensuring a level playing field among direct competitors.¹⁹ The Commission has exempted common carriers whose contributions would be *de minimis* and declined to exercise permissive authority over various providers of interstate telecommunications that generally do not compete directly with common carriers.²⁰ Today, about 2,900 telecommunications providers contribute to the USF. 3,100 providers that would otherwise be required to contribute qualify for the *de minimis* exemption.²¹ Nearly three-quarters of USF contributions come from five companies: AT&T Inc., CenturyLink, Inc., Sprint Nextel Corporation, T-Mobile USA, Inc., and Verizon Communications, Inc.²² Contributors commonly recover their universal service contribution

¹⁵ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999) (*TOPUC*).

¹⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 843.

¹⁷ The D.C. Circuit has affirmed the Commission’s interpretation that “telecommunications service” means “essentially the same as common carrier” service. *See Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (*VITELCO*).

¹⁸ *See Universal Service First Report and Order*, 12 FCC Rcd at 9183–85, paras. 794–98.

¹⁹ *See 2006 Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44 (extending contribution obligations to interconnected VoIP service providers). Although the Commission has not addressed the regulatory classification of interconnected VoIP services under the Act, the Commission has concluded that interconnected VoIP providers are “providers of interstate telecommunications” for purposes of universal service. *Id.* at 7537, para. 35 (citing 47 U.S.C. § 254(d)).

²⁰ 47 C.F.R. § 54.708 (“If a contributor’s contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution . . .”); 47 C.F.R. § 54.706(d) (“The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.”); *Universal Service First Report and Order*, 12 FCC Rcd at 9186, para. 800 (holding that “government entities that purchase telecommunications services in bulk on behalf of themselves,” entities that offer “interstate telecommunications to public safety or government entities” but not to others, and “public safety and local governmental entities licensed under Subpart B of Part 90 of our rules” are not required to contribute to universal service); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5476, para. 284 (1997) (*Universal Service Fourth Order on Reconsideration*) (non-profit schools, colleges, universities, and libraries “should not be made subject to universal service contribution requirements.”).

²¹ This information was calculated based on a review of the annual Telecommunications Reporting Worksheets filed in April 2011.

²² Universal Service Monitoring Report, Dec. 2011, CC Docket No. 98-202, Table 1.6, *available at* <http://www.fcc.gov/wcb/stats> (last visited Mar. 20, 2012) (*2011 Universal Service Monitoring Report*). In 2011, Qwest Communications International and CenturyTel, Inc. merged to become CenturyLink, Inc. T-Mobile USA, Inc. is a subsidiary of Deutsche Telekom AG.

costs from their customers, and providers that bill their customers on a monthly basis often include a line item on the consumer bill for such USF pass-through charges.²³

10. *Contribution Base.* When the Commission implemented the 1996 Act, it chose to assess contributions based on end-user revenues.²⁴ Under this system, contributions are currently assessed based on a contributor's "projected collected interstate and international end-user telecommunications revenues, net of projected contributions."²⁵ In determining what revenues should be assessed and how contributors must report those revenues, the Commission requires contributors to distinguish revenues in three ways, as illustrated in Diagram 1 below. First, contributors are required to allocate between revenues derived from either "telecommunications services"²⁶ or certain provisions of "telecommunications" (whether offered on a common carrier or private carrier basis),²⁷ and revenues derived from "information services"²⁸ or consumer premises equipment (CPE).²⁹ Revenues from interstate telecommunications services have always been part of the contribution base, and the codified rules specifically enumerate services that generate assessable revenues, such as cellular telephone service, paging service, and prepaid calling cards.³⁰ This includes revenues from "stand-alone broadband telecommunications service [offered] on a common carrier basis," as described in the *Wireline Broadband Internet Access Order*.³¹

²³ See *supra* n.6. We note that carriers also have the flexibility to recover their contribution costs through the rates they charge for service.

²⁴ The Commission had sought comment on basing contributions on gross revenues, net telecommunications revenues (gross revenues net of payments to other carriers for telecommunications services), or a per line or per-minute charge. *Universal Service First Report and Order*, 12 FCC Rcd at 9205, para. 842.

²⁵ 47 C.F.R. § 54.706(b); see also *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration and Eighth Report and Order, Sixth Report and Order, 15 FCC Rcd 1679, 1685, para. 15 (1999) (*Universal Service Eighth Report and Order*) (establishing a single contribution obligation for all universal service support mechanisms); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969, para. 29 (2002) (*2002 Second Contribution Methodology Order and FNPRM*) (establishing projected collected revenues (net of contributions) as the appropriate contribution base).

²⁶ See 47 U.S.C. § 153(53) (defining "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used").

²⁷ See 47 U.S.C. § 153(50) (defining "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received"); *Universal Service First Report and Order*, 12 FCC Rcd at 9173, para. 777 (requiring those who offer telecommunications on a common-carriage basis for a fee to contribute); *id.* at 9183, para. 795 (requiring those who offer telecommunications on a private-carriage basis for a fee to contribute).

²⁸ See 47 U.S.C. § 153(24) (defining "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications").

²⁹ *Policy and Rules Concerning the Interstate, Interexchange Marketplace et al.*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446, para. 47 (2001) (*CPE Bundling Order*).

³⁰ 47 C.F.R. § 54.706(a)(1)-(19). This list, however, is not comprehensive, as the rule states that "[i]nterstate telecommunications include, but are not limited to. . . ." To support our troops, the Commission has carved out an exemption for "revenues derived from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity." 47 C.F.R. § 54.706(d).

³¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 *et al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14916 n.357 (2005) (*Wireline Broadband Internet Access Service Order*) (*subsequent history omitted*). Small rate of return carriers that provide broadband transmission through the National Exchange Carrier Association (NECA) tariff contribute on those revenues.

Revenues from interstate telecommunications to which the Commission has extended its permissive authority are also included in the contribution base.³² In contrast, revenues from information services (including retail broadband Internet access services) have never been included in the contribution base.³³ A contributor that provides a mix of these different types of services must therefore apportion its revenues between telecommunications and non-telecommunications sources for purposes of contribution assessment.³⁴

11. Second, because our present rules require contribution only once along the distribution chain (when a contributor provides telecommunications to an “end user”), a contributor also must apportion its telecommunications revenues between two categories: (1) revenues derived from sales by one carrier or provider to another carrier or provider that is expected to contribute, known as “carrier’s carrier” or wholesale revenues; and (2) revenues derived from sales to all other entities, known as “end-user” or retail revenues.³⁵ “Carrier’s carrier” revenues are not currently assessed. “End-user” telecommunications revenues include revenues from sales to carriers or providers that do not contribute to USF, such as *de minimis* carriers and exempted providers of interstate telecommunications.³⁶ To ensure that all telecommunications revenues are assessed only once,³⁷ contributors must treat a customer as an end-user unless that customer “incorporates the purchased telecommunications . . . into its own offerings and . . . can reasonably be expected to contribute to support universal service based on revenues from those offerings.”³⁸

12. Third, contributors must determine how much of their end-user telecommunications revenues are derived from the provision of intrastate, interstate, and international services.³⁹ Intrastate

³² See *Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 39.

³³ See *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14909, para. 102 (classifying wireline broadband Internet access service as an information service). Prior to the *Wireline Broadband Internet Access Service Order*, facilities-based wireline broadband Internet access service providers were required to contribute to the Fund on the transmission component of the service. See *id.* at 14921-22, para. 12.

³⁴ See *infra* Section V.A.1. In this Notice, the use of the term “non-telecommunications” refers to services that are not currently in the USF contribution base. Included in this category are certain information services. We note, however, that this should not be read to suggest that information services do not include a telecommunications component that may be assessable.

³⁵ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18507 (1997) (*Universal Service Second Order on Reconsideration*).

³⁶ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507 (App. C); *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5482, para. 298 (“Entities that resell telecommunications and qualify for the *de minimis* exemption must notify the underlying facilities-based carriers from which they purchase telecommunications that they are exempt from contribution requirements and must be considered end users for universal service contribution purposes.”).

³⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 9206-07, paras. 844-46.

³⁸ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507 (App. C).

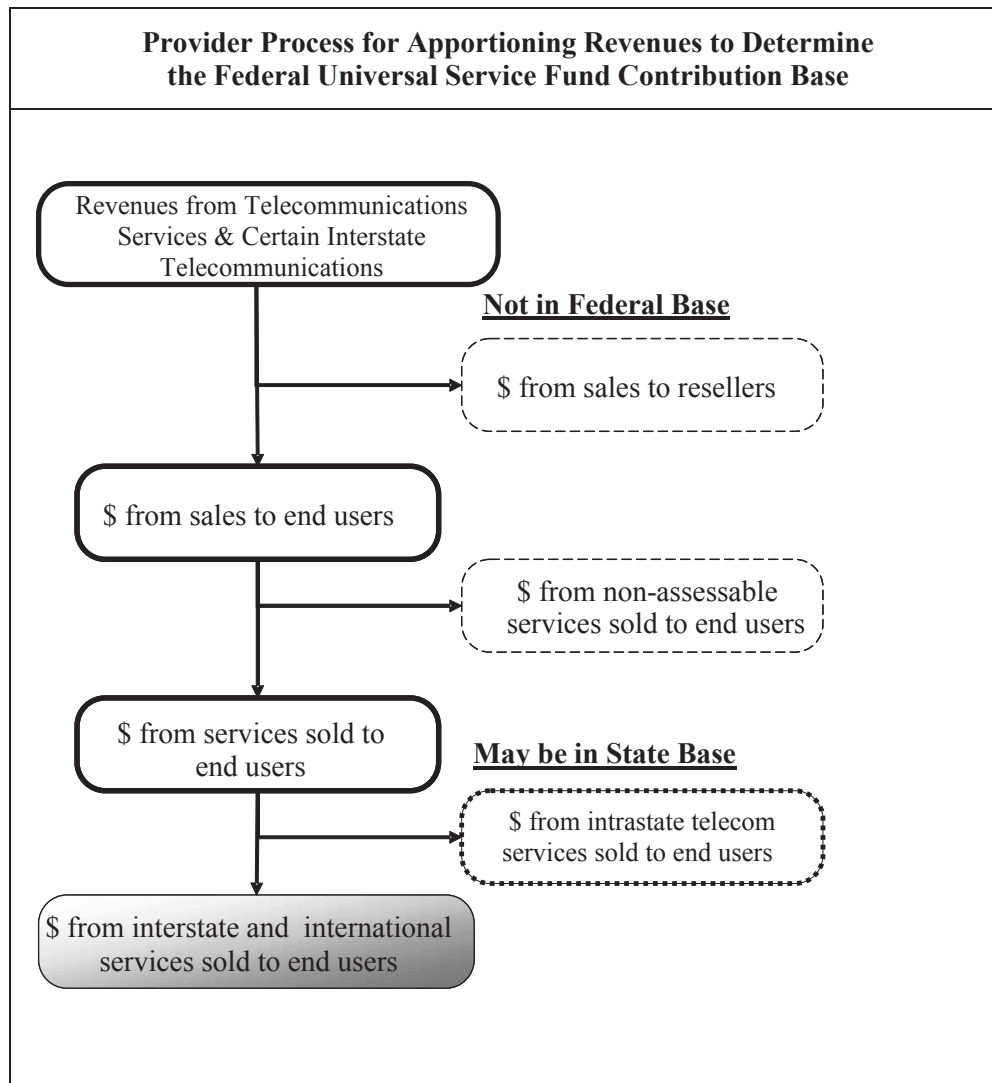
³⁹ Telecommunications providers with purely intrastate or international revenues are not required to contribute. *Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779; *Universal Service Eighth Report and Order*, 15 FCC Rcd at 1685, para. 15. Moreover, to the extent that a contributor’s universal service obligation would exceed its total interstate revenues, our rules provide a limited international revenues exemption (LIRE), which allows carrier to omit projections of, and contributions based on, collected international end-user telecommunications revenues if the contributor’s interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues. See *infra* Section V.A.6.

revenues are not assessed. All contributors are free to classify and report revenues based on the jurisdictional nature of all of their traffic during the relevant reporting period. In addition, the Commission has established safe harbors for allocating revenues for certain services.⁴⁰ If a contributor relies on an established safe harbor, the contributor's allocation of interstate/international revenues is presumed reasonable. Wireless and interconnected VoIP service providers also are free to allocate revenues based on a ratio derived from a sample of traffic in the relevant reporting period, also known as a traffic study. If such a provider chooses to allocate its end-user telecommunications revenues using a traffic study, it must submit that study to the Commission.⁴¹ Whatever their choice, contributors are required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category.⁴²

⁴⁰ The interstate safe harbor for analog Specialized Mobile Radio (SMR) revenues is 1%, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255, para. 6 (1998) (*Wireless Safe Harbor Order*), for paging revenues is 12%, *id.*, for wireless revenues is 37.1%, *2006 Contribution Methodology Order*, 21 FCC Rcd at 7532, para. 25, and for interconnected VoIP service revenues is 64.9%, *id.* at 7545, para. 53.

⁴¹ See *2006 Contribution Methodology Order*, 21 FCC Rcd at 7535-36, para. 32 (requiring wireless providers to submit traffic studies); *id.* at 7547, para. 57 (requiring interconnected VoIP service providers to submit traffic studies for pre-approval and review); *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1243 (D.C. Cir. 2007) (eliminating the pre-approval requirement for interconnected VoIP service providers).

⁴² See *2006 Contribution Methodology Order*, 21 FCC Rcd at 7535-36, para. 32.

Diagram 1⁴³

13. *Recovering Contributions.* A contributor may recover the costs of universal service contributions by passing through an explicit charge to its customers.⁴⁴ If a contributor chooses to pass through the contribution directly to its customers, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill multiplied by the relevant contribution factor.⁴⁵

⁴³ We note that the more explicit reporting instructions for the Telecommunications Reporting Worksheet may be different in layout and content than this simplified diagram.

⁴⁴ 47 C.F.R. § 54.712(a). *See also infra* Part VII.

⁴⁵ 47 C.F.R. § 54.712(a). Section 54.709(a) provides, in relevant part, that contributions to the universal service support mechanisms shall be based on contributors' projected collected end-user telecommunications revenues and on a contribution factor determined quarterly by the Commission based on information submitted by USAC. The quarterly contribution factor is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total projected collected end-user telecommunications revenues. 47 C.F.R. § 54.709(a).

14. *Administering the Contribution System.* The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms.⁴⁶ Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets quarterly (FCC Form 499-Q) and annually (FCC Form 499-A) with USAC.⁴⁷ An executive officer of the reporting entity must certify that historical data are true and accurate and that projections are good-faith estimates.⁴⁸

15. Contributors project future quarters' revenues and also report prior quarters' actual historical revenues on the FCC Form 499-Q, which is generally due on February 1, May 1, August 1, and November 1 of each year.⁴⁹ Contributors may revise their quarterly filings (FCC Form 499-Q) up to 45 days after filing them.⁵⁰ Once USAC has processed and aggregated the information in each quarter's filings, it reports the total quarterly contribution base to the Commission.⁵¹ USAC also projects the quarterly expenses for the universal service support mechanisms, adjusting those expenses to account for any excess or inadequate contributions from the prior quarter,⁵² and submits its projections to the Commission.⁵³ The Commission uses the ratio of projected expenses to the projected contribution base to establish the quarterly contribution factor.⁵⁴ USAC then bills contributors for their universal service contributions based on this factor.⁵⁵ Contributors report their annual historical revenues for the prior calendar year on the FCC Form 499-A, which is generally due on April 1 of each year.⁵⁶ Contributors must revise their Form 499-A filings within one year if the revision would result in a decrease in the contributor's contribution obligation.⁵⁷

16. *Oversight of the Contribution System.* The Commission's existing rules require contributors to "retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the

⁴⁶ 47 C.F.R. § 54.701; *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18423-24, para. 41.

⁴⁷ 47 C.F.R. § 54.711(a); 47 C.F.R. § 54.708 ("all interconnected VoIP providers, including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet."). In addition to *de minimis* interconnected VoIP service providers, certain other non-contributors are also required to file the Telecommunications Reporting Worksheets pursuant to the Commission's rules governing Telecommunications Relay Service, *see* 47 C.F.R. § 64.601 *et seq.*, numbering administration, *see* 47 C.F.R. § 52.1 *et seq.*, and the shared costs of local number portability, *see* 47 C.F.R. § 52.21 *et seq.*

⁴⁸ 47 C.F.R. § 54.711(a).

⁴⁹ *See* Universal Service Administrative Company, *Filing and Managing My 499s: Schedule of Filings*, available at <http://www.usac.org/cont/499/filing-schedule.aspx> (last visited Apr. 16, 2012) (USAC Form 499 Filing Schedule).

⁵⁰ *See id.*

⁵¹ 47 C.F.R. § 54.709(a)(3).

⁵² 47 C.F.R. § 54.709(b)-(c).

⁵³ 47 C.F.R. § 54.709(a)(3).

⁵⁴ 47 C.F.R. § 54.709(a)(2). In contrast to the USF contribution methodology, other regulatory programs are assessed based on a contribution factor determined annually by the Commission. *See, e.g.*, 47 C.F.R. § 64.604 (providing that contributors' contribution to the Interstate Telecommunications Relay Service (TRS) fund shall be the product of all subject revenues for the prior calendar and an annual contribution factor).

⁵⁵ 47 C.F.R. § 54.702(b); 47 C.F.R. § 54.709(a).

⁵⁶ *See* USAC Form 499 Filing Schedule.

⁵⁷ *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order, 20 FCC Rcd 1012, 1013, para. 2 (Wireline Comp. Bur. 2004), *applications for review pending (One-Year Deadline Order)*.

Commission's universal service rules."⁵⁸ Commission rules also require contributors to retain for three years "records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections."⁵⁹ Contributors must provide these records to the Commission or to USAC upon request.⁶⁰ USAC has the authority to audit contributors, and conducts both random and targeted audits pursuant to this authority.⁶¹

17. The Commission's rules penalize contributors that fail to comply with their universal service contribution obligations. If a contributor falsely claims exemption from filing, for example, it may be subject to criminal sanctions.⁶² If a contributor fails to file a timely FCC Form 499-Q, USAC bills the contributor based on a reasonable estimate of the contributor's contribution obligation.⁶³ USAC may also assess the contributor for the reasonable costs USAC incurs because of the failure to file,⁶⁴ or impose a late fee, penalties, and interest on the contributor if the filing becomes more than 30 days overdue.⁶⁵ Consistent with section 503 of the Act,⁶⁶ the Commission's Enforcement Bureau actively pursues violators of section 254(d) of the Act and related Commission rules by means of independent investigations, which may result in citations, monetary forfeitures, suspensions and debarments of violators, and revocations of operating authority.⁶⁷

B. Industry Developments and Contribution Reform Efforts

18. When the Commission first implemented the universal service requirements set forth in section 254 of the 1996 Act, wireline voice services produced the vast majority of the revenue in the contribution base.⁶⁸ Since then, network convergence and technological innovation have transformed the telecommunications industry. The use of mobile services has grown dramatically, driven by increased adoption of mobile phones and non-voice devices such as mobile broadband-enabled tablets.⁶⁹ Changes

⁵⁸ 47 C.F.R. § 54.706(e).

⁵⁹ 47 C.F.R. § 54.711(a).

⁶⁰ *Id.*

⁶¹ 47 C.F.R. § 54.707. See Universal Service Administrative Company, *Program Integrity: Audits & Assessments*, available at <http://www.usac.org/cont/about/program-integrity/audits.aspx> (last visited Apr. 17, 2012). Contributors that disagree with USAC audits findings may seek review by the Commission. See 47 C.F.R. § 54.722.

⁶² 47 C.F.R. § 54.708.

⁶³ 47 C.F.R. § 54.709(d).

⁶⁴ 47 C.F.R. § 54.713(a).

⁶⁵ 47 C.F.R. § 54.713(c).

⁶⁶ 47 U.S.C. § 503.

⁶⁷ See Federal Communications Commission, Enforcement Bureau, *Universal Service Fund Enforcement*, available at <http://transition.fcc.gov/eb/usfc/Oth.html> (last visited Mar. 14, 2012). Since 2003, the Enforcement Bureau has issued over 50 Notices of Apparent Liability, Forfeiture Orders, and Consent Decrees relating to universal service contribution compliance.

⁶⁸ See, e.g., Indus. Analysis and Tech. Div., *Telecommunications Industry Revenues: 1997*, Table 7 (Common Carrier Bur., 1998), available at <http://www.fcc.gov/wcb/stats> (last visited Mar. 20, 2012) (*1997 Revenues Report*) (reporting that only 2.7% of interstate telecommunications revenues in 1997 were attributable to wireless service providers).

⁶⁹ See Telecommunications Industry Association, 2012 ICT Market Review and Forecast, 5-134 to 5-135 (2012) (2012 TIA Review and Forecast) (indicating that since 2010, consumer spending for wireless services has increased due to the increased reach of 3G and 4G networks that facilitate mobile data). See also Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2011*, available (continued...)

have also been dramatic in fixed networks, with 31 million Americans subscribing to interconnected VoIP service in 2010,⁷⁰ and rapid growth in residential broadband.⁷¹ Over the last fifteen years, cable companies have entered the voice market, local exchange carriers have entered the long-distance, broadband, and video markets, and most telecommunications providers are marketing services in bundles, whether of fixed voice, broadband, and video, or mobile wireless voice, text messaging, and data.⁷²

19. Changes to the telecommunications ecosystem complicate the methodology by which contributions are assessed. For example, the lines drawn to distinguish “local service” revenues and “toll” (*i.e.*, long distance) revenues have become increasingly blurred for industry participants even though contributors are required to classify their revenues in these categories for USF contributions purposes.⁷³ Bundling of intrastate and interstate voice calling with data services and equipment has further complicated the Commission’s and providers’ ability to identify the revenues that should be included in the contribution base.⁷⁴

20. These changes to the marketplace also have led to a decline in the contribution base at the same time that the communications market has grown. Due in part to the introduction of new services into the marketplace, total revenues reported to the Commission by communications firms grew from \$335 billion in 2000 to more than \$444 billion in 2010.⁷⁵ Demand for universal service support also

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at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.htm> (last visited Feb. 21, 2012) (indicating that 31.6% of American homes had only wireless telephones); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9759-60, para. 160 (2011) (*Fifteenth Mobile Wireless Report*) (estimating that there were 290.7 million mobile wireless connections at the end of 2009); *id.* at 9776, para. 180 (noting that the trend of declining voice minutes may be due to the substitution by mobile messaging and other mobile data services, particularly among younger users); Nielsen, *Average U.S. Internet Usage for December 2011*, Nielsenwire, available at http://blog.nielsen.com/nielsenwire/online_mobile/december-2011-top-u-s-web-brands/ (last visited Feb. 7, 2012) (projecting that smartphones will outnumber cell phones in 2012); Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 162 n.113 (rel. Mar. 16, 2010) (*National Broadband Plan*) (industry estimates project that wireless data revenue will expand at a 24.6% compound annual growth rate between 2009 and 2012).

⁷⁰ Indus. Analysis and Tech. Div., *Local Telephone Competition Status as of December 31, 2010*, Figure 1 (Wireline Comp. Bur., 2011), available at <http://www.fcc.gov/wcb/stats> (last visited Mar. 20, 2012) (*2010 Local Telephone Competition Report*).

⁷¹ See Nielsen, *Average U.S. Internet Usage for December 2011*, Nielsenwire, available at http://blog.nielsen.com/nielsenwire/online_mobile/december-2011-top-u-s-web-brands/ (last visited Feb. 7, 2012) (stating that the average American spent 28 hours online in December 2011).

⁷² *National Broadband Plan* at 38; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407, 11437, para. 22 (2010) (*Fourteenth Mobile Wireless Competition Report*).

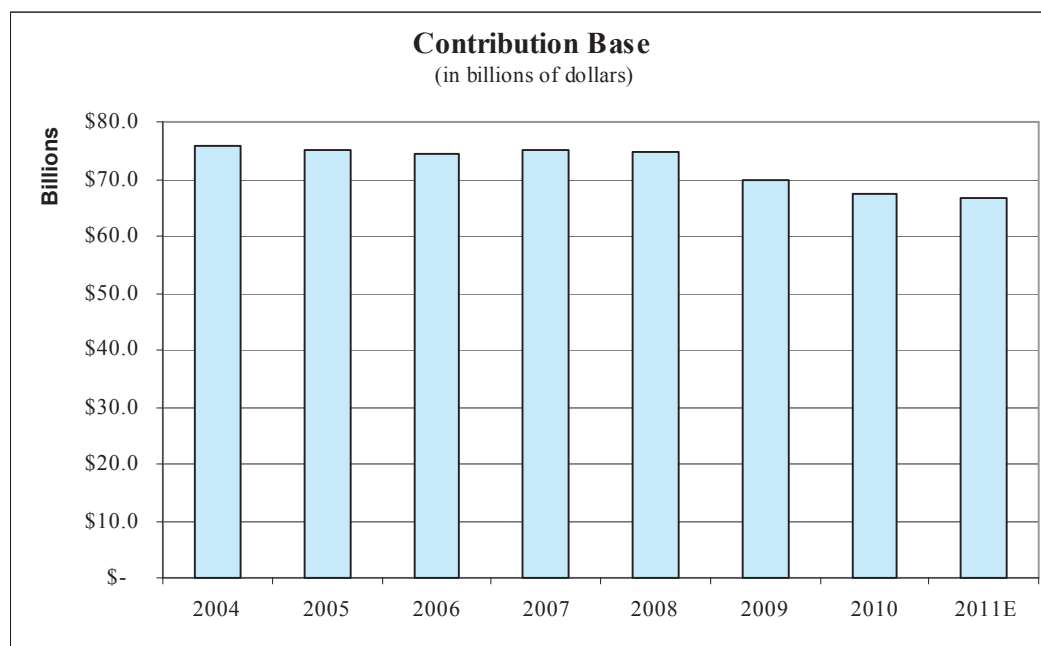
⁷³ See 2012 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 22–25 (*2012 FCC Form 499-A Instructions*).

⁷⁴ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7531–38, paras. 23–37. When a contributor bundles assessable and non-assessable services in a single offering, the contributor must determine how much of the revenue from the offering should be allocated to the assessable service. This can incentivize the contributor to game the system by allocating the revenue in a manner that reduces contributions burdens.

⁷⁵ See Indus. Analysis and Tech. Div., *Telecommunications Industry Revenues: 2009*, Table 2 (Wireline Comp. Bur., 2011), available at <http://www.fcc.gov/wcb/stats> (last visited Mar. 20, 2012) (*2009 Revenues Report*).

increased, from \$4.5 billion in 2000 to \$8.1 billion in 2011.⁷⁶ As shown in Chart 1 below,⁷⁷ during this period, the revenue base for universal service contributions remained relatively stable from 2004 (approximately \$75.8 billion) to 2008 (approximately \$74.9 billion), but has fallen since 2008, declining to approximately \$67 billion in 2011, as demonstrated in the following chart:

Chart 1



As shown in Chart 2 below,⁷⁸ reported toll revenue (*i.e.*, long-distance voice revenue), which historically comprised the largest share of the contribution base, has steadily declined over the last decade, due in part to intercarrier compensation reform occurring more than a decade ago that led to reductions in long

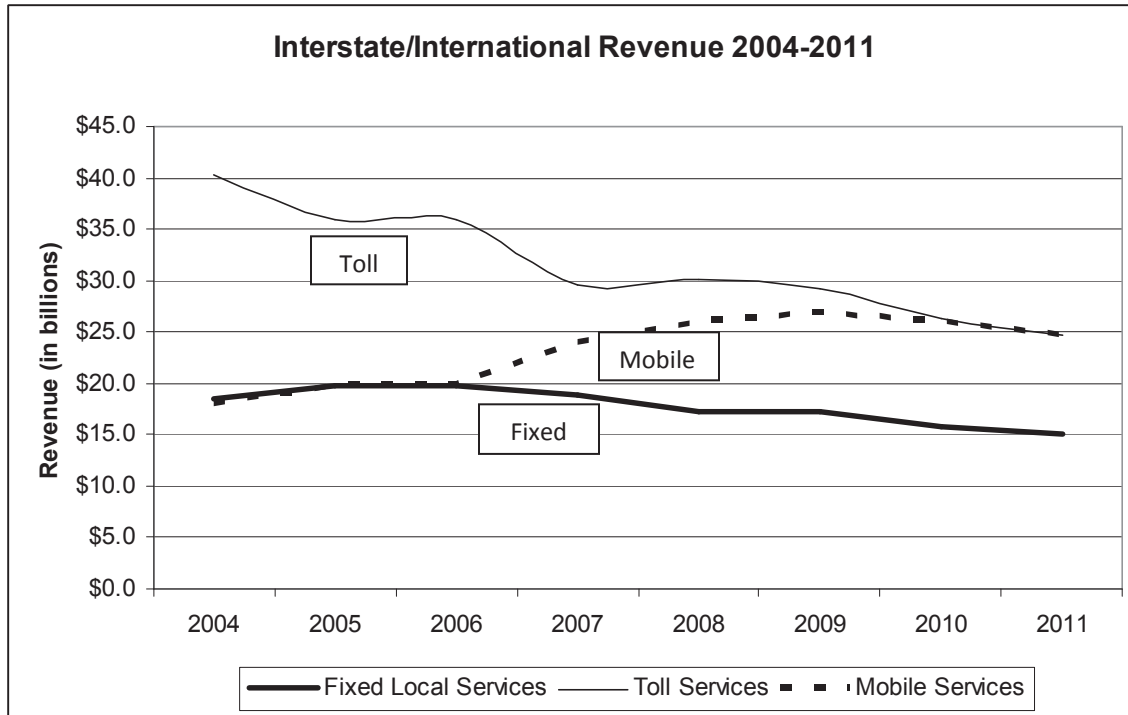
⁷⁶ According to USAC, the total amount of disbursements for all four support mechanisms in CY 2011 was \$8.1 billion. Universal Service Administrative Company, *2011 Annual Report* at 1, available at <http://www.usac.org/about/tools/publications/annual-reports/2011/index.html> (last visited Apr. 17, 2012) (*2011 USAC Annual Report*). This number reflects payments that were actually issued to companies from January 1 – December 31, 2011. It does not necessarily reflect payments authorized during that time period, since (i) some payments may have been authorized prior to 2011, and (ii) some payments may have been authorized in 2011 but may not yet have been paid in that year.

⁷⁷ Staff analysis of actual revenue base information for 2004-2010 filed with USAC through FCC Form 499-A. The amounts shown include USF pass through charges, which are reported as revenues on Form 499. The revenue base estimate for 2011 is taken from 2011 quarterly fund size projections, available at <http://www.usac.org/about/tools/fcc/filings/default.aspx>.

⁷⁸ Staff analysis based on actual revenue base information for 2004-2011 filed with USAC through FCC Form 499-A. Revenue information for 2011 is preliminary and may be adjusted.

distance rates.⁷⁹ Meanwhile, reported mobile revenue, which typically is a combination of interstate and intrastate revenues, has increased significantly.⁸⁰

Chart 2



21. Recognizing the impact of new market entrants, growth in the wireless sector, the advent of IP telephony, and increased bundling of services, the Commission began a proceeding in 2001 to revisit the universal service contribution methodology.⁸¹ On several occasions, the Commission has sought to develop the record on alternative methodologies to the current system that assesses contributions based on revenues.⁸² In addition, the Commission has taken several interim steps to ensure

⁷⁹ As discussed in the *USF/ICC Transformation Order and FNPRM*, retail toll charges fell sharply after the 2000 *CALLS Order*, by 18 percent in 2000 alone. Competitive pressure from wireless providers led to fixed line carriers offering unlimited domestic calling, at lower prices. See *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17910-11, para. 751.

⁸⁰ Compare 2009 Revenues Report, Table 6, with 2009 Revenues Report, Table 7. In 1999, \$4.58 billion in end-user mobile revenues were reported as interstate or international, out of the \$44 billion total end-user mobile revenues. In comparison, by 2009, \$29 billion in end-user mobile revenues were reported as interstate or international, out of \$111 billion in total end-user mobile revenues. Compare Universal Service Monitoring Report, Sept. 2000, CC Docket No. 98-202, Table 1.6, available at <http://www.fcc.gov/wcb/stats> (last visited Mar. 20, 2012) (2000 Universal Service Monitoring Report), with 2011 Universal Service Monitoring Report, Table 1.6.

⁸¹ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Notice of Proposed Rulemaking, 16 FCC Rcd 9892, 9895 (2001) (2001 Contribution Methodology Notice).

⁸² See *id.* at 9905-06, paras. 25-30 (seeking comment on modifications to the existing revenue-based contribution methodology and on replacing that methodology with one that assessed contributions on the basis of a flat-fee charge, such as a per line charge); see also 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3766-89, paras. 31, 34-83 (seeking comment on other universal service contribution methodologies, including moving to a numbers-based methodology); 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24983-97, paras. 66-100 (seeking comment on capacity-based proposals that had been developed in the (continued...))

the viability and sustainability of the Fund. In 2002 and 2006, the Commission adjusted upwards the wireless safe harbor percentage to reflect increased usage of wireless phones for placing interstate calls.⁸³ In addition, in 2006, the Commission extended universal service contribution obligations to providers of interconnected VoIP services, as consumers are increasingly purchasing VoIP service instead of traditional phone service.⁸⁴ Finally, the Commission has sought comment several times on whether and how broadband Internet access service providers should contribute to the Fund.⁸⁵

III. GOALS OF CONTRIBUTION METHODOLOGY REFORM

22. In this portion of the Notice, we seek comment on our proposed goals for reforming the contribution methodology both in the short term and in the long term. Although stakeholders may have differing views on the specifics of how to reform the contribution system,⁸⁶ as discussed below, many parties have suggested that our overarching objectives should be to simplify compliance and administration, maintain competitive neutrality, and ensure long term sustainability of the Fund to achieve our objectives of ensuring that robust and affordable voice and broadband services are available to Americans across the nation.

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record and on telephone number-based proposals advocated by certain parties); *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket No. 96-45 *et al.*, Public Notice, 18 FCC Rcd 3006 (2003) (2003 Staff Study PN); *High Cost Universal Service Support et al.*, CC Docket No. 96-45 *et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6536–64, paras. 92–156 (2008) (2008 Comprehensive Reform FNPRM) (App. A: seeking comment on a proposal to modify the contribution methodology); *id.* at 6669–95, paras. 39–104 (App. B: same); *id.* at 6735–62, paras. 88–151 (App. C: same).

⁸³ See, e.g., *Wireless Safe Harbor Order*, 13 FCC Rcd at 21258–59, paras. 13–15; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–95, paras. 66–95; *2006 Contribution Methodology Order*, 21 FCC Rcd at 7531–38, paras. 23–37.

⁸⁴ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7540, para. 43.

⁸⁵ *Appropriate Framework for Broadband Access to Internet over Wireline Facilities*, CC Docket No. 02-33 *et al.*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3048–56, paras. 65–83 (2002) (*Wireline Broadband NPRM*) (seeking comment on whether requiring wireline broadband Internet access service providers and other facilities-based providers of broadband Internet access services to contribute to universal service would be in the public interest); see also *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4905–06, paras. 63–64 (2004) (seeking comment on whether non-facilities-based providers of broadband Internet access services and other IP-enabled service providers should contribute to universal service); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4853, para. 110 (2002) (*Cable Broadband Internet Access Service Order*); *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–95, paras. 66–95 (seeking comment on how to stabilize the contribution base, including the assessment of broadband data connections).

⁸⁶ Compare, e.g., Letter from Brad E. Mutschelknaus, Counsel for XO Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 7 (filed Sept. 17, 2010) (XO Sept. 17, 2010 *Ex Parte* Letter) (arguing for improving the revenues-based system); Letter from David C. Bergmann, Chair, NASUCA Telecommunications Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Sept. 7, 2010) (NASUCA Sept. 7, 2010 *Ex Parte* Letter) (same), with Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 13, 2010) (Verizon Aug. 13, 2010 *Ex Parte* Letter) (arguing for a numbers-based system); Letter from Jennifer K. McKee, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et al.*, at 2 (filed Aug. 20, 2010) (NCTA Aug. 20, 2010 *Ex Parte* Letter) (same); Letter from John P. Janka, Counsel for ViaSat, Inc. and WildBlue Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, GN Docket No. 09-51, Attach. at 3 (filed Sept. 9, 2010) (arguing for a connections-based system) (WildBlue Sept. 9, 2010 *Ex Parte* Letter).

23. *Efficiency.* Since the contribution system was put in place more than a decade ago, it has become increasingly complex for all stakeholders in light of changes in the marketplace. As noted above, bundling of different kinds of services and a blurring of the line between local and toll service make it more challenging for contributors to allocate revenues as required under the current contributions methodology. Meanwhile, the emergence of new services has complicated contribution obligations over time, and exacerbates concerns that some providers are contributing on specific services, while other providers are not. In light of these problems, we propose that one goal for reform should be to make compliance with and administration of the contribution system more efficient (1) by developing rules that operate clearly within the evolving structure of the marketplace, and (2) by closing loopholes. Many stakeholders encourage the Commission to adopt reforms that would simplify the USF contribution system and limit undue provider discretion.⁸⁷ Stakeholders also have urged the Commission to avoid any changes to the contribution system that would increase its complexity.⁸⁸ Clearer, simpler rules that can be applied in new situations could deter gaming of the system and save consumers, companies, and the government money.

24. *Fairness.* Section 254(d) is grounded on the principle that the contributions system should be fair for contributors.⁸⁹ The Commission has been committed to competitive neutrality since it first implemented the 1996 Act.⁹⁰ Over time, however, the industry and the technology used to provide telecommunications have evolved, so that service providers that once were thought to compete in wholly distinct markets may now compete with each other. By treating similar or substitutable services differently, our contributions rules may create unintended market distortions.⁹¹ Stakeholders have urged that any reforms to the contribution system should be designed to provide that similar services are treated in a similar manner, regardless of technology or type of provider.⁹² Treating competitors equally could

⁸⁷ Letter from Mary L. Henze, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 24, 2010) (AT&T Aug. 24, 2010 *Ex Parte* Letter) (“[I]t is most critical to establish ‘bright-line’ rules regarding the entities that are obligated to contribute and on what basis.”); NASUCA Sept. 7, 2010 *Ex Parte* Letter at 1–2 (arguing against a system that would be complicated, complex, or subject to claims of arbitrage); Letter from Norina Moy, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et. al.*, at 1 (filed Aug. 20, 2010) (Sprint Aug. 20, 2010 *Ex Parte* Letter) (arguing that reforms should make the system “easy to administer ... and unambiguous (not subject to interpretation or manipulation, a problem with the current contribution methodology)”).

⁸⁸ See, e.g., Letter from Joshua Seidemann, Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et. al.*, at 1 (filed Sept. 29, 2010) (ITTA Sept. 29, 2010 *Ex Parte* Letter) (arguing that “new contribution mechanisms should be administratively simple in order to contain associated costs”); Letter from Melissa E. Newman, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1–2 (filed Sept. 9, 2010) (Qwest Sept. 9, 2010 *Ex Parte* Letter) (arguing the importance of simplicity in reforming the contribution system); XO Sept. 17, 2010 *Ex Parte* Letter at 1, 4 (arguing against contribution systems that would increase the complexity of the system).

⁸⁹ See 47 U.S.C. § 254(d) (requiring telecommunications carriers to contribute on an equitable and non-discriminatory basis).

⁹⁰ In implementing section 254(b) of the 1996 Act, the Commission, based on the recommendation of the Federal-State Universal Service Joint Board, adopted the additional principle of competitive neutrality. See 47 U.S.C. §§ 254(b)(4), 254(d); *Universal Service First Report and Order*, 12 FCC Rcd at 8801, para. 47.

⁹¹ See *supra* para. 4.

⁹² See, e.g., ITTA Sept. 29, 2010 *Ex Parte* Letter at 1–2 (arguing for “competitively equitable outcomes” and “regulatory parity”); Letter from Douglas D. Orvis II, Counsel for PAETEC Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Sept. 24, 2010) (stressing the “Act’s requirement for competitively-neutral contributions”); Qwest Sept. 9, 2010 *Ex Parte* Letter at 2 (“[F]ewer buckets and similar contribution treatment across buckets will also help to keep contribution requirements competitively neutral.”); Sprint Aug 20, 2010 *Ex Parte* Letter at 1 (arguing that the system should be “competitively neutral”); Letter from Tamar E. Finn, Counsel for U.S. TelePacific Corp. d/b/a TelePacific Communications, to Marlene H. Dortch, (continued...)

protect robust competition on service and price. We also seek to reform the system in a way that is fair to consumers, both residential and business, who ultimately bear the cost of universal service contributions. Accordingly, we propose that a second goal for reform should be ensuring fairness and competitive neutrality in the contribution system.

25. *Sustainability.* There is widespread agreement that the methodology for universal service contributions should be dynamic enough to keep pace with changes in the marketplace.⁹³ The National Broadband Plan recognized the need to ensure the Fund remains sustainable over time and recommended that the contribution base be broadened.⁹⁴ Universal service goals could be undermined by declines in the contribution base. Such declines could result in the obligation to support universal service being borne by a shrinking pool of contributors and, ultimately, consumers. Parties have argued that changes in today's marketplace have created potential loopholes in our current system as providers grapple with how to classify services for USF assessment purposes, with competing providers coming to different conclusions as to their contribution obligations.⁹⁵ One of the proposed goals for reform is to create an improved system that will adapt to market changes and stabilize the contribution base.

26. As we undertake contributions reform, we are guided by our overarching goal of ensuring the delivery of affordable communications to all Americans.⁹⁶ This includes ensuring that any reforms to the contributions system must safeguard the core Commission objectives of promoting broadband innovation, investment and adoption.⁹⁷ Similarly, we propose that reforms should incorporate appropriate transition periods to allow service providers and consumers to adapt.

27. We seek comment on these goals for contribution methodology reform and whether we should be guided by any additional goals.

IV. WHO SHOULD CONTRIBUTE TO UNIVERSAL SERVICE

28. In this section we seek comment on clarifying or modifying the Commission's rules on what services and service providers must contribute to USF in order to reduce uncertainty, minimize competitive distortions, and ensure the sustainability of the Fund. The question of who should contribute is at the core of much of the uncertainty and competitive distortions that plague the system today. The question is also in many ways distinct from the question of how contributions should be assessed. Even if we were to shift from a revenues-based approach to an alternative approach, such as connections,

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Secretary, FCC, WC Docket No. 06-122, at 2 (filed Sept. 17, 2010) (arguing for "contribution rules that are transparent and competitively neutral, to ensure that all market participants operate on a level playing field"); Verizon Aug. 13, 2010 *Ex Parte* Letter at 1 (complaining that today's system "skew[s] the competitive landscape" because "companies that use different technologies to compete for the same customers pay into the [F]und in different ways").

⁹³ See 47 U.S.C. § 254(d) (requiring telecommunications carriers to contribute to specific, predictable and sufficient mechanisms to preserve and advance universal service). Many recognize that if the contribution base itself is not sustainable, that could jeopardize universal service goals. See, e.g., Verizon Aug. 13, 2010 *Ex Parte* Letter at 1 (arguing that the contribution methodology must be sustainable); AT&T Aug. 24, 2010 *Ex Parte* Letter at 1 (suggesting that system should be "fair and sustainable").

⁹⁴ *National Broadband Plan* at 149.

⁹⁵ See, e.g., Letter from David B. Cohen, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.*, at 4 (filed Mar. 28, 2012) (USTelecom Mar. 28, 2012 *Ex Parte* Letter) (noting differences in classification of prepaid calling card revenue in the IDT and AT&T 2006 contributor appeals).

⁹⁶ See generally 47 U.S.C. § 254(b).

⁹⁷ See FCC Strategic Plan for FY 2012-2016 at 4, available at <http://www.fcc.gov/encyclopedia/fcc-strategic-plan>.

numbers, or a connections/numbers hybrid approach as discussed in past Notices, we would still need to determine which providers and services are appropriate to assess.⁹⁸ We would still need to determine, for example, whether it would be in the public interest to assess connections or numbers/connections associated with certain information services. We therefore invite commenters to address the question of who should contribute, even if those commenters advocate an alternative assessment methodology to the Commission's current revenues-based approach.⁹⁹

29. In determining whether it is appropriate to assess a particular provider or service, we must first determine whether that provider or service is within the scope of our statutory authority to assess "providers of interstate telecommunications," and whether assessing that provider or service would be in the public interest. Therefore, we begin by seeking comment on how to interpret the scope of the Commission's permissive authority under section 254(d). We then seek comment on two basic approaches to increase clarity as to what services and providers contribute to universal service and to address various proposals to expand the base of contributors: (1) using our permissive authority, and/or other tools, such as forbearance,¹⁰⁰ to address outstanding contribution issues, and clarify or modify on a service-by-service basis whether particular services or providers are required to contribute to the Fund; or (2) adopting a more general definition of contributing interstate telecommunications providers that could be more future proof as the marketplace continues to evolve.

30. Throughout this section, we seek data to help us evaluate how proposed methods of exercising our permissive authority would impact the contribution base.¹⁰¹ We observe that although assessing additional providers and services might expand the contribution base and affect the relative obligations of who contributes,¹⁰² nothing we propose in this section or anywhere else in this Notice will

⁹⁸ Below we seek comment on how to define the terms "connections" and "numbers" for contributions purposes if the Commission were to adopt an alternative contribution methodology. *See infra* Part V.

⁹⁹ In some circumstances the method of assessment may have implications for who we would assess. For example, if we were to adopt a numbers-only approach that was limited to North American Numbering Plan (NANP) numbers, fixed broadband as provided in today's marketplace would not be assessed. However, wireless broadband might be assessed, because NANP numbers are often assigned to wireless devices that only have data connections (such as air cards). The question, therefore, of who should contribute remains relevant even if we adopt a narrowly defined assessment methodology.

¹⁰⁰ Pursuant to section 10 of the Act, the Commission may forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier if and only if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. 47 U.S.C. § 160(a)–(b). In making a public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions.

¹⁰¹ While we ask about the revenues associated with certain services in this section, this does not prejudice whether we ultimately will maintain the existing revenue-based system or move to an alternative contribution methodology. Even if we exercise our permissive authority with respect to specific providers or specific services, we still must decide the appropriate methodology for determining how much each provider will contribute. In Section V below, we separately seek comment on the methodology we should use to assess contributions.

¹⁰² A number of stakeholders have suggested that broadening the base is a necessary prerequisite for any reform of the contribution methodology. *See, e.g.,* Letter from Jill Canfield, Senior Regulatory Counsel, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2–4 (filed Oct. 8, 2010) (NTCA Oct. 8, 2010 *Ex Parte* Letter); XO Sept. 17, 2010 *Ex Parte* Letter at 7–10; Letter from Shana Knutson, Nebraska Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 20, 2010); Letter from Todd Daubert, Counsel for SouthernLINC Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 20, 2010). *See also* Letter from David B. Cohen, (continued...)

affect the total amount of contributions collected or the overall size of the Fund. The size of the Fund is determined by demand projections, independent of how contributions are assessed.¹⁰³ The Commission recently adopted reforms that will limit growth in the Fund over time.¹⁰⁴ Here we address how those contributions can be best collected in ways that promote efficiency, fairness, and sustainability. We seek comment on how the proposals below will affect the distribution of contribution obligations among different industry segments and the impact of contributions among different categories of end users.

A. Statutory Authority to Require Contributions

31. Section 254(d) of the Act speaks to classes of providers who must contribute to the Fund. “[E]very telecommunications carrier that provides interstate telecommunications services” is a mandatory contributor to the Fund.¹⁰⁵ In addition, the Commission’s “permissive” authority extends to “any... provider of interstate telecommunications... if the public interest so requires.”¹⁰⁶ Over time, the Commission has periodically exercised its permissive authority to extend contribution obligations to particular classes of providers on a service-specific basis. In this section we seek comment on the scope of our permissive authority, including how we should interpret the statutory terms that define that authority.

1. “Provider of Interstate Telecommunications”

32. The threshold issue in exercising permissive authority is whether an entity is “providing” interstate “telecommunications” as defined in the Act.¹⁰⁷ We seek comment on how we should interpret these terms and whether it is appropriate to revisit any previous Commission interpretations based on the evolution of the industry and significant marketplace changes over the last decade.

33. *Provide.* In exercising our permissive authority, we must determine whether an entity is a “provider” of interstate telecommunications as specified in section 254(d). Although Congress has not defined the terms “provide,” “provider,” or “provision,” the Commission has addressed these terms in several orders.¹⁰⁸ First, the Commission has concluded that “provide” is a different term from “offer.”¹⁰⁹

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USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.*, at 2 (filed Mar. 29, 2012) (urging Commission to consider whether it is appropriate to include a broader range of participants in the broadband ecosystem to participate in funding universal service).

¹⁰³ 47 C.F.R. § 54.709(a)(2).

¹⁰⁴ See, e.g., *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17710-11, para. 123 (establishing a defined budget for the high cost component of the universal service fund); *Lifeline and Link Up Reform and Modernization Order* at 170, para. 357 (“as the reforms adopted in this Order take effect, they will substantially constrain program growth”).

¹⁰⁵ The term “telecommunications service” means the “offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(53). The D.C. Circuit has affirmed the Commission’s interpretation that “telecommunications service” means “essentially the same as common carrier” service. See *VITELCO*, 198 F.3d at 922. A “telecommunications carrier” is defined as “any provider of telecommunications services.” 47 U.S.C. at § 153(51).

¹⁰⁶ 47 U.S.C. § 254(d).

¹⁰⁷ Interstate/intrastate jurisdictional issues will vary depending on the assessment methodology. Therefore, these issues are discussed below in Sections V.A.3, V.B.5 and V.C.6.

¹⁰⁸ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 40.

¹⁰⁹ *Id.* In the *2006 Contribution Methodology Order*, the Commission acknowledged that the Commission had, prior to that order, sometimes used the terms “offer” and “provide” interchangeably. The Commission noted, however, that in those instances the Commission was clearly discussing telecommunications services (rather than (continued...))

The Commission has drawn a distinction between what is “offered” from a demand perspective (*i.e.*, what the customer perceives to be the integrated product),¹¹⁰ and what is “provided” from a supply perspective *i.e.*, what the provider is furnishing or supplying to the end user, including not only the integrated product but also the discrete components of the product).¹¹¹ Second, the Commission has previously held that “provide” is broader than “offer.”¹¹² Under this view, an entity may both “provide” and “offer” telecommunications, but an entity may also provide telecommunications without offering telecommunications. Many participants in today’s marketplace do not separately offer telecommunications to end users, but instead offer integrated services that include both telecommunications (*i.e.*, transmission) and non-telecommunications components. For such integrated services, however, the service provider still “provides” telecommunications as part of the “offering.” The D.C. Circuit has upheld the Commission’s interpretation.¹¹³ In light of the marketplace changes over the last decade, should the Commission revisit its interpretation of what it means to “provide” or to be a “provider of” telecommunications?

34. “*Telecommunications.*” The Act defines the term “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”¹¹⁴ Here and in Section IV.C below, we seek comment on how we should interpret each component of this definition for purposes of potentially exercising our permissive authority.

2. “If the Public Interest So Requires”

35. We seek comment on what factors we should consider in deciding whether the public interest warrants exercising our permissive authority. We seek comment generally on whether the public interest would be served, and to what extent exercising our permissive authority would achieve any or all of the goals set forth above – efficiency, fairness, and sustainability. For example, is it in the public interest to exercise permissive authority over a provider of telecommunications if the telecommunications is part of a service that competes with or is used by consumers or businesses in lieu of telecommunications services that are subject to assessment? In the past, the Commission has stated that the principle of competitive neutrality dictates that it should assess contributions from entities that are not mandatory contributors, but benefit from access to the PSTN.¹¹⁵ Is that consideration relevant in today’s

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telecommunications) and did not intend to make any sort of statement about how the terms “offer” and “provide” should be interpreted relative to each other. *Id.* at 7539 n.139.

¹¹⁰ *Cable Broadband Internet Access Service Order*, 17 FCC Rcd at 4820-24, para. 34-41; *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 990 (2005) (*Brand X*) (“It is common usage to describe what a company ‘offers’ to a consumer as what the consumer perceives to be the integrated finished product, even to the exclusion of discrete components that compose the product One might as well say that a car dealership ‘offers’ cars, but does not ‘offer’ the integrated major inputs that make purchasing the car valuable, such as the engine or the chassis. It would, in fact, be odd to describe a car dealership as ‘offering’ consumers the car’s components in addition to the car itself.”).

¹¹¹ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 40; *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1240–41 (D.C. Cir. 2007) (*Vonage*) (“Returning to *Brand X*’s car dealership hypothetical, we see nothing strange about the statement that a dealership provides both cars *and* engines. Indeed, one could reasonably interpret the statement that a dealership ‘does not provide engines’ to mean that it sells cars without engines, not that it won’t sell disconnected engines.” (emphasis in original)).

¹¹² *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 40.

¹¹³ *Vonage*, 489 F.3d at 1232.

¹¹⁴ 47 U.S.C. § 153(50).

¹¹⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9173-74, para. 796.

marketplace? Should we assess providers of services that are capturing a growing portion of overall communications spending as a means of achieving sustainability? Should we consider whether those services are being used in ways that may replace, partially or wholly, services that are subject to mandatory assessment? Does the public interest analysis differ depending on whether we are considering consumer services or business/enterprise services? What other factors should we take into account?

B. Determining Contribution Obligations on a Case-by-Case Basis with Respect to Providers of Specific Services

36. In this section, we seek comment on whether and if so, to what extent, the Commission should exercise its permissive authority contained in section 254(d) of the Act to clarify or modify contribution requirements for providers of several specific services, or if we should otherwise modify or clarify the contribution obligations of such services. As discussed above, the Commission has exercised its permissive authority on several occasions to expand or clarify contribution obligations on a service-specific basis.¹¹⁶ In the *Universal Service First Report and Order*, it required private line service providers and payphone aggregators to contribute to the Fund, reasoning that the services offered by these entities rely on access to the PSTN and compete with services offered by mandatory contributors to the Fund (*i.e.*, common carriers).¹¹⁷ In 2006, the Commission assessed interconnected VoIP services without reaching the statutory classification of such services. The Commission concluded that deciding the statutory classification was unnecessary, because even if interconnected VoIP services did not fall under the mandatory contribution provision of section 254(d), it was appropriate to assess such services as an exercise of permissive authority.¹¹⁸ The Commission determined that an immediate extension of contribution obligations to interconnected VoIP service was warranted due to the growth in demand for the Fund, the decline in the contribution base overall, and the “robust growth in subscribership” to interconnected VoIP services, from 150,000 subscribers in 2003 to 4.2 million subscribers in 2005.¹¹⁹

37. We seek comment on continuing this general approach of addressing the contribution obligations of specific services on a service-by-service basis. First, we seek comment on exercising permissive authority with respect to certain services for which contribution obligations are currently subject to dispute. To the extent commenters believe that any such services should be non-assessable, we also seek comment on alternative approaches to clarifying contributions, including forbearing from any applicable contribution obligations to the extent these services are telecommunications services, and we seek comment on the effect of such approaches on the contribution base and the sustainability of the Fund. Second, we seek comment on exercising permissive authority with respect to other services that are clearly not currently assessable, but which various commenters have proposed should be assessed.

38. In particular, we seek comment on exercising our permissive authority to require contributions from providers of enterprise communications services that include interstate telecommunications;¹²⁰ text messaging; one-way VoIP;¹²¹ and broadband Internet access services. Each of these services has found a significant niche in today’s communications marketplace. The question of

¹¹⁶ See, *e.g.*, 47 C.F.R. § 54.706(a) (listing services subject to assessment); *2006 Contribution Methodology Order*, 21 FCC Rcd at 7538-41, paras. 38-45 (exercising permissive authority over interconnected VoIP services).

¹¹⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 9183-85, paras. 794-97.

¹¹⁸ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 35.

¹¹⁹ *Id.* at 7528-29, para. 19.

¹²⁰ For purposes of this discussion, we use the term “enterprise” to include service provided to both commercial business customers and community anchor institutions that may have significantly different requirements than the typical residential consumer.

¹²¹ “One-way VoIP” is defined below. See *infra* para. 58.

whether certain enterprise communications services are currently assessable as telecommunications services or non-assessable as information services has led to significant disputes, uncertainty,¹²² and incentives for providers to attempt to characterize their services in a particular way in order to avoid contribution requirements, resulting in a pending request for guidance from USAC regarding the treatment of certain services.¹²³ Likewise, the question of whether text messaging is currently assessable has been disputed, and there is a pending request for guidance from USAC regarding text messaging.¹²⁴ In contrast, one-way VoIP services and broadband Internet access services are clearly not in the contribution base today, although various parties have argued they should be assessed.¹²⁵ We seek comment on these arguments.

39. We seek comment on addressing the contribution obligations of such services, regardless of their statutory classification as information services or telecommunications services, in order to provide clarity for contributors and greater stability for the Fund.¹²⁶ We also seek comment on whether exercising our permissive authority would ensure that competitive services are not unfairly disadvantaged by disparate contribution obligations, while further simplifying the requirements imposed on contributors.

40. We seek comment on adopting the following rule, in whole or in part:

Providers of the following are subject to contributions:

* * *

Enterprise communications services that include a provision of telecommunications;

¹²² See e.g., Comments of BT Americas Inc., WC Docket No. 06-122, at 11 (filed June 8, 2009) (arguing that lack of clarity on the proper classification of Multiprotocol Label Switching (MPLS)-based services will lead providers to avoid contribution obligations) (BT Americas June 8, 2009 Comments).

¹²³ See Letter from Richard A. Belden, USAC, to Julie Veach, Wireline Competition Bureau, FCC, WC Docket Nos. 06-122, 05-337 (filed Aug. 24, 2009) (USAC 2009 Guidance Request).

¹²⁴ Letter from Richard A. Belden, USAC, to Sharon Gillett, Wireline Competition Bureau, FCC, WC Docket No. 06-122 (filed Apr. 26, 2011) (USAC 2011 Guidance Request).

¹²⁵ See Letter from Michael R. Romano, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 8 (filed Jan. 24, 2011) (arguing that including one-way VoIP service revenues in the contribution base would help remedy the “supply” of universal service funding); Letter from Robert W. Quinn, Jr., AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2 (filed Aug. 14, 2009) (“Our entire universal service support system . . . is modeled around TDM-based interstate voice services and the revenues associated with those services. That business model is eroding faster than anyone could have imagined 10 years ago. Voice service and revenues associated with it are plummeting in the developing packet-based communications industry. Whether we are talking about voice replacements like Skype In, Skype Out (neither of which contributes directly to universal service because the services do not meet the definition of ‘Interconnected VoIP service’), Google-Voice, or Magic Jack . . . it is clear that the existing, traditional voice-based business model is disappearing and with it will go the universal service support provided by those traditional services today.”).

¹²⁶ In this Notice, we are not proposing to classify any of these services as telecommunications services or information services. We note, however, that to the extent that a service is a “telecommunications service” under the Act, it would be subject to mandatory USF contributions, unless the Commission were to conclude that the carrier’s contribution would be *de minimis* under section 254(d) or the statutory requirements for section 10 forbearance are met. To the extent that there exists any question as to whether a particular service is a telecommunications service, we seek comment on whether to exercise our permissive authority under section 254(d) to bring the service into the contribution base, or, to the extent it is a telecommunications service, whether to forbear from contribution obligations.

Text messaging service;

One-way VoIP service; and

Broadband Internet access services.

1. Enterprise Communications Services Providers

41. *Background.* In the *Wireline Broadband Internet Access Service Order*, the Commission noted that carriers and end users, including enterprise customers, have traditionally used services such as standalone Asynchronous Transfer Mode (ATM) service, frame relay (FR), gigabit Ethernet service, and “other high-capacity special access services” for basic data transmission purposes.¹²⁷ The Commission distinguished these services from broadband Internet access services, which it concluded intertwined information-processing capabilities with data transmission.¹²⁸ Data transmission services based on older technologies, such as standalone ATM¹²⁹ and frame relay¹³⁰ are currently subject to contribution obligations. In recent years, however, enterprises have increasingly replaced such legacy services with new services that perform substitutable functions, but are based on other technologies.¹³¹ The current generation of services, such as Dedicated IP, Virtual Private Networks (VPNs), and Wide Area Networks (WANs) that are implemented with various protocols such as ATM/FR, Multiprotocol Label Switching (MPLS),¹³² and Provider Backbone Bridging (PBB), allow providers to create a single integrated network infrastructure that can be used to provide multiple services to the enterprise customer, including (but not limited to) voice-over-IP service; data transmission service; managed email; corporate intranets; website and data hosting; caching; managed application services; Internet Protocol television (IPTV); and/or video conferencing.¹³³ USAC has sought Commission guidance regarding the classification of certain

¹²⁷ *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14860-61, para. 9.

¹²⁸ *Id.*

¹²⁹ ATM is a “high bandwidth, low-delay, connection-oriented packet-like switching and multiplexing technique” in which “[u]sable capacity is segmented into 53-byte fixed-sized cells, consisting of header and information fields [and] allocated to services on demand.” See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Memorandum Opinion and Order, 17 FCC Rcd 27000, 27003, para. 6 n.22 (2002) (quoting Harry Newton, *Newton's Telecom Dictionary: The Official Dictionary of Telecommunications and the Internet* 63 (17th ed. 2001)). The ATM technique was developed, in part, to address the need to carry real time voice and video across data networks.

¹³⁰ Frame Relay is a “high-speed packet-switched technology used to communicate digital data between, among other things, geographically dispersed local area networks.” *Independent Data Communications Manufacturers Association, Inc.; American Telephone and Telegraph Company*, Memorandum Opinion and Order, 10 FCC Rcd 13717, 13720, para. 6 (1995) (*Frame Relay Order*). For a discussion of frame-relay technology, see *id.* at 13720-21, paras. 6-8.

¹³¹ See, e.g., 2012 TIA Review and Forecast at 3-39 (“carrier Ethernet is gaining ground for companies with high bandwidth requirements Although Ethernet remains a small component of the overall market in terms of spending, it surpassed all legacy connections in 2011 in terms of bandwidth.... For companies with less extensive bandwidth needs, the dominant trend in recent years is the migration to IP VPNs from frame relay and ATM, while the leased line market continues to hold on, supported in part by growth in the dedicated IP VPN market, which uses leased lines for connectivity.”).

¹³² A group of carriers has submitted a proposal for how the Commission could assess MPLS-based services under the current revenues-based system, focusing on how to properly allocate revenues from such services for contributions purposes. See Letter from Sprint Nextel *et al.*, to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012) (*Industry MPLS Proposal*). In Section V.A.2 below, we seek comment on this proposal.

¹³³ See, e.g., BT Americas June 8, 2009 Comments. Many services currently offered in the enterprise market are not limited to a single protocol, but can enable the transmission of data between networks that rely on different protocols (for example, FR/ATM service, which allows seamless data transfer between Frame Relay and ATM networks). (continued...)

enterprise services that are provided over networks utilizing these newer technologies, and the Commission has several pending appeals or requests for guidance involving the contribution requirements for such services.¹³⁴

42. *Discussion.* We seek comment on clarifying the contribution obligations of various enterprise communications services that include the provision of telecommunications, without classifying those services as telecommunication services or information services, to advance our proposed goals for contributions reform, namely, creating greater efficiency, fairness, and sustainability of the Fund.¹³⁵ Several commenters have stated that uncertainty over the appropriate treatment of certain services today increases regulatory costs and results in gaming that has unfairly disadvantaged carriers who make good-faith attempts to comply with their contribution obligations.¹³⁶ For example, BT Americas Inc. has argued that a continued lack of clarity on which MPLS-enabled services are assessable “will lead one or more providers (whether a network services-based provider, systems integrator, or other) to leverage the lack of clarity and not pay into the [F]und,” and that “[c]ustomers may use this situation to demand that other providers do the same.” BT Americas further argues that it “is not realistic for one or more providers to charge corporate customers 11 to 12 percent more in USF fees on MPLS-enabled services and maintain market share when other providers do not assess their customers for such fees.”¹³⁷

43. We note that, as stated above, the Act defines telecommunications as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”¹³⁸ The Commission has found that

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AT&T Inc. and BellSouth Corp. Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5698, para. 63 & n.180 (2007).

¹³⁴ See USAC 2009 Guidance Request, *supra* note 123. Masergy Communications Inc. Petition for Clarification, WC Docket No. 06-122 *et al.*, at 2 (filed Mar. 27, 2009) (Masergy Petition for Clarification) (seeking clarification from the Commission on the classification of MPLS service revenues); Request for Review by XO Communications Services, Inc. of a Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Dec. 29, 2010) (XO Request for Review) (challenging USAC’s reclassification of MPLS revenues); Equant, Inc. Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Jan. 3, 2012) (Equant Request for Review) (challenging USAC’s reclassification of IP-based virtual private network revenues).

¹³⁵ We note that to the extent that enterprise communications services are telecommunications services, they are already subject to mandatory contribution obligations under section 254(d). 47 U.S.C. § 254(d). See, e.g., Comments of Verizon and Verizon Wireless, WC Docket No. 05-337 *et al.* (filed Oct. 28, 2009) (Verizon Oct. 28, 2009 Comments) (stating that whether a particular service that uses ATM or FR technology is assessable for USF purposes depends on whether that particular service meets the statutory definition of a telecommunications service); Comments of the United States Telecom Association, CC Docket No. 96-45 *et al.*, at 7 (filed Oct. 28, 2009) (stating that services that use MPLS technology can be either telecommunications or information services depending on product characteristics).

¹³⁶ See, e.g., Masergy Petition for Clarification, at 2-3 (discussing how the diversity of methods used by carriers to collect USF for MPLS services creates artificial competitive advantages for carriers that do not collect USF on the underlying transport); Equant Request for Review (arguing that USAC’s reclassification of Equant’s VPN revenues as telecommunications revenues will place Equant at a competitive disadvantage vis-a-vis other carriers who have elected to classify all of their VPN revenues as non-telecommunications); NTT America Comments, WC Docket No. 06-122 (filed June 8, 2009) (seeking clarification on classification of MPLS and stating that the lack of clarity surrounding the classification of MPLS will allow uncertainty to persist among USF contributors).

¹³⁷ BT Americas June 8, 2009 Comments at 11 (arguing that lack of clarity on the proper classification of MPLS-based services will lead providers to avoid contribution obligations).

¹³⁸ 47 U.S.C. § 153(50).

transmission is the heart of telecommunications,¹³⁹ and has classified data transmission services that have “traditionally” and “typically” been used for basic transmission purposes, such as “stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services,” as telecommunications services.¹⁴⁰

44. We have not formally addressed enterprise communications services such as Dedicated IP, VPNs, WANs, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations. To the extent that such enterprise communications services would not fall within the definition of telecommunications services, should we exercise our permissive authority with respect to providers of those services? Are such enterprise communications services substitutes for other enterprise communications services that are subject to mandatory contributions, and would such an exercise of permissive authority increase clarity and fairness?¹⁴¹ If we were to exercise our permissive authority over enterprise communications services that may be information services, should we enumerate the specific services that would be subject to a contribution obligation, or should we attempt to craft a more general definition that would capture future generations of such services that deliver similar functionality, regardless of technology used, in order to promote the sustainability of the Fund? What would be the appropriate transition period for such changes?

45. If we choose to exercise our permissive authority in this fashion, how would that affect the size of the contribution base? To what extent would assessing enterprise communications services bring additional contributors into the system that do not otherwise contribute today directly or indirectly?¹⁴² How would an assessment of additional enterprise communications services affect the distribution of contribution obligations among various industry segments? How would such assessment affect the relative distribution of contribution obligations between services provided to enterprise and residential customers? How would such assessment affect the average contributions of different categories of residential end users, such as low-volume versus high-volume users, or vulnerable populations such as low-income consumers?

46. To the extent we conclude that Dedicated IP, VPNs, WANs, or other communications services for which contribution obligations have been in dispute should not be subject to contribution obligations, should we exercise our forbearance authority under section 10 of the Act to exempt these services from mandatory contribution insofar as they may be viewed as telecommunications services? How would that impact the current contribution base, and the relative distribution of contribution obligations between enterprise and residential consumers? Do these services differ from other explicitly assessed enterprise communications services in a way that makes their exemption from contribution appropriate, and would the section 10 criteria otherwise be met?

¹³⁹ *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3312, para. 9 (2004) (*Pulver Order*).

¹⁴⁰ *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14860–61, para. 9.

¹⁴¹ Consistent with precedent, the Commission may exercise its permissive authority to subject a provider or service to universal service contribution requirements without classifying such a provider or offering as a “telecommunications service” or “information service,” as those terms are defined in the Act. *See, e.g., 2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 35.

¹⁴² For example, systems integrators, which are defined in the *Universal Service Fourth Order on Reconsideration* as entities that do not provide services over their own facilities, may contribute indirectly to the Fund (even if they are not direct contributors to the Fund) if their underlying providers pass through USF surcharges to them. *See Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5472, para. 278.

47. We note that the Commission has expressly declined to exercise permissive authority over systems integrators for whom telecommunications represents a small fraction (less than five percent) of total revenues derived from systems integration services.¹⁴³ To the extent that we explicitly exercise our permissive authority to assess enterprise communications services, should we also eliminate the system integrators exemption, so that systems integrators would contribute even if their telecommunications revenues were under the current threshold? In the alternative, if we determine that we should clarify that certain enterprise communications services are not subject to contributions, should we modify the systems integrators exemption, and if so how? How would our decision to clarify the contribution obligations for any category of these services affect current contributions?

48. The Telecommunications Industry Association (TIA) estimates 2011 revenues of approximately \$41 billion for enterprise services, including data communications services (which can be used for, among other things, Internet access), unified communications, videoconferencing public room services, audio conferencing service bureau spending, and web conferencing.¹⁴⁴ We seek comment on the size of the enterprise communications services marketplace, including comment on the TIA estimates, and whether this marketplace is likely to grow or shrink in the future. If commenters believe the estimates are too high or too low, they should provide specific data to more accurately size this segment of the communications marketplace. We also seek comment and data submissions on how assessing these services would affect the contribution base under the different methodologies proposed in Section V below. We seek comment and data on the extent to which service providers are currently treating these services as assessable.¹⁴⁵ In Section V.A.2 below, we seek comment on how revenues from such services should be apportioned into assessable and non-assessable segments if the Commission continues with a revenues-based methodology. We encourage commenters to provide comments and data regarding the structure of typical enterprise communications services contracts. In particular, we seek comment on whether such contracts typically break out costs for different parts of the services provided and, if so, how they generally do so.

2. Text Messaging Providers

49. *Background.* The Commission has not addressed whether text messaging revenues are subject to federal universal service contribution requirements. As noted above, the Act requires all providers of interstate telecommunications services to contribute to the Fund, and our rules require providers to contribute based on their telecommunications service revenues.¹⁴⁶ Moreover, the obligation has never been limited to voice services.¹⁴⁷ On April 22, 2011, USAC filed a request for guidance from the Commission regarding the proper treatment of text messaging for USF contribution purposes.¹⁴⁸ USAC stated that some carriers are reporting text messaging revenue as assessable telecommunications

¹⁴³ Systems integrators are non-facilities-based, non-common carrier providers of telecommunications that integrate the telecommunications they purchase from other providers with computer capabilities, data processing, and other services to offer an integrated voice and data package to their customers. *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5472, para. 278. System integrators that derive more than five percent of systems integration services revenues from telecommunications are required to contribute to universal service. *Id.* at 5472-3, para. 280; 47 C.F.R. § 54.706(d).

¹⁴⁴ See 2012 TIA Market Review and Forecast at 3-4.

¹⁴⁵ We note that companies may request confidential treatment for any such company-specific data, or related data, submitted in response to this Notice. 47 C.F.R. § 0.459.

¹⁴⁶ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.709.

¹⁴⁷ See, e.g., 47 C.F.R. § 54.706(a)(13)–(14) (listing “telegraph” and “video services” (to the extent provided on a common carrier basis) among the services on which providers are assessed).

¹⁴⁸ See USAC 2011 Guidance Request, *supra* n.124.

revenues, and other carriers are reporting revenues from these services as non-assessable information services revenues.¹⁴⁹

50. *Discussion.* We seek comment on whether text messaging services should be assessed in light of our proposed goals for contribution reform. To what extent is there a lack of clarity within the industry over whether such services are subject to universal service contributions? Would adopting a clear rule establishing that text messaging is in the contribution base further the Commission's efforts to promote fairness and competitive neutrality? If providers of text messaging services were required to contribute, would that create competitive distortions between text messaging service providers and providers that offer applications that allow users to send messages using a wireless customer's general data plan – applications that consumers may increasingly view as a substitute to text messaging? Given the rapid growth in the text messaging marketplace, a number of stakeholders have suggested in recent years that text messaging revenues should be added to the contribution base to enhance the sustainability of the Fund.¹⁵⁰ To what extent would including these services in the contribution base add to the stability of the Fund? If we modified our rules to explicitly assess text messaging, what would be an appropriate transition period?

51. If we conclude text messaging services should be assessed, should we exercise the Commission's permissive authority under section 254(d) of the Act to assess providers of these services, without determining whether such services are telecommunications services or information services?¹⁵¹ Alternatively, if we conclude that text messaging services should not be assessed, should the Commission conclude that even if such services are telecommunications services, we should exercise our forbearance authority under section 10 of the Act to exempt text messaging from contribution obligations?¹⁵²

¹⁴⁹ In addition, the Commission has a pending Petition for Declaratory Ruling asking whether text messaging is a telecommunications service or an information service. *See* Petition of Public Knowledge *et al.* for Declaratory Ruling Stating that Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules, WC Docket No. 08-7, at 7–13 (filed Dec. 11, 2007) (arguing that text messaging services meet the requirements for classification as a “commercial mobile service” under Section 332 of the Act and are thus subject to Title II regulation). Some parties argue that text messaging is a Title II service, subject to USF contributions. *See, e.g.,* Comments of the National Telecommunications Cooperative Association, WC Docket No. 06-122 (filed June 6, 2011); Comments of Public Knowledge and National Hispanic Media Coalition, WC Docket No. 06-122 (filed June 6, 2011). Other parties argue that text messaging is an information service, and cannot be assessed until the Commission amends its rules to encompass text messaging. *See, e.g.,* CTIA – The Wireless Association Comments, WC Docket No. 06-122, at 13 (filed June 6, 2011) (arguing that SMS is an information service because it involves the storing and forwarding of messages, data conversion, and data retrieval functions); Comments of Verizon Wireless, WC Docket No. 06-122 (filed June 6, 2011).

¹⁵⁰ *See, e.g.,* AT&T Petition for Immediate Commission Action to Reform Its Universal Service Contribution Methodology, WC Docket No. 06-122, at 8–9 (filed July 10, 2009) (“Anyone in their 20’s will tell you that text-messaging . . . and other applications are increasingly important avenues of communication, which are not subject to universal service contributions Unless the Commission is prepared to use its ancillary jurisdiction in ways that it has not previously, the consequences of these changes will be an even smaller contribution base”); NTCA Oct. 8, 2010 *Ex Parte* Letter at Attach. p. 8 (arguing that including text messaging revenues in the contribution base would help remedy the “supply” of universal service funding); XO Sept. 17, 2010 *Ex Parte* Letter at 8 (recommending that the Commission, at a minimum, consider making at least a reasonable allocation of the revenue attributable to the telecommunications transmission input for wireless text messaging services assessable).

¹⁵¹ If text messaging is a telecommunications service, it is subject to mandatory contribution obligations under section 254(d). 47 U.S.C. § 254(d). As discussed above, we are not proposing to classify text messaging as a telecommunications service or an information service in this Notice.

¹⁵² 47 U.S.C. § 160.

52. We seek comment on the extent to which consumers are substituting text messaging for traditional voice services and other services that are subject to universal service contributions. Are there any reasons to treat short message service (SMS) or multimedia messaging service (MMS) differently for this analysis? Commenters should provide data to support their assertions.

53. We also seek comment on whether wireless providers include revenues generated through the use of common short codes in their text messaging revenues.¹⁵³ If common short code revenues are not reported as part of the text messaging revenues, are there any reasons to treat such revenues differently in calculating the universal service contributions?

54. We note that the telecommunications industry has seen explosive growth in the wireless segment over the last decade, with end-user mobile revenues reported on FCC Form 499-A almost tripling from \$44 billion in 1999 to about \$111 billion in 2010.¹⁵⁴ TIA estimates that U.S. spending on wireless voice in 2011 was \$102.3 billion, and spending in wireless data was \$73.6 billion.¹⁵⁵ TIA also estimates that spending in wireless data will exceed wireless voice by 2013, and by 2015 wireless data spending will be approximately double that of wireless voice.¹⁵⁶ Hand-in-hand with that growth has been the expansion of text messaging. In the most recent *Mobile Wireless Competition Report*, the Commission found that “consumers are increasingly substituting among voice, messaging, and data services, and, in particular, are willing to move from voice to messaging or data services for an increasing portion of their communications needs.”¹⁵⁷ One study showed that over 70 percent of U.S. mobile subscribers used text messaging on their mobile devices in 2010.¹⁵⁸ Industry-wide text messaging revenues were approximately \$11 billion in 2008 and \$16 billion in 2009,¹⁵⁹ and we estimate that those revenues were approximately \$17 to \$19 billion in 2010 and 2011.¹⁶⁰ CTIA estimates that approximately two trillion text messages were sent in 2011, in comparison to 113.5 billion in 2006.¹⁶¹ We seek comment

¹⁵³ A common short code is a number to which a text message can be sent that is common across all wireless service providers in the United States. The Common Short Code Administration (CTIA with Neustar) assigns common short codes to applicants allowing them to be used for the same application across multiple wireless providers. Under this system, users send a short message to a five or six-digit short code that belongs to a particular content provider and then receive, on their handsets, the information requested from that provider. The short codes can be used for applications such as voting in TV or radio shows, or receiving specific information such as a sports or weather update. See CTIA-The Wireless Association, *About CSCs—Common Short Codes*, Common Short Code Administration, available at http://www.usshortcodes.com/csc_csc.html (last visited Apr. 17, 2012).

¹⁵⁴ 2011 *Universal Service Monitoring Report*, Table 1.1.

¹⁵⁵ 2012 TIA Review and Forecast at 1-6.

¹⁵⁶ *Id.*

¹⁵⁷ *Fifteenth Mobile Wireless Report*, 26 FCC Rcd at 9687-9688, para. 4.

¹⁵⁸ *Id.* at 9765, Chart 9.

¹⁵⁹ *Id.* at 9677-9677, para. 4 (2008 estimate); XO Sept. 17, 2010 *Ex Parte* Letter at 8 (2009 estimate). The Commission has not developed an estimate of text messaging revenues after 2009 because the industry has stopped reporting text messaging revenues separately from overall mobile data service revenues. *Fifteenth Mobile Wireless Report*, 26 FCC Rcd at 9676-9677, para. 4.

¹⁶⁰ See Chetan Sharma, *US Mobile Messaging Market – Growth and Opportunities 5* (2011), available at <http://mobilebroadbandopportunities.com/chetansharma/Sharma3.pdf> (last visited Mar. 6, 2012) (estimating that messaging revenues were approximately \$17 billion in 2010); Chetan Sharma, *US Wireless Market Update Q2 2011* (Aug. 18, 2011), available at <http://www.chetansharma.com/blog/2011/08/18/us-wireless-market-update-q2-2011/> (last visited Mar. 6, 2012) (reporting \$5 billion in text messaging revenues for 2Q 2011).

¹⁶¹ CTIA—The Wireless Association, *U.S. Wireless Quick Facts*, CTIA Advocacy, available at <http://www.ctia.org/advocacy/research/index.cfm/aid/10323> (last visited Mar. 8, 2012) (annualizing mid-year 2011 and mid-year 2006 figures).

on the size of the text messaging marketplace, including the industry revenue figures referenced above, and whether this marketplace is likely to grow or shrink in the future.¹⁶² Commenters who disagree with the estimates above should submit specific revenue data to support their assertions.

55. To the extent commenters advocate a position on whether text messaging providers should be assessed, we view it as highly relevant whether those commenters earn text message revenues themselves and, if so, whether they have reported it as assessable in recent years. We thus ask commenters to include in their comments their estimated recent text messaging revenues, and the extent to which they reported those revenues as assessable.¹⁶³ If we explicitly assess text messaging providers, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between services for enterprise and residential customers? How would it affect the total average impact of contributions on residential end users? How would it affect the distribution of obligations between low-volume and high-volume users? How would an assessment of text messaging providers affect the distribution of contribution obligations among various industry segments?

56. We also seek comment and data submissions on how assessing these providers of these services would affect the contribution base under the different methodologies proposed in Section V below. We note that to the extent that providers of text messaging also are providers of assessable voice services, explicitly assessing text messaging would not necessarily broaden the base, to the extent we were to adopt a non-revenues-based contribution methodology. We also seek comment and data on the extent to which service providers are currently treating these services as assessable.

3. One-way VoIP Service Providers

57. *Background.* In 2005, when the Commission first asserted regulatory authority over interconnected VoIP service providers, it defined “interconnected VoIP” as a service that permits users generally “to receive calls that originate on the [PSTN] and to terminate calls to the public switched telephone network.”¹⁶⁴ In 2006, the Commission relied on this same “two-way” definition when it extended universal service contribution obligations to interconnected VoIP service providers.¹⁶⁵ At the same time, the Commission recognized that the definition of interconnected VoIP service for purposes of universal service contributions might “need to expand as new VoIP services increasingly substitute for traditional phone service.”¹⁶⁶

¹⁶² See, e.g., Jenna Wortham, *Free Texts Pose Threat to Carriers*, New York Times (Oct. 9, 2011), available at <http://www.nytimes.com/2011/10/10/technology/paying-to-text-is-becoming-passe-companies-fret.html?pagewanted=all> (last visited Mar. 14, 2012) (discussing analyst reports that free messaging applications could reduce carrier text messaging profits); Chetan Sharma, *US Wireless Market Update: Q4 2011 and Full Year 2011* (Mar. 19, 2012), available at <http://www.chetanisharma.com/USmarketupdate2011.htm> (stating that US text messaging continued to grow in 2011, but at a slower pace).

¹⁶³ We note that companies may request confidential treatment for any such company-specific data, or related data, submitted in response to this Notice. 47 C.F.R. § 0.459.

¹⁶⁴ 47 C.F.R. § 9.3 (emphasis added); see also *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257–58, para. 24 (2005) (*VoIP 911 Order*).

¹⁶⁵ 47 C.F.R. § 54.5 (referring to rule 9.3 to define an interconnected VoIP service for contribution purposes); see also *2006 Contribution Methodology Order*, 21 FCC Rcd at 7536, para. 34 & n.119.

¹⁶⁶ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36. The Commission also noted that USF obligations would continue to apply to any modified definition of “interconnected VoIP.” *Id.* at n.129.

58. *Discussion.* We seek comment on whether the Commission should exercise its permissive authority under section 254(d) to include in the contribution base providers of “one-way” VoIP with respect to such service offerings, regardless of the statutory classification of such services.¹⁶⁷ Such offerings would include all services that provide users with the capability to originate calls to the PSTN or terminate calls from the PSTN, but in all other respects meet the definition of “interconnected VoIP.” We seek comment below on a potential definition of such services for the purpose of USF contributions:

One-way VoIP service. A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network or terminate calls to the public switched telephone network.

59. As noted above, the Commission has previously found it to be in the public interest to extend universal service contribution obligations to discrete classes of providers that compete with common carriers and that benefit from universal service through their interconnection with the PSTN, including providers of interconnected VoIP service.¹⁶⁸ The Commission found that it is in the public interest to require providers of two-way interconnected VoIP services to contribute, noting that among other things, such providers benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN, and that interconnected VoIP increasingly was being used by consumers in lieu of traditional voice telephony.¹⁶⁹

60. To what extent does this rationale apply today to one-way VoIP services? We note that one-way VoIP enables consumers to originate or terminate calls on the PSTN.¹⁷⁰ Would the public

¹⁶⁷ The Commission has not classified one-way VoIP as a telecommunications service or an information service. Consistent with precedent, the Commission may exercise its permissive authority to subject a provider or service to universal service contribution requirements without classifying such a provider or offering as a “telecommunications service” or “information service,” as those terms are defined in the Act. *See, e.g., 2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 35. To the extent we conclude that one-way VoIP should not be subject to contribution obligations, we seek comment on whether we should exercise our forbearance authority under section 10 to the extent one way VoIP could be viewed as a telecommunications service.

¹⁶⁸ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7540–41, para. 43; *see also Universal Service First Report and Order*, 12 FCC Rcd at 9184–85, para. 797.

¹⁶⁹ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7540–41, para. 43. The Commission found that like other contributors to the Fund, interconnected VoIP providers are “dependent on the widespread telecommunications network for the maintenance and expansion of their business,” and they “directly benefit[] from a larger and larger network.” *Id.*, quoting *TOPUC*, 183 F.3d at 428. The Commission also relied on its ancillary jurisdiction under Title I as an additional source of authority to require contributions from interconnected VoIP providers. *See id.* at 7541–43, paras. 46–49. The Commission noted that the Act grants subject matter jurisdiction over interconnected VoIP because it involves “transmission” of voice by wire or radio, and that imposing contribution obligations on interconnected VoIP providers was “reasonably ancillary” to the effective performance of the Commission’s responsibilities to establish “specific, predictable, and sufficient mechanisms . . . to preserve and advance universal service.” The Commission also noted that interconnected VoIP providers “benefit from their interconnection to the PSTN.” *See id.* at 7538–40, paras. 39–42.

¹⁷⁰ Under existing precedent, a provider of one-way VoIP provides telecommunications. *See USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18013–4, para. 954; *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41. In this regard, we note that when the Commission exercised permissive authority over two-way interconnected VoIP, it reasoned that interconnected VoIP providers provide telecommunications regardless of whether they own or operate their own transmission facilities or arrange for the end user to access the PSTN through a third party (commonly referred to as “over-the-top interconnected VoIP”). *See id.* (“To provide this (continued...)”)

interest be served by exercising permissive authority over one-way VoIP to further our proposed goals of efficiency, fairness and sustainability?

61. In particular, we seek comment on whether competitive neutrality concerns now support the inclusion of one-way VoIP services within the contribution base. Some parties argue that the one-way VoIP exemption is “an enormous loophole” that creates competitive disparities.¹⁷¹ USTelecom has argued that the current system “unfairly penalizes traditional voice providers (and ultimately their customers) and artificially skews the market.”¹⁷² One-way VoIP providers, on one hand, and providers of traditional telephone and interconnected VoIP services, on the other hand, have acknowledged that they compete against each other.¹⁷³ XO, for example, argues that the exemption provides “a significant artificial cost advantage” for non-assessable services that provides “a powerful incentive for consumers to replace [assessable services] with less costly non-assessable services.”¹⁷⁴ We seek comment on the extent of competition between one-way VoIP and other services that are subject to assessment, and how that should affect our analysis. Commenters are encouraged to provide data to support their analysis. If one-way VoIP providers are brought into the contribution base, what would be the appropriate transition period?

62. We seek comment on the size of the one-way VoIP marketplace in the United States, and whether this marketplace is likely to grow or shrink in the future. Skype, which separately offers a service that permits users to receive calls that originate on the PSTN and a service that permits users to terminate calls to the PSTN, reported that it had over 8.8 million paying users worldwide for its SkypeIn and SkypeOut services and domestic revenues of over \$140 million in 2010.¹⁷⁵ How many providers of one-way VoIP are there, and who are other major providers of such services? What are the overall U.S. revenues for this group of providers, and how many customers do they have? Commenters are encouraged to provide specific data to support their assertions. We also seek comment and data submissions on how assessing these services would affect the contribution base under the different methodologies proposed in Section V below.

63. If we assess one-way VoIP, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between services for enterprise and residential customers? How would it affect the total average impact of contributions on residential end users? How would it affect the distribution of obligations between low-volume and high-volume users, and how would it impact low-income consumers? How would an assessment of one-way VoIP affect the distribution of contribution obligations among various industry segments?

64. We note that, in other contexts, the Commission has subjected one-way VoIP providers to the same regulatory requirements as two-way interconnected VoIP providers. For instance, in the *USF/ICC Transformation Order and FNPRM*, the Commission included providers of one-way VoIP

(Continued from previous page)
capability [telecommunications], interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others.”).

¹⁷¹ XO Sept. 17, 2010 *Ex Parte* Letter at 8.

¹⁷² USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3.

¹⁷³ Skype S.a.r.l., *Amendment No. 2 to Form S-1 Registration Statement* at 132 (filed with the SEC, Mar. 4, 2011) (Skype S-1) at 30–31 (listing primary competitors as Internet and software companies, telecommunications companies and hardware-based VoIP providers, and small and medium-size enterprise telecommunications services providers); Verizon Oct. 28, 2009 Comments at 5 (“IP-based services such as Google Voice, SkypeIn, ooma, and magicJack . . . compete with traditional telephone services”).

¹⁷⁴ XO Sept. 17, 2010 *Ex Parte* Letter at 5–6.

¹⁷⁵ Skype S-1 at 132.

services (defined as services that “that allow end users to place calls to, or receive calls from the PSTN, but not both”) within the intercarrier compensation framework for VoIP-PSTN traffic.¹⁷⁶ Providers of “non-interconnected VoIP,” a term that can include providers of one-way VoIP, also are required to contribute to the interstate Telecommunications Relay Services (TRS) Fund under the Twenty-First Century Communications and Video Accessibility Act of 2010.¹⁷⁷ We seek comment on the relevance of these precedents to the question of whether one-way providers should contribute to universal service.

4. Broadband Internet Access Service Providers

65. *Background.* The State Members of the Federal-State Universal Service Joint Board (State Members of the Joint Board) have proposed that the Commission include “broadband and services closely associated with the delivery of broadband” in the base, including Digital Subscriber Line (DSL), cable, and wireless broadband Internet access.¹⁷⁸ Other commenters also support extending assessments to broadband Internet access.¹⁷⁹

¹⁷⁶ *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18006-7, para. 941. *See also id.* at 18008-18018, paras. 943-959 (adopting an intercarrier compensation framework that brings all VoIP-PSTN traffic within the section 251(b)(5) framework).

¹⁷⁷ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, §103(b), 124 Stat. 2751, 2755 (2010) (CVAA). *See Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14543, para. 23 (2011) (requiring providers that offer non-interconnected VoIP services on a stand-alone basis for a fee to contribute to the TRS Fund). “Non-interconnected VoIP services” are defined under the CVAA as “service that enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and requires Internet protocol compatible customer premises equipment; and does not include any service that is an interconnected VoIP service.” 47 U.S.C. § 153(36).

¹⁷⁸ Comments of State Members of Universal Service Joint Board, WC Docket No. 10-90 *et al* (filed May 2, 2011) at 119 (State Members of Joint Board CAF Comments). State Staff of the Joint Board have also developed proposals recommending that the base be expanded to include broadband Internet access service. Robert Haga *et al.*, *The Omaha Plan: A White Paper to the State Members of the Federal-State Joint Board on Universal Service*, Feb. 2011, available at http://www.kcc.state.ks.us/telecom/roundtable032011/Omaha_Plan.pdf (last visited Apr. 17, 2012) (*Omaha Plan*); Peter Bluhm, Robert Loube, *Consultants’ Plan for Universal Service: A White Paper to the State Members of the Federal-State Joint Board for Universal Service* (Feb 2011), available at http://www.kcc.state.ks.us/telecom/roundtable032011/Consultants_Plan.pdf (last visited Apr. 17, 2012) (*Consultants’ Plan*); Joel Shifman, *Shifman’s Universal Service and Intercarrier Compensation Reform Plan: A White Paper to the State Members of the Federal-State Joint Board on Universal Service 4* (2011), available at http://www.kcc.state.ks.us/telecom/roundtable032011/Shifman_White_Paper.pdf (last visited Apr. 17, 2012) (*Shifman Plan*).

¹⁷⁹ *See, e.g.*, National Exchange Carrier Association, Inc. *et al* Joint Comments, WC Docket No. 10-90 *et al.* at 68 (filed July 12, 2010) (stating that the Commission should assess broadband Internet access). *See also* AT&T Aug. 24, 2010 *Ex Parte* Letter (stating that “any new mechanism must reflect the entire broadband ecosystem”); Letter from Brad E. Mutschelknaus, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Aug. 19, 2010); Letter from Matthew F. Wood, Media Access Project, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.* (filed Aug. 19, 2010); Letter from Jeffry H. Smith, GVNW Consulting, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.* (filed Aug. 16, 2010); Letter from Kenneth E. Hardman, Counsel for American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Aug. 19, 2010); Letter from Kenneth E. Hardman, Counsel for Association of TeleServices International, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Aug. 19, 2012); Sprint Aug. 20, 2010 *Ex Parte* Letter.

66. In 2002, the Commission sought comment on whether and how broadband Internet access service providers should contribute to universal service.¹⁸⁰ In the *Wireline Broadband Internet Service Access Order*, the Commission classified wireline broadband Internet access as an information service.¹⁸¹ The Commission also recognized, however, that wireline broadband Internet access service includes a provision of telecommunications.¹⁸² In the *Wireline Broadband Internet Access Order*, the Commission stated that it intended to address contribution obligations for providers of broadband Internet access in a comprehensive fashion in the future, either in that docket or in this docket.¹⁸³

67. *Discussion.* Some commenters have suggested that the Commission should exercise its permissive authority to assess providers of broadband Internet access services.¹⁸⁴ Several parties, however, have expressed concern that assessing broadband Internet access could discourage broadband adoption.¹⁸⁵ We seek comment on those concerns and invite commenters to submit empirical data into the record of this proceeding regarding the potential impact of assessing broadband Internet access services on consumer adoption or usage of services. Would assessing broadband Internet access service in the near term undermine the goals of universal service? Could the Commission address such concerns by phasing in contributions for mass market broadband Internet access services over time?

68. In the *USF/ICC Transformation Order*, we adopted new rules to ensure that robust and affordable voice and broadband, both fixed and mobile, are available to Americans throughout the nation. In this proceeding, we are looking to update and modernize the method by which funds are collected to support universal service. Some have expressed concern that assessing broadband Internet access may indirectly raise the price of broadband Internet access for some consumers.¹⁸⁶ To what extent, if any, would assessing broadband services discourage consumers from subscribing? To what extent, if any, would that in turn slow down deployment of broadband infrastructure? We seek comments and economic

¹⁸⁰ *Wireline Broadband NPRM*, 17 FCC Rcd at 3048–56, paras. 65–83 (seeking comment on whether requiring wireline broadband Internet access service providers and other facilities-based providers of broadband Internet access services to contribute to universal service would be in the public interest); see also *Cable Broadband Internet Access Service Order*, 17 FCC Rcd at 4853, para. 110; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–95, paras. 66–95 (seeking comment on how to stabilize the contribution base, including the assessment of broadband data connections).

¹⁸¹ *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14863–64, para. 14. The Commission has similarly classified as an information service broadband Internet access services provided over cable modem, wireless, and broadband over power line facilities. *Cable Broadband Internet Access Service Order*, 17 FCC Rcd at 4822, para. 38 (cable modem); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5909–11, paras. 22–27 (2007) (wireless broadband); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006) (broadband over power lines).

¹⁸² *Brand X*, 545 U.S. at 987–89; *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14861, 14864, paras. 10, 15.

¹⁸³ *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14915, para. 112.

¹⁸⁴ See *supra* nn. 178–179 (citing comments and letters suggesting that the Commission assess broadband Internet access services from the State Members of the Joint Board, trade associations, contributors, and other parties).

¹⁸⁵ See Letter from S. Derek Turner, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2 (filed Aug. 10, 2010) (Free Press Aug. 10, 2010 *Ex Parte* Letter); NCTA Aug. 20, 2010 *Ex Parte* Letter at 2.

¹⁸⁶ See, e.g., Free Press Aug. 10, 2010 *Ex Parte* Letter, at 2.

analyses that address the overall effect on broadband deployment of assessing or not assessing broadband.¹⁸⁷

69. The State Members of the Joint Board recommend that both telecommunications services and information services (such as broadband Internet access services) should be assessed and suggest that if most of the revenues currently reported on FCC Form 499 Line 418 were assessed, that would reduce the contribution factor to approximately two percent.¹⁸⁸ They also suggest this would simplify billing “since the new federal USF surcharge rate would generally apply to an end user’s total bill.”¹⁸⁹ We seek comment on this recommendation of the State Members of the Joint Board. Would such an approach make telecommunications more affordable for consumers with lower overall telecommunications expenditures? What is the relationship between household income and the percentage of a household’s telecommunications bill subject to assessment under the current system, and what would it be under the State Members’ proposed approach? Would such an approach affect consumer adoption of telecommunications services that are not currently assessed? We ask commenters to provide any analysis and data regarding their estimated reduction in the contribution factor, if we were to require contributions based on the total bill. If we were to assess broadband Internet access, to what extent would that reduce the contribution factor if we maintain a revenue-based methodology?

70. If the Commission does assess broadband Internet access service, now or at some point in the future, should the Commission assess all forms of broadband Internet access, including wired (including over cable, telephone, and power-line networks), satellite, and fixed and mobile wireless? Should it assess mass market broadband Internet access as well as enterprise broadband Internet access? As a practical matter, how would the Commission differentiate between mass market broadband Internet access, and other forms of broadband Internet access, and would such a distinction create any distortions in the marketplace?

71. We note that TIA estimates the wired broadband Internet access marketplace to be \$38.3 billion in 2011 and \$40.3 billion in 2012, and the marketplace for wireless data services to be \$73.6 billion in 2011 and \$89.8 billion in 2012.¹⁹⁰ TIA also projects wireless data services to be over \$140 billion, or double that for wireless voice, by 2015.¹⁹¹ It is not clear, however, from how TIA presents the data whether its estimates include both enterprise as well as mass market broadband Internet access. To what extent are any of these revenues in the contribution base today? What proportion of those revenues should be considered mass market broadband Internet access, if we were to retain a revenues-based system but adopt an approach that would exempt mass market broadband Internet access services from contribution obligations? Under such an approach, how should we define “mass market”?¹⁹²

¹⁸⁷ See 47 U.S.C. § 1302(a) (“The Commission . . . shall encourage the deployment [of broadband] on a reasonable and timely basis” and, upon finding that broadband is not “being deployed to all Americans in a reasonable and timely fashion,” to “take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”).

¹⁸⁸ State Members of Joint Board CAF Comments at 118-19.

¹⁸⁹ *Id.* at 120.

¹⁹⁰ 2012 TIA Review and Forecast at 1-12, 4-4.

¹⁹¹ *Id.* at 1-6.

¹⁹² For purposes of this discussion, we note that the term “mass market” often is used to refer to a service marketed and sold on a standardized basis to residential customers and small businesses. See, e.g., *AT&T and BellSouth Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5710, para 89 n.259 (2007) (*AT&T and BellSouth Order*); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18336, para. 82, n.243 (2005); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, (continued...)

72. In addition to our questions above regarding the effects on adoption of assessing broadband Internet access, we seek comment on whether exercising our permissive authority with respect to broadband Internet access services would be consistent with the Act and our potential goals for contributions reform, namely, creating greater efficiency, fairness, sustainability, and other goals that commenters identify. If we assess broadband Internet access services, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between enterprise and mass market customers if we assess only enterprise broadband Internet access services, only mass market broadband Internet access services, or all broadband Internet access services? How would these different approaches to assessing broadband Internet access services affect the total average contribution impact for mass market end users? How would they affect the distribution of contribution obligations between services offered to low-volume and high-volume users, or between low-income and higher-income users? How would an assessment of broadband Internet access services affect the distribution of contributions among various industry segments? Would assessing retail broadband Internet access service eliminate the current competitive disparity that exists today between providers that contribute on their broadband transmission (small rate of return companies) and their competitors, who do not?

5. Listing of Services Subject to Universal Service Contribution Assessment

73. Section 54.706 of our rules sets forth a non-exhaustive list of services that are currently included in the contribution base.¹⁹³ Should we continue to specify in our codified regulations specific services that are subject to assessment? Should that list be updated to reflect marketplace changes over the last decade? Does it advance our potential goals for reform of providing predictability and simplifying compliance and administration to maintain a non-exhaustive list of services that are subject to contributions, which by definition does not provide clarity as to whether services not on the list are subject to contribution obligations? Could we adopt a simpler approach that is flexible enough to be applied to services that exist today and ones that will emerge in the future, without a need to continually update our codified rules? Should the Commission periodically set forth a list of assessable services, similar to the eligible services list used for the schools and libraries universal service support mechanism?¹⁹⁴

C. Determining Contribution Obligations Through a Broader Definitional Approach

74. In the previous section, we inquired about using our section 254(d) permissive authority or other tools to modify or clarify the contribution obligations of providers of specific services. In this section, we seek comment on an alternative approach: exercising our permissive authority to craft a general rule that would specify which “providers of interstate telecommunications” must contribute, without enumerating the specific services subject to assessment. Like the approach discussed above, such

(Continued from previous page)

Memorandum Opinion and Order, 20 FCC Rcd 18433,18477, para. 83, n.245 (2005). The term does not include enterprise service offerings, which are typically offered to larger organizations through customized or individually negotiated arrangements. *See, e.g., AT&T and BellSouth Order*, 22 FCC Rcd at 5709-10, para. 85 (“[E]nterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants), . . . contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), . . . contracts are generally for customized service packages, and [] the contracts usually remain in effect for a number of years.”).

¹⁹³ The list includes cellular telephone and paging services, mobile radio services, operator services, personal communications services (PCS), access to interexchange service, special access service, WATS, toll-free service, 900 service, message telephone service (MTS), private line service, telex, telegraph, video services, satellite service, resale of interstate services, payphone services, and interconnected VoIP services. 47 C.F.R. § 54.706(a).

¹⁹⁴ *See, e.g., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, DA 11-1600 (rel. Sept. 28, 2011) (releasing funding year 2012 eligible services list).

a rule would not require us to resolve the statutory classification of specific services as information services or telecommunications services in order to conclude that contributions should be assessed. Such a rule could potentially produce a more sustainable contribution system by avoiding the need to continually update a list of specific services subject to assessment. At the same time, such an approach leaves open the possibility of carving out or excluding a specifically defined list of providers or services, if inclusion of those providers or services is not in the public interest.

75. For example, we seek comment on exercising our permissive authority to adopt a rule such as the following:

Any interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users.

76. The rule above is intended to encompass only entities that provide transmission to their users, whether using their own facilities or by utilizing transmission service purchased from other entities. As discussed above, the provision of “telecommunications” means, in part, the provision of transmission capability.¹⁹⁵ Under the approach historically taken by the Commission, some, but not all, providers of information services “provide” telecommunications. By statutory definition, an information service provider offers the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”¹⁹⁶ In the past, the Commission has found that the telecommunications component may be provided by the information services provider *or* the customer.¹⁹⁷ In other words, some information service providers “provide” the telecommunications required to utilize the information service, but others require their customers to “bring their own telecommunications” (in other words, to “bring their own transmission capability”).¹⁹⁸ The rule set forth above is intended to include entities that provide transmission capability to their users, whether through their own facilities or through incorporation of services purchased from others, but not to include entities that require their users to “bring their own” transmission capability in order to use a service.¹⁹⁹ This is consistent with Commission precedent where the Commission has exercised its permissive authority to extend USF contribution requirements to providers of telecommunications that are competing directly with common carriers.²⁰⁰ We seek comment on whether the rule would achieve this intended result. To

¹⁹⁵ See *supra* Section IV.A.1.

¹⁹⁶ 47 U.S.C. § 153(24).

¹⁹⁷ *Pulver Order*, 19 FCC Rcd at 3315–16, para. 14; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11522, para. 41 (1998) (“When an entity offers subscribers the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications,’ it does not provide telecommunications; it is using telecommunications.”); *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, Order on Remand, 16 FCC Rcd 9751, 9759, para. 17 (2001) (*Non-Accounting Safeguards Order on Remand*) (“Information services therefore are, as explicitly stated in the statutory definition, conveyed ‘via telecommunications,’ whether or not the telecommunications component is separately supplied by *either the provider or the customer.*” (emphasis added)).

¹⁹⁸ See *Vonage*, 489 F.3d at 1241 (a provider of “information services” can also be a “provider of telecommunications” for purposes of section 254(d)).

¹⁹⁹ An example of an information service that would fall outside the scope of this rule might be an email service that the consumer accesses through a separately purchased broadband Internet access connection.

²⁰⁰ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 9183–85, paras. 794–97 (extending contribution obligations to private line service providers and payphone aggregators based, in part, on the fact that these providers compete directly with common carriers subject to mandatory contribution authority).

the extent the rule above would not achieve this intended result, we seek comment on how the rule could be altered to achieve this result.

77. We seek comment on whether a rule such as the one above would further our proposed goals of contributions reform by improving efficiency, fairness, and the sustainability of the Fund. Would adopting such a rule provide sufficient guidance to potential contributors regarding their contribution obligation? Would such a rule be simple to administer, monitor, and enforce? Would it create market distortions or impede innovation?

78. The National Broadband Plan recommended that however the Commission chooses to reform contribution methodology, it should take steps to minimize opportunities for arbitrage as new products and services are developed, so that there is no need to continuously update regulations to catch up with changes in the market.²⁰¹ Would a rule like the one discussed above achieve these goals, minimizing opportunities for arbitrage and eliminating the need to continuously update regulations? Or, alternatively, would it result in new definitional disputes and potential uncertainty?

79. Could the above rule be read to make content fees assessable when content is provided by the provider of the interstate telecommunications?²⁰² For example, could an IP-based video-on-demand service be assessable? We note that cable services are regulated under Title VI of the Act, and that video service providers are currently only required to contribute to the extent they provide interstate telecommunications services or other assessable telecommunications.²⁰³ We also note that many video-on-demand services are being provided through Internet web sites, and thus are services that require the viewer to bring their own “telecommunications” (*i.e.*, Internet access). Could the above definition lead to the assessment of any other services that compete largely or primarily against services that remain non-assessable? If so, would this lead to competitive distortions? How could the definition be altered to avoid this result?

80. As noted above, the Commission has determined that “over-the-top” interconnected VoIP providers provide transmission to or from the PSTN to end users, and has subjected these services to contribution obligations. Even where a user obtains Internet access from an independent third party to use an interconnected VoIP service, an over-the-top interconnected VoIP provider must still supply termination to the PSTN for outgoing calls (which is not covered by the Internet access service), and origination from the PSTN for incoming calls (which again is not covered by the Internet access service). Over-the-top VoIP providers generally purchase this access to the PSTN from a telecommunications carrier who accepts outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider’s media gateway. The Commission held that origination or termination of a communication via the PSTN is “telecommunications,” and over-the-top interconnected VoIP providers, like other resellers, are providing telecommunications when they provide their users with the ability to originate or terminate a communication via the PSTN, regardless of whether they do so via their own facilities or obtain transmission from third parties.²⁰⁴ Are there legal or policy considerations that would warrant revisiting those rationales, if we were to exercise our permissive authority as set forth above? Are there reasons to extend or not extend the rationale above to other services that provide origination or termination of a communication via the PSTN? Would interconnected VoIP providers fall under the definition of an assessable service set forth in this section? If the objective is to include only entities that provide a

²⁰¹ *National Broadband Plan* at 149.

²⁰² In Section V.A.1 below, we seek comment on issues concerning apportionment of revenues between assessable and non-assessable services under a revenues-based system.

²⁰³ *Universal Service First Report and Order*, 12 FCC Rcd at 9176, para. 787.

²⁰⁴ *See 2006 Contribution Methodology Order*, 21 FCC Rcd at 7539-40, para. 41.

physical connection (wired or wireless), should we consider entities that provide PSTN origination or termination to be included within that group? If not, should we alter the proposed definition, or should we add some additional provisions specifically including additional services, like interconnected VoIP or other services that are substitutable for assessable services, for assessment?

81. The State Members of the Joint Board have proposed an alternative broad definition, recommending that the Commission exercise its permissive authority to broaden the contributions base to include “all services that touch the public communications network.”²⁰⁵ The State Members conclude, however, that contributions should not be required for “pure content delivered by non-telecommunications over broadband facilities.” They acknowledge that their proposed rule could result in difficult line drawing problems when the same company sells both broadband services and content.²⁰⁶ We seek comment on the State Members’ proposal.

82. *Potential Exclusions.* If we were to adopt a rule such as the one above, we seek comment on whether we should adopt any additional limitations.

83. *Non-Facilities-Based Providers:* The rule discussed above would assess providers of interstate telecommunications whether or not they own the physical facility, or hold license to the spectrum, that is used to provide interstate telecommunications. In the alternative, should we limit contribution obligations to facilities-based providers, and if so, how should we define “facilities-based”? For example, would a provider be considered “facilities-based” for contributions purposes if it provides service only partially over its own facilities?²⁰⁷ Should we define “facilities-based” services for contributions purposes as those provided over unbundled network elements, special access lines, and other leased lines and wireless channels that the provider obtains from another communications services provider?²⁰⁸ For example, EarthLink has suggested that non-facilities-based providers of Internet access service do not provide the “transmission service.”²⁰⁹ We seek comment on this viewpoint. The Commission’s contribution methodology has never exempted non-facilities-based telecommunications providers from their obligation to contribute, and the Act does not itself distinguish between facilities-based and non-facilities-based telecommunications providers for purposes of contribution obligations. We note that the Commission has previously found resellers to be telecommunications carriers supplying telecommunications services to their customers even though they do not own or operate the transmission facilities.²¹⁰ Carriers that incorporate transmission obtained from other providers into their own telecommunications services are currently subject to contribution requirements under the mandatory contribution requirement in section 254(d). Likewise, firms contribute today when they resell private line

²⁰⁵ State Members of Joint Board CAF Comments at 118. They suggest that the “public communications network” should be defined as “the interconnected communications network that uses public rights of way or licensed frequencies for wireless communications.” As noted above, under their proposal, this would include “broadband and services closely associated with the delivery of broadband” in the base, including DSL, cable, and wireless broadband. State Staff of the Joint Board have also developed proposals recommending that the base be expanded to include broadband Internet access service. *Omaha Plan* at 20-21; *Consultants’ Plan* at 2; *Shifman Plan* at 4.

²⁰⁶ The State Members suggest Westlaw or Lexis as examples of services that should not be assessed. State Members of Joint Board CAF Comments at 119-20.

²⁰⁷ *i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45 *et al*, Order, 25 FCC Rcd 8784, 8785, para. 3 (2010); *see* 47 U.S.C. § 214(e)(1)(A).

²⁰⁸ *See* 47 C.F.R. § 1.7001(a)(1).

²⁰⁹ Comments of Earthlink, Inc., GN Docket No. 10-127, at 18 (filed July 15, 2010).

²¹⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 9179, para. 787 (identifying resellers as telecommunications carriers that provide interstate telecommunications services for purposes of section 254(d)).

service provided by other carriers.²¹¹ Are there policy or administrative reasons not to exercise permissive authority over entities that incorporate telecommunications purchased from others into their own service offerings?

84. *Broadband Internet Access:* If we were to adopt a rule such as the one above, should we exclude broadband Internet access service? Several parties have expressed concern that assessing broadband Internet access could discourage broadband adoption.²¹² As described above, we seek comment on those concerns and invite commenters to submit empirical data into the record of this proceeding regarding the impact of assessing broadband Internet access services on consumer or business adoption or usage of services. To what extent would assessment of universal service contribution obligations potentially deter adoption of such services? Is there less likelihood that assessment of USF contributions would deter adoption of business broadband Internet access services?

85. To the extent commenters believe that assessing mass market broadband Internet access service in particular could discourage broadband adoption or harm other Commission goals, we seek comment on a specific exemption for mass market broadband Internet access services (both fixed and mobile). If we were to take such an approach, how should we define enterprise versus mass market services, and from an administrative standpoint, how would carriers and USAC be able to distinguish between the two?²¹³ To what extent would such an exemption potentially distort how business and residential broadband Internet access is provided, as carriers may seek to characterize their offerings as “mass market” to avoid contribution obligations?

86. *Free or Advertising-Supported Services:* If we were to adopt a rule such as the one above, should we do so only with respect to providers that offer service for a subscription fee?²¹⁴ Given the broad meaning of “fee” in other contexts, how would we frame an exclusion for free or advertising-supported services? Would such an exclusion potentially cause marketplace distortions vis-à-vis firms that have business models that derive revenues from other sources, such as advertising revenues? Would imposing contribution obligations on free or advertising-supported services from contribution obligations discourage innovative offerings? Commenters should provide specific examples and supporting data regarding the business models of relevant services.

87. *Machine-to-Machine Connections:* If we were to adopt a rule such as the one above, should we exclude machine-to-machine services? Machine-to-machine connections have grown rapidly in recent years.²¹⁵ Would it be consistent with our statutory authority to exercise permissive authority over machine-to-machine communications, such as smart meter/smart grids, remote health monitoring, or remote home security systems? Should machine-to-machine connections be treated the same as connections between or among people? As discussed above, the Act defines the term “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and

²¹¹ See 47 C.F.R. § 54.706(a)(11).

²¹² See *supra* n.185 (ex parte letters expressing concern that assessing broadband Internet access service could discourage broadband adoption).

²¹³ See *supra* para. 70.

²¹⁴ Note that in the context of the definition of “telecommunications service,” the Commission has held that “for a fee” broadly “means services rendered in exchange for something of value or a monetary payment.” *Universal Service First Report and Order*, 12 FCC Rcd at 9167, para. 784.

²¹⁵ See generally OECD, *Machine-to-Machine Communications: Connecting Billions of Devices*, OECD Digital Economy Papers (OECD Publishing, Working Paper No. 192, 2012), available at <http://dx.doi.org/10.1787/5k9gsh2gp043-en> (last visited Mar. 26, 2012).

received.”²¹⁶ In the case of machine-to-machine communications, who is the “user” that is specifying where the information should go? Is there any precedent outside the contribution methodology context that should inform our interpretation of the statutory term here? Should we conclude that all machine-to-machine connections that transmit information over the Internet include interstate telecommunications? How would assessing machine-to-machine communications impact marketplace innovation in this arena?

88. *Statutory Interpretation.* Above, we asked whether a general rule like that described in this section would provide sufficient guidance to potential contributors regarding their contribution obligation. The rule described in this section would not require us to resolve the statutory classification of specific services as information services or telecommunications services in order to conclude that contributions should be assessed. The Commission would, however, still be required to determine whether services involved the provision of interstate “telecommunications.” We seek comment on additional issues that may arise in interpreting the definition of “telecommunications” for contributions purposes as the communications marketplace evolves. We also ask how resolution of these questions in the context of USF contributions would impact other regulatory obligations, such as regulatory fees or other assessments that utilize the Telecommunications Reporting Worksheets.

89. First, we seek comment on how to interpret the statutory requirement that a telecommunications transmission must be “between or among points specified by the user.” In particular, we seek comment on whether we should interpret “the user” to be a subscriber to the service in question. For example, suppose that Bookseller A sells an electronic reading device to Ms. Smith. The price of the device includes a 3G wireless connection that allows Ms. Smith to connect to Bookseller A’s servers at any time and purchase e-books. Bookseller A, in turn, purchases the wireless bandwidth for the connection from Carrier B. In this instance, should we consider Ms. Smith to be the “user” of the service provided by Bookseller A? Alternatively, is Bookseller A the “user” of the service provided by Carrier B? Under the former view, would Bookseller A be viewed as “providing telecommunications” to Ms. Smith, and therefore a contributor on that service? Or should Carrier B be viewed as the entity that is providing telecommunications to Bookseller A, and therefore the contributor? What would be the potential effects in other regulatory contexts if the Commission were to interpret the term “user” in a new way here?

90. We seek comment on what it means for the user to “specify” the “points” of transmission. Many communications services today allow the user to specify the points of transmission – for example, telephone and text messaging services generally allow a user to reach any other user on the PSTN, and broadband Internet access services generally allow users to access any location on the Internet. Certain services, however, arguably do not allow the “user” to specify the endpoints of the communication. To return to the e-books example above, suppose that the free wireless connectivity on the reading device can *only* be used to communicate between the device and Bookseller A’s server, and not to reach any other destination on the PSTN or the Internet. In that case, is Ms. Smith, Bookseller A’s customer, “specifying” the “points” of the transmission, or is Bookseller A?²¹⁷

91. We also seek comment on how to interpret the statutory requirement in the definition of “telecommunications” that the information transmitted must also be “of the user’s choosing.” How

²¹⁶ 47 U.S.C. § 153(50).

²¹⁷ Compare this hypothetical scenario to, for example, private line service which allows communications between fixed points chosen by the subscriber to that service. *See, e.g., American Telephone & Telegraph Company Private Line Rate Structure and Volume Discount Practices*, CC Docket No. 79-246, Notice of Inquiry and Proposed Rulemaking, 74 FCC 2d 226, 231, paras. 11-12 (1979) (“In a functional sense, a private line is a transmission channel providing access between or among points specified by the customer on a permanent, or virtually permanent basis during a specified time period. . . . In order to obtain access to the carrier’s plant, the customer must first designate the geographical points at which service is desired.”).

should we interpret this phrase? For example, suppose a doctor provides a remote monitoring device to a patient that can send information back to the doctor's office. The monitoring device is pre-programmed to transmit only certain types of relevant medical data. Assuming that the other statutory components of "telecommunications" are present, is this an instance where the patient should be deemed the "user" that is transmitting information "of his or her choosing," or would the fact that only information specified by the doctor or manufacturer that provides the device to the patient is transmitted mean that this communication does not meet the statutory definition of "telecommunications"?

92. We also seek comment on whether, under a rule such as the one described in this section, the Commission would have to interpret the statutory requirement that the transmission must be "without change in the form or content of the information as sent and received." Although information services often include a component that "processes" information in some way, the Commission has in the past recognized that an information service can also include a separate "telecommunications" component.²¹⁸ Furthermore, the Commission has previously found that while all information services require the transmission of information between customers and "computers or other processors," the form or content of the information is not altered during these transmissions, and such transmissions constitute "telecommunications."²¹⁹ Would we be required to revisit any aspect of these interpretations in light of changing technology and marketplace developments?

93. *Impact on the Contribution Base.* We seek comment on the number of additional contributors and impact on the contribution base if we were to adopt the general definitional approach discussed in this section, and whether those figures are likely to grow or shrink in the future. How would the answer to this question differ if we were to assess based on revenues, connections, numbers or some other alternative? For each contribution methodology scenario, what services and providers would contribute under such a rule that do not contribute today? To what extent are they contributing today? What other services, not already discussed above, might be included if we were to adopt the general definitional approach discussed in this section? How would the answer to these questions differ under the definitional approach discussed in this section, as opposed to the service-by-service approach discussed in the preceding section?

94. Finally, to the extent not already covered by the questions above, we request clear and specific comments on the Commission's legal authority and the type and magnitude of likely benefits and costs of each of these variants of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and an identification of all underlying assumptions.

V. HOW CONTRIBUTIONS SHOULD BE ASSESSED

95. In this portion of the Notice, we seek comment on how to simplify our contributions system, consistent with the Act and our proposed goals for reform. In particular, this section focuses on the question of how contributions should be calculated, whether based on revenues, connections, numbers, or a hybrid system, once we have resolved the threshold decision of which providers should contribute.

²¹⁸ *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14910, para. 104 (finding that the transmission component of a facilities-based provider's offering of wireline broadband Internet access service is "telecommunications").

²¹⁹ *See Non-Accounting Safeguards Order on Remand*, 16 FCC Rcd at 9758, para. 16 ("All information services require the use of telecommunications to connect customers to the computers or other processors that are capable of generating, storing, or manipulating information. The transmission of information to and from these computers constitutes 'telecommunications,' for the transmission itself does not alter the form or content of the information").

96. Over the last decade, the Commission has sought comment on a number of proposals for alternative methodologies to the current revenues-based system, including methodologies based on connections, numbers, and various hybrid solutions.²²⁰ The record is mixed on whether we should make modifications to our existing revenues-based system, or move to an alternative system such as connections or numbers.²²¹ Here, we seek comment on reforming the current revenues-based system as well as ask parties to update the record on these alternative methodologies. We seek comment on how each option would further our proposed goals and ask about potential implementation issues that are associated with specific methodologies. We ask commenters to provide data to quantify how potential rule changes would impact the Fund and reduce compliance costs and burdens.

97. We request specific comments on the type and magnitude of likely benefits and costs of each of the possible rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how any data were calculated and an identification of all underlying assumptions.

A. Reforming the Current Revenues-Based System

98. In this section, we seek comment on whether we should retain the existing revenues-based system, and if so, how we can reform the current system to provide greater clarity to contributors, thereby promoting efficiency, fairness, and sustainability. Specifically, we seek comment on the pros and cons of retaining a revenues-based system. We ask parties claiming significant costs or benefits of a revenues-based system to provide supporting analysis and facts for such assertions, including an explanation of how they were calculated and all underlying assumptions.

99. What are the benefits or disadvantages of retaining a revenues-based system for a transitional or indefinite period? Are there market distortions caused by the existing revenues-based system?²²² We solicit comment on whether the modifications discussed below would sufficiently address problems with the current revenues system. If we adopt any of the potential reforms discussed in this section to modify the revenues system, would such a system better serve our proposed reform goals than a connections-based, numbers-based, or other alternative contribution system? Would any of the potential reforms suggested in this section also make sense for a connections-based, numbers-based, or other alternative contribution system?

100. To the extent that we retain the current system, we seek comment on rules to simplify how revenues are apportioned for assessment, including the allocation of telecommunications service revenues between the intrastate and interstate jurisdictions, and the reporting of assessable revenues when a customer purchases a bundle of services only some of which are assessable. We also seek comment on how to assess revenues from information services and services that have not been classified as information or telecommunications services. Such adjustments could address some shortcomings in the current system that stakeholders have raised and could reduce administrative burdens on providers and

²²⁰ See 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3766, para. 35; 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24986, 24989, paras. 72, 78; 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6686, App. B., para. 81.

²²¹ Compare, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 7 (arguing for improving the revenues-based system); NASUCA Sept. 7, 2010 *Ex Parte* Letter at 1 (same), with Verizon Aug. 13, 2010 *Ex Parte* Letter (arguing for a numbers-based system); NCTA Aug. 20, 2010 *Ex Parte* Letter (same); WildBlue Sept. 9, 2010 *Ex Parte* Letter, Attach. at 3 (arguing for a connections-based system).

²²² The economics literature suggests that market distortions in a revenues-based system could potentially be reduced by including the broadest set of services in the contribution base and by assessing competing services at the same rate. See N. Gregory Mankiw, Matthew Weinzierl, and Danny Yagan, "Optimal Taxation in Theory and Practice," J. ECON. PERSP., Vol. 23, No. 4, Fall 2009, at 164-165.

USAC.²²³ We also seek comment on alternative approaches to provide greater clarity regarding the respective obligations of wholesalers and their customers, which has been subject to much dispute.²²⁴ We seek comment on adopting a value-added revenues system that would require contributions from each provider in the value chain,²²⁵ or, in the alternative, substantially revising the reseller certification process. Adopting a value-added revenues system or revising the certification process could eliminate the complications and loopholes associated with the current carrier's carrier reporting requirements. In addition, we seek comment on measures to clarify our prepaid calling card reporting requirements to ensure that competitors are contributing in a consistent manner. Finally, we seek comment on eliminating the international-only and the limited international revenues exemptions and on modifying the *de minimis* exemption to reduce compliance burdens.²²⁶

1. Apportioning Revenues from Bundled Services

101. Today, many providers offer mass market end users bundled packages of voice (local and long distance), video, and/or broadband services. Similarly, many providers serving the enterprise market offer customized packages that provide voice and data connectivity as well as other services and products such as IT support, web hosting, data centers, network management, IP-based cloud computing, customer devices, networking and videoconferencing equipment, and more. Determining which portion of these and similar bundled offerings are subject to contribution to the Fund has been an issue of dispute and complexity.²²⁷ Bundled offerings of telecommunications and information services present two contribution issues concerning how revenues from a bundled offering should be apportioned: (1) how to apportion revenues when the provider does not offer the assessable service (*i.e.*, telecommunications service or interconnected VoIP) in the bundle on a stand-alone basis, and (2) how to apportion revenues when the provider does offer the assessable service on a stand-alone basis, but does not explicitly allocate the discount on a bundled offering to specific services comprising the bundle. In this section, we seek comment on ways to simplify these determinations.

102. *Background.* Due to technological and marketplace changes over the last decade, providers are increasingly offering customers packages of bundled services that include both assessable telecommunications services (*e.g.*, voice) and information services that are not currently assessable (*e.g.*, broadband Internet access service), and these revenues must be apportioned between assessable and non-assessable services for contribution purposes. Our current contribution apportionment rules for bundled services, which were established over ten years ago in the *CPE Bundling Order*, give providers fairly wide latitude to determine assessable revenues within bundled services, which may result in contributors adopting different methodologies to determine their contribution base. Taken to an extreme, if

²²³ See, *e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 1-5 (outlining problems with the current contribution system).

²²⁴ See *id.* at 3 (outlining problems with the wholesale-reseller certification process).

²²⁵ See *infra* Section V.A.4.a.

²²⁶ The Commission's current rules provide exemptions from contribution requirements for certain entities. See 47 C.F.R. §§ 54.706(c) (allowing entities to only contribute on revenues from interstate telecommunications if projected collected interstate end-user telecommunications revenues comprise less than twelve percent of their combined projected collected interstate and international end-user telecommunications revenues) and 54.708 (providing that certain providers are not required to contribute to universal service in a given year if their contributions would be less than \$10,000).

²²⁷ See, *e.g.*, XO Request for Review at 52, 59 (arguing that MPLS ports provide information services that are inseparable from the transmission functions); Masergy Petition for Clarification (seeking clarification on how to classify components of MPLS service); see also Comments of Google Inc., WC Docket No. 10-90, *et al.*, at 27 (filed Aug. 24, 2011) (stating that the proliferation of bundled service offerings has made it more and more difficult for carriers and regulators to separate telecommunications from information service-derived revenues).

contributors have unrestricted latitude to determine assessable revenues, it jeopardizes the stability of the Fund and could lead to competitive inequities in the marketplace.

103. In the *CPE Bundling Order*, the Commission established three methods by which providers could apportion revenues from a bundled offering for purposes of contribution assessment. First, a provider could apportion its revenues based on “unbundled service offering prices, with no discount from the bundled offering being apportioned to telecommunications service.”²²⁸ Second, a provider could treat all bundled revenues as telecommunications revenues.²²⁹ Third, a provider could apportion its bundled revenues using “any reasonable alternative method” as long as the provider does not apply discounts to telecommunications services in a manner that attempts to circumvent its obligation to contribute to the Fund.²³⁰ The first two methods were identified as “safe harbors” and presumed reasonable, while the Commission cautioned that carriers utilizing the third method would have to justify the reasonableness of their methodology in an audit or enforcement proceeding.²³¹ The Commission also stated that “we may in the future seek comment on whether we need to adopt additional rules.”²³² Since that time, however, the Commission has not addressed any specific factual situations that would provide more clarity on what alternative methodologies might be viewed as reasonable. Thus, the Commission has not adopted a bright-line rule with respect to bundled offerings, but rather has given contributors substantial latitude in how they apportion bundled revenues.

104. *Discussion.* We seek comment on modifying our bundled offering apportionment rules to adopt more specific standards for determining what apportionment methods are deemed reasonable for allocating revenues from bundled offerings, or to eliminate carrier discretion in determining how to apportion revenues from bundled offerings. We ask whether doing so will further our proposed goals of making the contributions system more efficient and fair, minimizing compliance burdens, and reducing competitive distortions in the marketplace.

105. We are concerned that the lack of bright-line rules may encourage providers to minimize their allocation of revenues in a bundle to assessable services to reduce their contribution obligations in order to gain a competitive edge. A number of commenters have suggested, for instance, that this is a concern in the enterprise market, where there is fierce competition to win contracts from large corporate clients.²³³ We seek data from commenters regarding what are common industry practices regarding the allocation of revenues from bundled offerings. To what extent do contributors rely on market studies of stand-alone services offered by other providers? To what extent do contributors allocate revenues based on the allocated cost of the underlying individual services? To what extent do contributors allocate revenues based on revenue reporting requirements imposed by other regulatory jurisdictions, such as cable franchising authorities or state sales tax authorities?

²²⁸ *CPE Bundling Order*, 16 FCC Rcd at 7447, para. 50.

²²⁹ *Id.* at 7447, para. 51.

²³⁰ *Id.* at 7448, para. 53.

²³¹ *Id.* at 7448, paras. 52–53.

²³² *Id.* at 7448, para. 54.

²³³ See, e.g., BT Americas June 8, 2009 Comments at 11 (stating that failure to clarify the classification of MPLS-enabled services will enable providers to circumvent their contribution obligation); Comments of Masergy Communications Inc., WC Docket No. 05-337 *et al.*, at 4 (filed Oct. 28, 2009) (stating that because the Commission’s precedent on the proper classification of VPN-based services is not clear, it is not consistently applied by either service providers or USAC); Verizon Oct. 28, 2009 Comments at 14-15 (stating that the classification of revenues as information services or telecommunications services depends on the capabilities offered to the end user).

106. We seek 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).

107. We seek comment on whether this rule would simplify the process of apportioning bundled revenues in a way that is transparent, enforceable, and easily administrable. How would such a rule be enforceable if the provider does not offer stand-alone equivalent services? Would we need a separate rule to address such circumstances? If so, how should that rule be structured? Would the benefits of limiting the method by which providers determine assessable revenues for bundled services outweigh any potential benefits of allowing providers to present individualized showing, as permitted under the current rule? We seek comment and examples of instances where some providers of bundled services may be allocating assessable revenues differently than their competitors, creating a competitive disadvantage. Would eliminating the open-ended apportionment option in favor of the rule above minimize competitive disparities?²³⁴ Would the rule change incentives to offer (or not offer) assessable services on an unbundled basis?

108. We seek comment on the technical aspects of such a rule. For example, if we were to adopt such a rule, how much discretion should carriers have in determining what constitutes a "stand-alone offering of equivalent service"? How could we prevent contributors from gaming a stand-alone option to minimize their assessable revenues? Should there be a requirement, for instance, that such a stand-alone offering be generally available and actually subscribed to by a minimum number of end users? If so, how and how many end users? Are there any alternative ways to ensure that contributors are not creating a sham stand-alone offering to minimize contribution obligations?

109. We also seek comment on whether such a rule would create competitive disparities between providers that offer stand-alone offerings of assessable services, and those that only sell bundled services in the marketplace. Should we require carriers that do not offer a stand-alone service themselves to rely on a market analysis of services offered by other carriers in the marketplace or a tariffed rate of another provider? If so, should we require such carriers to submit any such market analyses used for imputation purposes or third party tariffed rate to the Commission and to USAC? Should we require that the stand-alone offering price be objectively verifiable by the Commission or USAC, such as by reference to a public website or tariffed offering? What measures would need to be in place for USAC to be able to verify stand-alone pricing for business services, which are often individually negotiated for individual customers? Is there any reason to implement such a rule only for certain types of bundled offerings and not others, or certain classes of customers and not others? What is the least burdensome mechanism to ensure allocations are objectively verifiable?

110. We seek comment on how the rule would impact the overall contributions base, as well as the individual burden on consumers. What would be the impact of the rule on providers serving

²³⁴ To illustrate the point, a wireline telecommunications provider in a particular area may allocate \$22 in its triple play package to voice service, while a cable provider offering a functionally equivalent triple play package to the same residential location may allocate only \$10 to the voice service in the package. The former provider may be at a competitive disadvantage as compared to the latter, because it would have a higher contribution burden.

consumers with lower telecommunications expenditures (such as a voice only subscriber with limited long distance calling) compared to providers serving consumers with higher expenditures (such as a triple-play subscriber)? How would such a rule affect consumers with lower telecommunications expenditures compared to consumers with higher expenditures? What would be the impact of such a rule on mobile providers, who increasingly are deriving revenues from bundled voice-data packages, and their consumers?

111. We also seek comment on alternative rule language as well as alternative means of determining contribution obligations for bundled service offerings. Parties that submit alternative proposals should explain how such proposals further our proposed goals of reform and are consistent with our legal authority. We ask commenters to quantify, where possible, how their proposed rule would impact the contribution base and total assessable revenues.

112. For each of these alternatives, we seek comment on how the approach would impact the overall contribution base, as well as the individual burden on contributors and consumers. We also seek comment on what steps would need to be taken to implement the proposals above or alternative proposals for apportioning revenues from bundled service offerings for USF contribution purposes. How much time would parties need to transition to a new method of apportioning revenues from bundled offerings?

113. As discussed above, the Commission has the authority to assess all providers of interstate telecommunications, if the public interest warrants. Would a contribution methodology that assesses the full retail revenues of bundled services that contain “telecommunications,” as that term is defined in the Act, without safe harbors or the ability to present individualized showings, conform to the statutory requirements? Given the growth in bundled service offerings over the last decade, would adopting such a bright-line rule make the contribution base more stable and thereby serve the public interest? Would it further the principle of “equitable and non-discriminatory” contributions by reducing potential competitive distortions among providers and service offerings that apportion revenues using different methodologies? Would a simplified approach that assesses the total bill for bundled services promote administrative efficiency and reduce compliance and enforcement expenditures? Would it be appropriate to adopt such an approach even if the Commission chose not to make every component of a bundled service individually assessable, or would that create market distortions and discourage bundled offerings?

2. Contributions for Services with an Interstate Telecommunications Component

114. In this section, we seek comment on what revenues should be assessed to the extent we choose to exercise our permissive authority over services that provide interstate telecommunications. For example, to the extent enterprise communications services that are implemented with MPLS protocols are information services that provide interstate telecommunications, we seek comment on whether we could and should assess the full retail revenues of such enterprise communications services, or instead should adopt a bright-line that would assess only a fraction or percentage of the retail revenues.

115. Would it be consistent with our statutory authority under section 254(d) to require contributions on the full retail revenues of an information service that provides interstate telecommunications? Is there a potential for competitive disparity, to the extent a non-facilities-based provider of such services is assessed on its retail revenues, and also may bear indirectly the cost of a universal service contribution on underlying transmission that it purchases from a wholesale provider? To what extent should the retail revenues derived from information services have some nexus with the underlying transmission component, in order for the full retail revenues to be assessed?²³⁵ What are the

²³⁵ The State Members of the Joint Board suggest, for instance, that pure content should not be assessed, while acknowledging difficult line drawing issues would arise in instances whether a broadband Internet access provider is also providing content. State Members of Joint Board CAF Comments at 119.

advantages and disadvantages of assessing retail information service revenues, if we were to exercise our permissive authority?

116. Alternatively, should we assess only the telecommunications (*i.e.*, the transmission) component, and if so, how would we determine what portion of the integrated service revenues should be associated with the transmission component? For example, the MPLS Industry Group proposes that revenues associated with the access transmission components of all MPLS-enabled services be imputed on a uniform basis and made subject to USF contributions obligations through Commission-established “MPLS Assessable Revenue Component” proxies.²³⁶ In other cases, the underlying transmission is separately offered on a Title II basis, which could provide a basis for assessing only the revenues associated with the transmission component.²³⁷ We seek comment on the MPLS Industry Group proposal. Is such a proposal workable for other similar services?

117. We seek comment on the following rule:

If an entity offers an assessable information service with an interstate telecommunications component, it must treat all revenues for that information service as assessable revenues, unless it offers the transmission underlying the information service separately on a stand-alone basis. If it offers the transmission on a stand-alone basis, it may treat as assessable revenues an amount consistent with the price it charges for stand-alone offerings of equivalent transmission.

118. We seek comment on whether this rule would simplify the process of determining assessable revenues for information services in a way that is transparent, enforceable, and easily administrable. How would such a rule be enforceable if the provider did not offer the underlying transmission on a stand-alone basis? In such circumstances, should we craft a rule that looks at the general retail price of such transmission services when offered on a stand-alone basis by other providers? Would the proposed rule change incentives to offer (or not offer) telecommunications transmission on an unbundled basis? Would such a rule create competitive disparities between providers that choose to offer transmission on a stand-alone basis (such as small rate-of-return carriers that offer broadband Internet access) and providers that do not offer transmission separately (such as cable operators in the same geographic area as those rate-of-return carriers)?

119. In the alternative, should we craft a rule, or a safe harbor, that provides for assessment of a certain percentage of the retail revenues of information services with a telecommunications (transmission) component? Would it be legally permissible for the Commission to assess a set percentage of the retail revenues, even when such percentage might exceed the allocated revenues associated with the

²³⁶ British Telecom, NTT America, Orange Business Services, Sprint Nextel Corporation, Verizon, and XO Communications (MPLS Industry Group) propose that the Commission assess only the transmission associated with MPLS-enabled services. Under the proposal, the Commission would establish a proxy or revenue value for different types of MPLS connections (based on capacity and distance). Such proxy would be similar to NECA tariffs for such services. For MPLS services, contributors would: (1) identify the speed of each access transmission component of their MPLS-enabled services on a customer-by-customer basis; (2) apply the appropriate proxy established by the Commission based on the speed of each access transmission component to determine their USF contribution base; and (3) apply the current USF factor to that contribution base. The remaining revenues derived from the MPLS-enabled services would not be assessed under their proposal. *See* Letter from MPLS Industry Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012) (MPLS Industry Group Letter).

²³⁷ *See* Letter from Melissa E. Newman, CenturyLink to Marlene H. Dortch, Office of the Secretary, FCC, WC Docket 06-122 (filed Apr. 4, 2012) (discussing the possibility of assessing the transmission component of MPLS-enabled services using the Commission’s permissive authority under section 254(d) of the Act).

underlying transmission in that information service? Would a set percentage be easier to administer, reduce compliance costs, and otherwise be in the public interest? Would it create competitive distortions? Should the percentage vary depending on the type of information service at issue? Is some other formula for determining the assessable percentage of retail revenues of an information service appropriate?

120. For each of these alternatives, we seek comment on how the approach would impact the overall contributions base, as well as the individual burden on contributors and consumers. We also seek comment on what steps would need to be taken to implement the proposals above or alternative proposals for apportioning revenues from information services for USF contribution purposes. How much time would parties need to transition to a new method of apportioning revenues from information services with an interstate telecommunications component?

3. Allocating Revenues Between Inter- and Intrastate Jurisdictions

121. The current revenues-based mechanism requires contributors to distinguish revenues from interstate and intrastate services, which has become increasingly difficult given today's communications marketplace. Such jurisdictional distinctions have become blurred and are often irrelevant from the perspective of consumers selecting and buying communications services.²³⁸ In this section, we seek comment on ways to simplify the allocation of interstate and intrastate revenues for USF contributions and reporting purposes.

122. *Background.* Many of the services that have developed and flourished since the 1996 Act, such as wireless, interconnected VoIP service, text messaging, and flat-rate long-distance services, do not distinguish between inter- and intrastate communications from the consumer's perspective. Rather, these services enable consumers to communicate both within a state and across state lines, often for a price that does not depend on the jurisdiction of the call; *i.e.*, a user that places and receives only intrastate calls pays the same rate as another user that places and receives only interstate calls.²³⁹ Allocating revenues between jurisdictions may be complicated and burdensome for contributors, and our current allocation rules may be unfair because they allow certain providers to choose among various methods of allocation, creating an incentive to minimize their contribution obligation.²⁴⁰

123. Since the initial implementation of the 1996 Act, contributors have been directed to report the amount of total revenues that are intrastate, interstate, and international using information from their books of account or other internal data systems.²⁴¹ To the extent the company cannot make that determination directly from its corporate books of account, it should use "good faith estimates."²⁴² In addition, wireless providers and interconnected VoIP service providers may use safe harbors or traffic studies to allocate their revenues. The safe harbors allow contributors to designate the following percentages of revenues (for the categories indicated) as interstate/international: paging services, 12 percent; wireless services, 37.1 percent; and interconnected VoIP services, 64.9 percent.²⁴³

²³⁸ USTelecom Mar. 28, 2012 *Ex Parte* Letter at 2-3.

²³⁹ *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17691, para 76.

²⁴⁰ *See, e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 2.

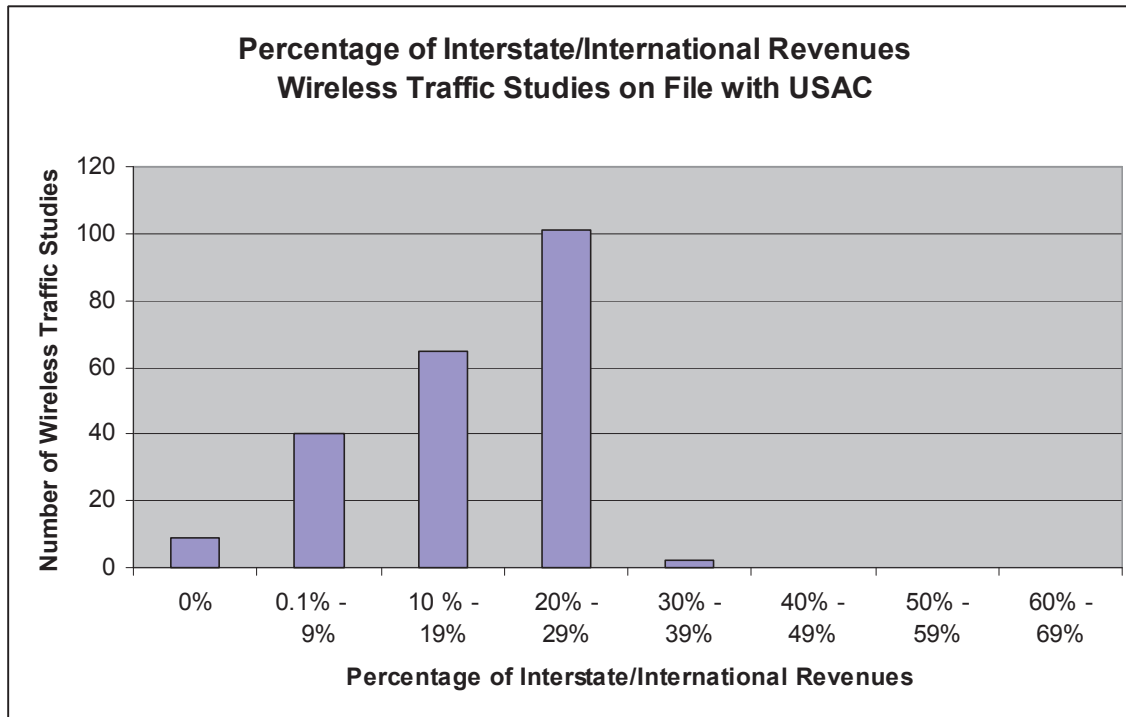
²⁴¹ As a practical matter, only incumbent local exchange companies allocate their revenues between the intrastate and interstate jurisdictions for cost-recovery purposes, pursuant to Part 36. *See* 47 C.F.R. §§ 36.201-36.225.

²⁴² *2012 FCC Form 499-A Instructions* at 23.

²⁴³ *See Wireless Safe Harbor Order*, 13 FCC Rcd at 21259, para. 14 (setting a 12% safe harbor for paging providers); *2006 Contribution Methodology Order*, 21 FCC Rcd at 7532, para. 25 (setting a 37.1% safe harbor for wireless telephony providers); *id.* at 7545, para. 53 (setting a 64.9% safe harbor for interconnected VoIP service (continued...))

124. As shown in Chart 3 below and Appendix B,²⁴⁴ the 217 wireless providers submitting traffic studies (and not relying on safe harbors for allocating intrastate and interstate/international revenues) report anywhere from zero to 30 percent interstate/international revenues; the average of the traffic studies on file is 23 percent, with the median study reporting 19 percent interstate/international.

Chart 3



125. As shown in Chart 4 below and Appendix B,²⁴⁵ VoIP providers have filed traffic studies showing interstate/international revenues ranging from zero to 59.9 percent. Forty-seven out of 243 VoIP providers have submitted traffic studies showing no interstate/international traffic. Overall, the average percentage for VoIP traffic studies is 22.1 percent interstate/international, with the median study reporting 14.7 percent interstate/international. Traffic studies on file thus report interstate/international usage significantly lower than the safe harbors for both wireless and interconnected VoIP.

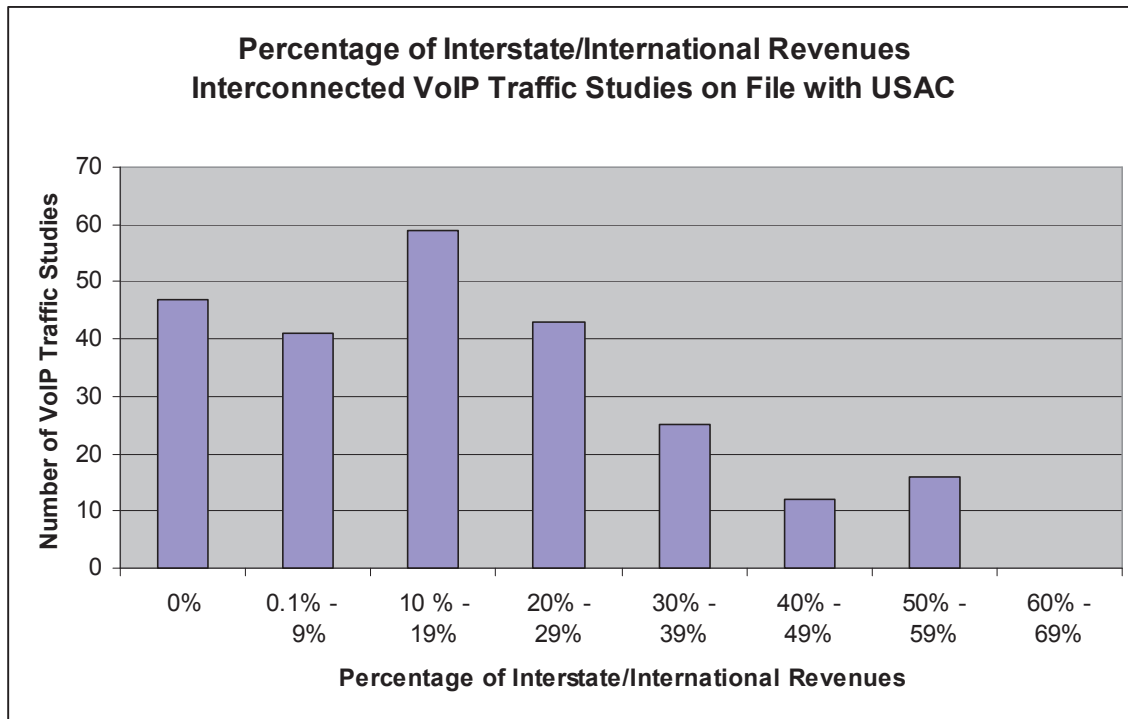
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providers); *see also Universal Service Contribution Methodology et al.*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1417-18, paras. 13-15 (2008) (*Traffic Study Toll Allocation Order*).

²⁴⁴ Staff analysis of wireless traffic studies on file with USAC as of January 19, 2012. *See* Appendix B for the data used to prepare this chart.

²⁴⁵ Staff analysis of interconnected VoIP traffic studies on file with USAC as of January 19, 2012. *See* Appendix B for the data used to prepare this chart.

Chart 4



126. The Commission has not codified any rules for how contributors should allocate revenues between the interstate and intrastate jurisdictions for contributions purposes,²⁴⁶ nor has it adopted any rules specifying how precisely companies should classify their traffic when conducting a traffic study. The fact that there is such a wide disparity in the reported percentages for wireless and mobile providers suggests that companies may be utilizing different methods in how they classify calls in their traffic studies, which lessens predictability and may lead to competitive distortions. The lack of standards in this area may give providers an incentive “to bias any traffic studies [or good-faith estimates] to minimize their amount of interstate and international end-user revenues and thereby minimize their Fund contributions” with “no countervailing market forces to offset these incentives.”²⁴⁷

127. *Discussion.* We seek comment on modifying or eliminating the requirement that carriers are assessed based on interstate and international revenues. While that requirement may have made sense when the Commission initially implemented the Act, the marketplace has changed dramatically since 1996 and will evolve with the continued deployment of IP-based networks. For each approach discussed below, we ask commenters to address what would the impact be, if any, on the states’ ability to assess revenues to support their state universal service funds.

128. As a general matter, we seek comment on whether the Act compels us to only assess a portion of revenues associated with services that operate interstate, intrastate, and internationally. We also seek comment on whether as a policy matter we should require that revenues be allocated based on

²⁴⁶ While there are no codified rules on how to allocate revenues, the FCC Form 499-A Instructions provide some guidance. The Instructions direct contributors to report all of the revenues for private lines as 100 percent interstate if more than 10 percent of the traffic on that line is interstate, and to report federal number portability charges and subscriber line charges as 100 percent because those charges are tariffed in the federal jurisdiction. *2012 FCC Form 499-A Instructions* at 24-25. The Instructions implicitly assume that the regulatory classification of the service in question determines how it should be treated for contribution purposes.

²⁴⁷ *2006 Contribution Methodology Order*, 21 FCC Rcd at 7535, para. 32.

the jurisdiction that regulates the associated service. Does this construct make sense in an environment where many contributors are not rate regulated, and many of the services they offer are only lightly regulated?

129. One approach would be to adopt a rule that requires all providers that are subject to contributions to report and contribute on all of the revenues derived from assessable services rather than require providers to allocate revenues between the interstate and intrastate jurisdictions. Since many services offered today are not priced and sold separately as intrastate or interstate service, any designated allocation between jurisdictions may be arbitrary to some extent.²⁴⁸ In the *TOPUC* decision, the court found that the Commission did not have jurisdiction to assess federal universal service contribution on intrastate revenues.²⁴⁹ Given the changes in the marketplace, would the *TOPUC* decision prohibit assessing a federal universal service fee on the entire service?

130. The State Members of the Joint Board argue that the regulatory jurisdiction over a service should not determine whether that service contributes to universal service. They note that the states may constitutionally impose sales taxes on both interstate and intrastate telecommunications, and they suggest that the U.S. Constitution does not prohibit there being both a federal universal service surcharge and a state universal service surcharge on all services delivered over the public communications network. They acknowledge that the 1999 *TOPUC* decision limited the Commission from imposing universal service surcharges on intrastate services, but they contend that *TOPUC* was wrongly decided.²⁵⁰ We seek comment on the State Members' analysis and ask commenters to address whether it would be consistent with section 254(d) for the Commission to require contributions on all revenues derived from services delivered over a public network.

131. Would a rule that assesses all revenues from services that operate interstate, intrastate, and internationally without allocation for intrastate operations advance our proposed goals for reform? How would such a rule impact the contribution base, today and in the future? We note that the sum of interstate, international, and intrastate revenues for all filers was \$210 billion in 2010, while the contribution base (the total of reported assessable revenues) for 2010 was \$67 billion.²⁵¹ If such a rule had been in place in 2010, *i.e.*, a rule that assesses all interstate, intrastate, and international revenues, the contribution factor would have been roughly four percent, instead of 14 percent on an annualized basis.²⁵² Would such a system be significantly simpler to administer, reducing the costs of complying with our contribution rules? How would such a system affect states? How would such an approach affect the allocation of the contribution burden, especially between residential consumers and enterprise consumers? For example, would residential consumers end up paying (in USF pass through charges) a substantially higher portion of the USF burden than they do today, compared to enterprise customers? If so, are there ways to offset or limit this effect? Commenters are encouraged to provide additional data and analysis regarding the impact of such a rule change.

²⁴⁸ See, e.g., USTelecom Mar. 28, 2012 *Ex Parte* Letter at 2-3 (stating that "most wireless services are based on pricing models, and state boundaries are simply irrelevant to how consumers select and buy communications services" and that, "from a financial perspective of most consumers. . . a 'long distance call' is meaningless.").

²⁴⁹ *TOPUC*, 183 F.3d at 417-18.

²⁵⁰ State Members of Joint Board CAF Comments at 121-24.

²⁵¹ The \$210 billion is the sum of interstate, international, and intrastate revenues for all filers in calendar year 2010 -- without deducting exempt LIRE and *de minimis* revenues. This information was calculated based on a review of the Telecommunications Reporting Worksheets filed in April 2011.

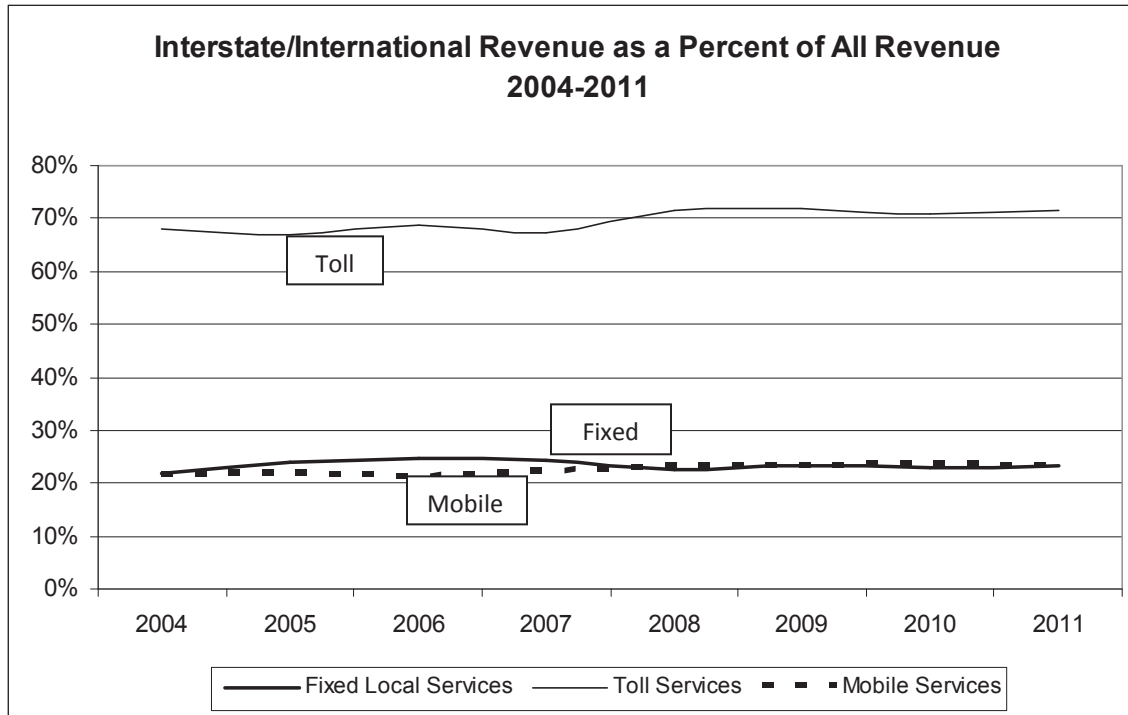
²⁵² In 2010, program demand and administrative expenses were \$8.4 billion. 2011 Monitoring Report, Table 1.10. Multiplying 4 percent times \$210 billion equals \$8.4 billion. During 2010, the quarterly contribution factor ranged from 12.9 percent to 15.3 percent.

132. Another alternative would be to adopt bright-line rules for how companies should allocate revenues between jurisdictions for broad categories of services. If we were to adopt such rules, how narrowly or broadly should we define the relevant services? As shown in Chart 5 below,²⁵³ the percentage of end user revenues that are reported as interstate/international have remained relatively stable for the major subcategories of revenue that have been reported on FCC Form 499 between 2004 and 2011. Should we adopt a separate allocator for each major category of service presently reported on Form 499 (fixed local services, mobile services, toll services), or should we follow a simpler approach, for instance, with just two allocation rules: one for voice and one for data services? For instance, we could adopt a standard allocator for all voice revenues, regardless of technology (fixed or mobile, traditional telephony or interconnected VoIP). Under such an approach, we could specify that voice revenues should be allocated according to a specified ratio, such as 20 percent interstate and 80 percent intrastate.²⁵⁴ Should the interstate allocation be higher or lower? Is there any policy justification for setting a different percentage for voice based on the type of carrier or technology used?

²⁵³ Percentages based on actual revenue information filed with USAC on FCC Form 499-A for 2004 through 2011. See Appendix C for supporting data. Revenue information for 2011 is preliminary and may be adjusted.

²⁵⁴ We note that based on traffic studies on file, VoIP providers that file traffic studies on average report 21.5 percent interstate/international revenues, while wireless providers on average report 23 percent interstate/international. In 2010, for example, incumbent LECs reported that 16.9 percent of their circuit-switched local exchange revenues were assessable (*i.e.*, interstate or international), competitive LECs reported that 17.3 percent of their circuit-switched local exchange revenues were assessable, and interconnected VoIP providers reported that 22.7 percent of their local exchange revenues were assessable. These numbers are based on revenues reported on the 2011 Telecommunications Reporting Worksheets (reporting calendar year 2010 data). It is unclear to what extent the variation among different classes of filers is a product of different methodologies for allocating revenues among the jurisdictions, or different calling patterns of different customer bases.

Chart 5



133. In other contexts, the Commission has recognized that Internet access services are jurisdictionally interstate because end users access websites across state lines.²⁵⁵ 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?

134. What data should be considered when developing that fixed percentage of interstate and intrastate revenues for services? Appendix C presents in more detail the percentage of end user revenues that are reported as interstate/international for each individual subcategory of end user revenue reported on FCC Form 499 for the periods of 2004 through 2011.²⁵⁶ For 2011, filers reported \$73.5B in total

²⁵⁵ See, e.g., *National Association of Regulatory Utility Commissioners Petition for Clarification or Declaratory Ruling that No FCC Order or Rule Limits State Authority to Collect Broadband Data*, WC Docket No. 09-193, Memorandum Opinion and Order, 25 FCC Rcd 5051, 5054 n.24 (2010) (“Although the Commission has acknowledged that broadband Internet access service traffic may include an intrastate component, it has concluded that broadband Internet access service is properly considered jurisdictionally interstate for regulatory purposes.”); *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6484–85, para. 21 & n.69 (reaffirming the “interstate nature of ISP-bound traffic” and noting that the Commission has “consistently found that ISP-bound traffic is jurisdictionally interstate” and that “services that offer access to the Internet are jurisdictionally interstate services”), affirmed by *Core Commc’ns, Inc. v. FCC*, 592 F.3d 139, 144 (D.C. Cir. 2010) (“Petitioners do not dispute that dial-up internet traffic extends from the ISP subscriber to the internet, or that the communications, viewed in that light, are interstate.”).

²⁵⁶ Percentages based on actual revenue information filed with USAC on the 2011 FCC Form 499-A. Revenue information for 2011 is preliminary and may be adjusted.

revenues for fixed local revenues, with 30 percent allocated to the interstate category and 0.6 percent allocated to the international category.²⁵⁷ For mobile services, filers reported \$106.6 billion in total revenues in 2011, with 22.8 percent allocated to the interstate category and 0.4 percent allocated to the international category.²⁵⁸ For toll services in 2011, filers reported \$34.3 billion in total revenues, with 50.3 percent allocated to the interstate category, and 21.4 percent allocated to the international category.²⁵⁹ We note that there is significant variation in some of the individual subcategories of revenues as currently reported on FCC Form 499. How should our decision be informed by the interstate percentages reported for individual subcategories of service as reported on the current Form 499, such as fixed local exchange (line 404) and mobile services monthly and activation charges (line 409)?

135. To what extent should we take into account ratios reported by wireless carriers and interconnected VoIP providers in their traffic studies? If we were to adopt a ratio applicable to the broad category of “mobile services,” for instance, should we base the percentage for mobile services, on the average (23 percent) or median (19 percent) ratio that carriers have reported in their most recent traffic studies? Commenters that support a different percentage should explain why adoption of that alternative is preferable.

136. If we were to adopt such a rule specifying that a set percentage of revenues should be reported as interstate for a category of service, should carriers still be permitted to make a particularized showing that a higher percentage of their traffic is intrastate? Should the Commission adopt a mechanism to periodically update the percentage and, if so, what would be the basis for updating the fixed percentage factor? How would such a rule impact the contribution base, today and in the future? Commenters are encouraged to provide additional data and analysis regarding the impact of such a rule change.

137. Would adopting a fixed allocation method for categories of services, or an across the board fixed allocation method, further our proposed goals for contribution reform? Using a single allocation factor for contribution purposes could potentially minimize competitive distortions among providers offering similar services. Would a single allocation factor help stabilize the contribution base by eliminating incentives for providers to underreport their interstate telecommunications revenues? Would a single allocation factor lessen providers’ compliance burdens by eliminating the need to perform traffic studies or to maintain and update the methodology used to establish their good-faith estimates? Would using a single allocation factor potentially provide greater predictability?

138. We seek comment on whether, if we were to adopt a rule imposing a fixed interstate allocator, we would be legally required to adopt a procedure by which a provider could “opt-out” of using the single allocation factor and instead make an individualized showing.²⁶⁰ We seek comment on whether allowing any telecommunications provider to opt-out would negate the administrative simplicity of adopting a single allocator for purposes of universal service contributions. To the extent that any commenter believes there should be a mechanism to “opt-out” of the fixed allocation factor, it should explain what showing should be required to opt out, and what steps the Commission should take to minimize competitive distortions that may arise if alternative allocations are used for certain types of providers or for certain types of traffic. For example, should a provider that opts out of the fixed

²⁵⁷ See Appendix C.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Cf. Smith v. Ill. Bell Telephone Co.*, 282 U.S. 133, 151 (1930). The Supreme Court recognized with respect to separations of revenues and expenses for purposes of regulated ratemaking for incumbent telephone companies many decades ago, “extreme nicety is not required.” *Id.* at 150.

allocation factor be required to allocate revenues on a customer-by-customer basis, given that each customer actually uses the purchased telecommunications differently?

139. We also seek to develop a factual record on the regulatory compliance costs stemming from the current requirement to allocate revenue between the intrastate and interstate jurisdictions. We seek comment and data submissions regarding the costs imposed on companies today to separate their revenues in this fashion, and the costs associated with performing a traffic study on an annual basis. We encourage companies to provide estimates not only of the costs associated with their legal and regulatory personnel, but also to include any other costs that compliance with such requirements may pose on other personnel, including accounting, billing, sales, network, IT, and marketing staff, and any costs associated with hiring outside resources, such as attorneys or consultants, to assist in implementing such requirements or responding to any audits or investigations relating to this aspect of our contribution rules.

140. To the extent commenters have concerns about any of these proposals, they should present alternative methods for simplifying the allocation of revenues between the interstate and intrastate jurisdictions and explain how their proposals would meet the proposed contribution reform goals set forth in this Notice. If we do not adopt a fixed factor or factors to allocate telecommunications revenues, what modifications should we consider making to the current rules?

141. If we continue to allow use of traffic studies to estimate the allocation of interstate revenues, should we codify specific requirements or provide greater detail in the Form 499 instructions for how traffic is categorized in traffic studies to ensure that reporting entities are conducting the studies in a competitively neutral manner? We seek comment on current practices for classifying traffic for traffic studies. We have some concerns that contributors may be using different methodologies in conducting traffic studies, given the broad variation in reported ratios. It is surprising, for instance, that nine wireless providers report no interstate or international revenues at all. Similarly, the fact that 47 VoIP filers report no interstate/international revenues, while some others report ratios relatively close (but slightly under) the current 64.9 percent safe harbor, also suggests that VoIP providers may be classifying their traffic in significantly different ways, and there may be a need to provide more standardized guidance regarding how to perform a traffic study. We seek comment on this analysis.

142. We seek comment on what steps would need to be taken to implement the approaches above or alternative approaches to simplify the allocation of interstate and intrastate revenues for federal USF contribution purposes. We also seek comment on how much time, if any, parties would need to transition to any new allocation method.

4. Contribution Obligations of Wholesalers and Their Customers

143. In this section, we seek comment on potential rule changes to address recurring USF contribution compliance issues that arise in instances involving the allocation that wholesale carriers must make between “carrier’s carrier revenues” and “end-user revenues.” First, we seek comment on a value-added approach, under which the Commission would eliminate the current exemption from contribution obligations for wholesalers and instead assess each provider, with credits provided to subsequent providers in the value chain. In the alternative, we seek comment on modifying the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into other services that are not telecommunications services.

144. *Background.* Under today’s rules, wholesale carriers generally do not contribute on sales to their customers that contribute to the Fund (carrier’s carrier revenues), but may be required to contribute on sales to customers that do not contribute to the Fund (end-user revenues).²⁶¹

²⁶¹ See *supra* Section II.A. for a discussion of carrier’s carrier revenues and end-user revenues.

145. In recent years, there have been disputes over how to comply with this general requirement, with USAC concluding in some cases that contributors have failed to properly report their end-user revenues, and contributors facing significant financial liability for unpaid contributions.²⁶² Issues relating to contribution obligations of wholesalers and their customers are pending in a number of appeals of USAC decisions. While we intend to address specific factual circumstances in the context of several adjudicatory proceedings in the near future, here we seek comment more broadly on how to address such issues going forward under a revenues-based system, consistent with our proposed goals of promoting efficiency, fairness, and the sustainability of the Fund.

146. In the 1997 *Universal Service First Report and Order*, the Commission required telecommunications providers to contribute to the USF based on end-user telecommunications revenues.²⁶³ The Commission made a policy decision to exclude wholesale revenues from the contribution requirements, though nothing in the Act requires such a result. In some wholesale/resale situations, a reseller purchases telecommunications service from a carrier (the wholesaler) at a wholesale discount, and resells such telecommunications services in unchanged form to customers (the end user) with a retail mark-up.²⁶⁴ In other situations, the reseller may purchase one service that is used to provide another service.²⁶⁵ In adopting the existing wholesale-resale distinction, the Commission concluded that basing contributions on end-user revenues would relieve a wholesale carrier (in a wholesale/resale distribution chain) from making direct contributions to the USF because the wholesale carrier does not earn revenues directly from end-users.²⁶⁶ Instead, the reseller that provides the service to the end user, and thereby earns end-user revenues, should contribute directly to the USF.²⁶⁷

147. At that time, the Commission did not directly focus on the potential implementation difficulties that such a rule would pose in situations where a wholesaler sells a service to another firm that incorporates that wholesale telecommunications into a different offering for its retail customers that is not subject to assessment. In some instances, the revenues from the finished offering may be assessable, while in other cases, such as broadband Internet access service, the retail revenues may not be subject to a contribution obligation.

148. The Commission has directed wholesalers to have in place “documented procedures” to ensure that the wholesaler reports as “revenues from resellers” only revenues from resellers that “reasonably would be expected to contribute” to the Fund.²⁶⁸ This system may present two sources of

²⁶² USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3.

²⁶³ *Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 843.

²⁶⁴ See 47 U.S.C. § 251(c)(4). In the *Local Competition Order*, the Commission described “resale” in this fashion: “carriers reselling incumbent [local exchange carrier (LEC)] services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that the incumbents do not offer. The only means by which a reseller can distinguish the services it offers from the incumbent is through price, billing services, marketing efforts, and to some extent, customer service.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15667, para. 332 (1996) (*Local Competition Order*).

²⁶⁵ In the original Universal Service Worksheet instructions, the Commission provided an example of interexchange carriers that use access services from other contributors (*i.e.*, local exchange companies) to provide switched toll service. *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18508, App. C.

²⁶⁶ *Universal Service First Report and Order* at 9207, paras. 846-47.

²⁶⁷ *Id.*

²⁶⁸ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18508, App. C; see also *Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network* (continued...)

complexity and inefficiency. First, wholesalers may incur non-trivial compliance costs in documenting and enforcing procedures to support determinations that they “reasonably expect” that their customers are contributing to the Fund. Such wholesalers may be concerned that if they fail to demonstrate a reasonable expectation that their customers are contributing, they may be held accountable for USF contribution obligations of their customers. Second, the procedures that many companies follow to demonstrate that reasonable expectation regarding contributions by their customers may result in an unintended loss of revenues to the Fund in situations where the customer of the wholesale provider provides both assessable and non-assessable services to its retail customer.²⁶⁹

a. Value-Added Approach to Assessing Contributions

149. We seek comment on whether we should modify the existing universal service contribution methodology to assess “value-added” revenues rather than “end-user” revenues. Under this value-added approach, each telecommunications provider in a service value chain (including both wholesalers and resellers) would contribute based on the value the provider adds to the service.²⁷⁰ Thus, in a revenue-based system, a wholesaler would contribute on its wholesale revenues, and a reseller of those services would contribute based on its retail mark-up.²⁷¹

150. Table 1 illustrates how reported revenues and contributions could be determined under a value-added revenues system. In the table and throughout this section, *A*, *B*, and *C* are telecommunications providers, and *EU* is the end user. We use the symbol $A \rightarrow B$ to mean that *A* provides a service to *B*. Also, we assume for purposes of illustration that the contribution factor is ten percent.

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Enhanced Telecom, LLP, WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14539, para. 15 (Wireline Comp. Bur. 2010) (*NetworkIP Order*) (“The Commission requires... that wholesalers have a ‘reasonable expectation’ that its reseller customers would contribute to universal service and have in place documented procedures to demonstrate compliance with this requirement”).

²⁶⁹ *Universal Service Contribution Methodology; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, WC Docket No. 06-122, Order, DA 10-752, paras. 13-15 (Wireline Comp. Bur., rel. Apr. 30, 2010) (*TelePacific Order*).

²⁷⁰ In 1997, the Joint Board recommended a value-added system, but the Commission adopted an end-user revenue system. See *Universal Service First Report and Order*, 12 FCC Rcd at 9205-06, paras. 842-44.

²⁷¹ While we discuss the value added system in the context of maintaining a revenues-based system in this section, we note that similar issues exist if we were to move to a connections-based approach. We seek comment below on whether all connections, whether they serve end users or not, should be subject to assessment. See *infra* para. 242.

Table 1²⁷²

	<i>Service Price</i>	<i>USF Line-Item *</i>	<i>Total Price **</i>	<i>Seller</i>	<i>Seller's Direct Contribution ***</i>
<i>A→B</i>	\$100	\$10	\$110	A	\$10
<i>B→C</i>	\$150	\$15	\$165	B	\$5 10% (\$150 – \$100)
<i>C→EU</i>	\$200	\$20	\$220	C	\$5 10% (\$200 – \$150)
<i>EU Price</i>	\$200	Aggregate Contributions to USF			\$20

151. As reflected in the table above, under this value-added revenues approach each provider in a distribution or value chain would contribute based on the provider's total interstate and international revenues, less a credit for any telecommunications services or telecommunications purchased from other contributors in the distribution or value chain. Contributors would not, therefore, need to distinguish between revenues from end users and revenues from other telecommunications providers.

152. We seek comment on the following potential rule change, which could implement a value-added revenues system:

A contributor must contribute based on its projected assessable revenue less a credit for telecommunications services or telecommunications purchased from other contributors. Contributors shall report such revenues on the FCC Form 499-A and 499-Q Telecommunications Reporting Worksheets or such other forms or filings as the Commission may prescribe from time to time. Projected revenue information shall be subject to an annual true up, as prescribed from time to time by the Commission in its Telecommunications Reporting Worksheet instructions.

153. We ask whether the proposed value-added revenues approach would meet the proposed goals of improving administrative efficiency, while ensuring sustainability of the Fund. For example, how would a value-added system further our proposed goals of simplifying administration and oversight of the contribution system? Would a value-added system reduce incentives to structure transactions to avoid contribution obligations? Would adoption of a value-added system have unintended consequences that undermine our proposed goals in reforming the system? What records should contributors be required to retain to demonstrate compliance with a value-added system? For example, if we adopted the rule proposed above, should contributors be required to retain (and/or report) back-up for the "credit for telecommunications services or telecommunications purchased from other contributors"?

154. As an alternative to reporting on the revenues earned minus any amounts paid for telecommunications service inputs, should we implement a value-added methodology in which carriers instead subtract from their final contribution liability any pass-through charges paid to other contributors?

²⁷² Notes for Table 1:

* The "USF Line-Item" is the amount passed through to a customer as a line-item charge and equals the Service Price times the Contribution Factor.

** The "Total Price" is the total amount a customer pays and equals the Service Price plus the USF Line-Item.

*** The "Seller's Direct Contribution" is the amount the seller contributes to universal service as a direct payment to USAC and equals the revenues earned from its service minus the amounts paid for services provided by the seller's underlying provider, times the contribution factor.

If so, should we require or permit telecommunications providers to pass through an explicit universal service line-item charge to customers that are also telecommunications providers? Would a pass-through charge in these limited circumstances enable telecommunications providers and USAC to verify the universal service charges paid by one contributor to another for purposes of calculating the credit the contributor should receive against its own contribution obligation? Would mandated pass-through charges benefit competition by eliminating the ability of wholesale providers to distinguish service offerings based on whether or how they pass through universal service charges to their reseller customers? Would allowing providers to retain discretion over whether to recover their contributions implicitly or via an explicit line-item charge further our proposed goals of ensuring competitive neutrality and simplicity in the USF contribution system? Under a value-added assessment system, how should we treat transactions between wholesale providers and non-carriers (e.g., retailers or distributors of prepaid calling cards), or transactions between wholesale providers and entities that are currently exempt from directly contributing to the Fund (e.g., non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers)?²⁷³

155. If we adopt a value-added system based on credits for pass through charges paid to other providers, we seek comment on whether we should scale or otherwise limit the credit a telecommunications provider receives to account for the fact that this system may exclude some telecommunications revenues from assessment. To illustrate the point, consider the retail chain in Table 1, but assume that provider *C* qualifies for the LIRE exemption and its international revenues are not included in the contribution base. If *C*'s offering to the end user (*EU*) consists of \$10 of interstate service and \$190 of international service, *C*'s assessable revenues from this sale would be \$10 (the interstate portion), and *C*'s contribution obligation would be \$1 (10 percent of \$10), which *C* could pass through to *EU*. To calculate *C*'s payment to the Fund as proposed above, the value-added system would normally take *C*'s contribution obligation and subtract the USF surcharge that *C* paid its underlying provider. But in this case, the credit *C* would receive for USF surcharges paid (\$15) would exceed *C*'s contribution obligation (\$1). Accordingly, applying a non-scaled credit when a contributor's own contribution obligations are reduced by exemptions may create a situation in which the Fund effectively subsidizes certain offerings of those contributors. We seek comment on this analysis and any proposed solutions. For example, should we limit a carrier's credit to no more than its own contribution obligation?

156. We also seek comment on the implementation of a value-added system. What would be an appropriate time frame for implementing such a rule? For example, to what extent would the existence of long-term contracts warrant delaying implementation of a value-added revenues system? If we delay implementation, what would be a reasonable period of time to transition to this system?

157. We request clear and specific comments on the type and magnitude of likely benefits and costs of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how data were calculated and identification all underlying assumptions.

158. *Value-Added Approach for Alternative Contribution Methodologies.* The value-added revenues system discussed above assumes retaining a revenues-based contribution system. We seek comment below on moving from a revenues-based contribution system to a system based on assessing connections or numbers.²⁷⁴ Commenters should indicate whether a value-added system could and should be developed for a connections-based or numbers-based contribution system. If value-added is needed or

²⁷³ See 47 C.F.R. § 54.706(d). We note that while such entities are exempt from direct USF contribution obligations, there is no rule that prohibits carriers from passing through USF charges to such entities.

²⁷⁴ See *infra* Sections V.B. and V.C.

advisable for such other contribution systems, commenters should explain the basis for such analysis, and should indicate how a value-added system would work in such instances.

159. We note that one of the considerations in crafting the current revenue-based system focused on end users was to avoid “double counting” revenue.²⁷⁵ We ask commenters whether a connections or numbers-based system may also raise concerns of double counting, and if so, how a value-added proposal could be crafted to address this issue. More generally, we seek comment on whether avoiding double counting remains a significant policy concern, and if it should inform the structure of a contributions methodology system.

160. In particular, we seek comment here on whether a value-added system similar in concept to the value-added revenues proposal set forth above for a revenues-based system may be desirable for connections, and if so, how such a system would operate. If we were to adopt a service-based definition of connections, there could be situations in which a wholesaler sells a “connection” to a reseller who adds value by separately selling more than one service over that connection. For instance, to the extent Carrier A sells a connection to Carrier B, and then Carrier B sells two connections to the retail customer, would it simplify administration of a connections-based system if both Carrier A and B are assessed based on the connections provided to their respective customers, with Carrier B receiving a credit for the number of connections it has purchased from a wholesale provider so that, in this example, Carrier A and B would each be assessed for one connection?

161. We also seek comment on how one might adopt a value-added approach for a numbers-based methodology. Would a value-added approach work in which each provider of interstate telecommunications in a service value chain (including both wholesalers providers and their customers) that provides a number to a customer would contribute on that number, with a credit provided to the extent a carrier obtains lines with numbers from another provider? Alternatively, would it make sense to adopt a system in which a wholesaler could contribute on its wholesale numbers at a lesser adjusted rate, and its customer could contribute based on a higher per-unit rate for numbers associated with services provided to retail customers, with an adjustment made for any pass-through charges paid to the wholesale provider?

b. Contributor Certificates

162. In this section, we seek comment on alternatives to the value-added approach that would further our proposed goals of improving administrative efficiency, fairness and sustainability of the Fund.

163. Part of the complexity that exists in wholesale-resale relationships today stems from the fact that in some instances, a wholesaler may sell services to an entity that incorporates telecommunications (such as a private line, which is subject to contributions) into a different finished offering (such as broadband Internet access, which is exempt from contributing to the Fund).²⁷⁶ In such instances, the Commission requires wholesalers to treat revenues from services to these non-contributing

²⁷⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9207-08, paras. 845-48. The Commission was concerned that basing contributions on gross revenues would distort competition by disadvantaging resellers that compete against non-resellers offering the same retail service. A reseller with a similarly priced service would have to contribute on the revenues from its retail service as well as pay the USF contribution charge that its underlying carrier would likely pass through to the reseller.

²⁷⁶ Such exempt resellers may include: (1) *de minimis* telecommunications providers; (2) carriers that do not resell services as telecommunications or telecommunications services to ultimate end-user customers; (3) systems integrators that incorporate only a minimal amount of telecommunications into their sales; (4) broadcasters that provide non-common carrier interstate telecommunications to others, and (5) non-profit schools, colleges, universities, libraries, and health care providers. See *2012 FCC Form 499-A Instructions* at 4-5.

customers as “end user” revenues. To implement this end-user revenues system, the instructions to the Telecommunications Reporting Worksheet provide for wholesalers to distinguish between (1) revenues from sales to telecommunications providers that “can reasonably be expected to contribute to” the Fund (carrier’s carrier revenues) and (2) revenues from all other sources (end-user revenues, including revenues from sale directly to end users as well as revenues from sale to non-contributing resellers or other non-contributing entities).²⁷⁷

164. While the Commission has not codified rules specifying the precise manner in which wholesalers verify that their customers are contributing, most providers obtain certifications from their customers specifying that the customer “is purchasing service for resale in the form of U.S. telecommunications” and that it “contributes directly to the federal universal service support mechanisms.”²⁷⁸ The Form 499 Instructions caution that if a customer does not provide such a certification, the wholesaler should not assume that the customer contributes to the Fund on those services, and should therefore report revenues from services provided to such customers as subject to USF assessment.²⁷⁹ In such a scenario, the wholesale provider typically passes through a universal service contribution charge to these customers.

165. The Telecommunications Reporting Worksheet instructions have been amended several times in an effort to provide additional guidance on how a telecommunications provider may establish a reasonable expectation.²⁸⁰ For example, the instructions have been revised to explain that wholesalers should obtain annual certifications from their resellers, certifying that the reseller will resell the services it purchases from the wholesaler, and that it will contribute to the Fund.²⁸¹ The instructions also direct telecommunications providers to implement policies and procedures to comply with this requirement to ensure they properly report carrier’s carrier revenues.²⁸²

²⁷⁷ See, e.g., *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18424, para. 43; *id.* at 18507–08 (adopting the Worksheet to collect information about end-user revenues for USF contribution purposes); *2012 FCC Form 499-A Instructions* at 21.

²⁷⁸ *2012 FCC Form 499-A Instructions* at 19. We note, however, that a facilities-based carrier must determine whether a carrier has registered with the Commission before it may offer services to that carrier for resale. See 47 C.F.R. § 64.1195(h).

²⁷⁹ See *2012 FCC Form 499-A Instructions* at 22 (“Filers that do not comply with the above procedures will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.”).

²⁸⁰ See, e.g., 2000 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 13 (*2000 FCC Form 499-A Instructions*); 2001 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15 (*2001 FCC Form 499-A Instructions*) (clarifying that a “reseller” did not need to be a “telecommunications service provider” but could also be any “telecommunications provider” reasonably likely contribute); 2002 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15-16 (*2002 FCC Form 499-A Instructions*) (clarifying that “resellers” incorporate the purchased telecommunications into their “own telecommunications offerings,” advising providers to collect a reseller’s “Filer 499 ID,” and notifying providers of an online database of current contributors); 2003 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15-16 (*2003 FCC Form 499-A Instructions*) (clarifying that a reseller should resell the purchased telecommunications in the form of telecommunications and “not as information services”); 2004 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 16-17 (*2004 FCC Form 499-A Instructions*) (clarifying that providers should submit documentation about resellers to the Administrator or Commission upon request and advising providers that they may be responsible if their customers must be reclassified as end users).

²⁸¹ *2012 FCC Form 499-A Instructions* at 22.

²⁸² *Id.* Even these measures may be insufficient to safeguard the Fund. As discussed below, our rules currently exempt providers with far more international revenues than interstate revenues from contributing on the international revenues (known as the LIRE or limited international revenues exemption). See *infra* Section V.A.6. (continued...)

166. *Reasonable Expectation Standard.* Implementing the “reasonable expectation standard” has become a time consuming and complicated case-by-case exercise. Many carriers argue that the current reseller certificate process is burdensome and ineffective, in essence requiring wholesale providers to act as “enforcement agents to the Commission” by requiring them to collect certifications from reseller customers attesting to being a USF contributor.²⁸³ A number of carriers have appealed USAC audit findings reclassifying certain reseller revenues as end-user revenues, with the contributor arguing that it had a reasonable expectation that its customer(s) would contribute to universal service.²⁸⁴ USAC and the Commission have to devote resources to detect evasion of contribution obligations, and companies that purchase wholesale inputs from others can derive substantial monetary benefits by providing a reseller certificate. Indeed, the end-user revenues system as currently structured may even create incentives for a purchaser of wholesale telecommunications to claim falsely that it directly contributes to the Fund, to avoid the universal service charge that the underlying provider would likely otherwise pass through if the customer did not claim it contributes directly. We seek comment on potential bright line rules that we could adopt that would provide greater clarity to contributors as to what steps they must take to properly report their assessable revenues and lessen the need to engage in such fact-intensive inquiries, if we maintain a revenue-based contribution methodology.

167. Complying with the requirement to distinguish wholesale from end-user revenues likely imposes non-trivial regulatory costs on firms with significant wholesale businesses. We seek comment and data submissions regarding the costs imposed on companies today to separate their wholesale from their retail revenues, and the costs associated with complying with the requirement that they demonstrate a reasonable expectation that their customers are contributing to USF. We encourage companies to provide estimates not only of the costs associated with their legal and regulatory personnel, but also to include any other costs that compliance with such requirements may pose on other personnel, including accounting, billing, sales, IT, and marketing staff, and any costs associated with hiring outside resources, such as attorneys or consultants, to assist in implementing such requirements or responding to any audits or investigations relating to this aspect of our contribution rules.

168. We seek comment on whether we should adopt a rule mandating greater specificity in contributor certifications regarding the services on which the certifying entity is contributing, so that wholesalers are in a better position to determine which of their revenues should be classified as carrier’s carrier revenues. Many contributors may obtain such certifications from their customers only on an entity-wide basis, rather than on a service-specific basis, because the model certification language provided in the instructions beginning in 2007 does not specify service-specific certifications.²⁸⁵

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If a provider sells both interstate and international telecommunications to a reseller that qualifies for this exemption, the reseller will not contribute on the basis of the international telecommunications it offers (because of this exemption) and the underlying provider will not contribute on the basis of the international telecommunications it offers (because the reseller is not an end user for these purposes). In other words, our end-user methodology may unintentionally exempt certain revenue streams from the contribution base entirely.

²⁸³ See, e.g., USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3; Request for Review of Decision of Universal Service Administrator by Global Crossing Bandwidth, Inc., CC Docket No. 96-45 at 17 (filed Sept. 16, 2009) (Global Crossing Request for Review).

²⁸⁴ XO Request for Review at 40-43; Global Crossing Request for Review at 11-12.

²⁸⁵ The 2012 Form 499-A instructions state, in relevant part, that each filer should have documented procedures to ensure that it reports as “revenues from resellers” only revenues from “entities” that reasonably would be expected to contribute to support universal service. In addition, the instructions state that reseller certifications should include a statement that “the company [*i.e.*, the reseller] contributes directly to the federal universal service mechanisms.” See 2012 FCC Form 499-A Instructions at 22.

169. We seek comment on adopting a rule that would establish the following language for customer certifications:

I certify under penalty of perjury that the company is purchasing service which is incorporated into the company's offerings. I also certify under penalty of perjury that either my company contributes directly to the federal universal support mechanisms for those offerings that incorporate this wholesale service, or that each entity to which the company, in turn, sells those offerings has provided the company with a certificate in the form specified by Commission rules.

OR

I certify under penalty of perjury that the company is purchasing service for which is incorporated into the company's offerings. I also certify under penalty of perjury that:

(check one)

_____ The company contributes directly to the federal universal service support mechanisms for those service offerings that incorporate the wholesale service, or if the company resells the service to another contributor, that the company has received a certification from each customer in a form specified by Commission rules that the customer will contribute directly based on revenues from each such service.

_____ The company contributes on [number] percent of the revenues for services that incorporate the wholesale service, or has received a certification from its customer stating that the customer will contribute directly based on revenues from the service. On the remaining [number] percent of the revenues of the service that incorporates the wholesale service, the company does not directly contribute, and it does not sell that service to another contributor.

I also certify under penalty of perjury that the company will notify [name of wholesale provider] within [30 or 60 days] if the information provided in this certification changes.

170. *Specificity as to Incorporation of Wholesale Services into a Finished Service.* It appears that under our current requirements, certain revenues may be escaping assessment altogether, in situations where a wholesaler does not contribute on revenues derived from customers that it believes to be contributing when in fact the customer is not contributing on those revenues.²⁸⁶ For example, there may be situations where a wholesaler provides wholesale circuits to a customer, some of which are used for an assessable service, such as voice telephony, and some of which are used to provide retail broadband Internet access service, which is not assessable. In some cases, the usage of a given circuit may vary over the course of the year, or even at the request of the customer, between assessable and non-assessable services.²⁸⁷ If the customer executes a certificate consistent with the model certification language

²⁸⁶ USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3.

²⁸⁷ A number of business services dynamically allocate bandwidth to voice and broadband Internet access, depending on customer demand. See, e.g., OneLink Voice and Data Circuit, *Telnes Broadband*, <http://www.telnesbroadband.com/services/onelink-voice-and-data> (last visited Apr. 2, 2012); SIP Trunking with (continued...)

guidance provided in the current Form 499 instructions – stating “the company [*i.e.*, the customer incorporating the telecommunications into its finished offering] contributes directly to the federal universal service mechanisms” – there is no way for the wholesaler to know that the customer is not contributing on revenues derived from all of the circuits. We seek comment on the magnitude and prevalence of this problem. In these and other analogous situations, should there be an affirmative obligation on the part of the entity that purchases the wholesale telecommunications to specify in its certification the extent to which the wholesale input is incorporated into assessable services versus non-assessable services? For instance, should we adopt the following rule:

To the extent a company purchases services that are incorporated into its own offerings, with some of the offerings subject to universal service contributions and some of the offerings not subject to universal service contributions, the purchaser has an affirmative obligation to provide information to its wholesale provider sufficient for the wholesaler to allocate the revenues associated with its service as carrier’s carrier revenue or end-user revenue.

171. What burdens would such a rule impose on entities that purchase wholesale telecommunications to incorporate into their finished offerings, and what measures could be implemented to minimize such burdens?²⁸⁸ If we were to adopt such a rule, what metric should the purchasing entity use in developing the relevant allocations? For instance, should it base the percentage on the number of circuits, the revenues associated with individual circuits (to the extent that can be determined), the average usage of a circuit, or something else?

172. We seek comment on whether to adopt a rule imposing an affirmative obligation on entities purchasing wholesale telecommunications that sign certifications to notify their wholesale carrier within a specified period of time, such as 30 or 60 days, if their contribution status changes over the course of the year. For instance, we seek comment on the following rule:

Providers who provide contributor certifications to their wholesale carriers must notify their wholesale carrier within [30 or 60] days if the contribution status provided in the certifications changes.

173. Today, there may be situations where an entity certifies in good faith at the beginning of the year that it is a contributor with respect to the services provided to its retail customers, but subsequently it ceases to be a contributor. This could occur, for instance, if the entity purchases a special access circuit from a wholesaler, and initially expects to provide special access to a retail customer, but ultimately uses that circuit to provide broadband Internet access service, which is not assessable under our current rules. Or an entity purchasing wholesale telecommunications may expect to contribute, but ultimately it turns out to be a *de minimis* contributor due to lower than expected revenues. In both situations, the wholesaler would not contribute on the services (because it has a contributor certificate

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AT&T IP Flexible Reach, *AT&T Enterprise*, <http://www.business.att.com/enterprise/Service/voice-services/voip/sip-trunking/> (last visited Apr. 3, 2012); VoIP and Data Bundle, *Windstream*, <http://www.windstreambusiness.com/enterprise/data-solutions/voip-and-data-bundle> (last visited Apr. 3, 2012); VoIP for Your Small Business, *XO Communications*, <http://smallbusiness.xo.com/small-business-voip.html> (last visited Apr. 3, 2012).

²⁸⁸ One party in an adjudicatory proceeding, for instance, has argued that it would be virtually impossible for wholesale providers to classify their revenues based on the end user services provided by their carrier customers and unreasonably burdensome for the wholesaler’s resale customers to comply with a service-specific certification system. Opposition of U.S. TelePacific Corp. d/b/a TelePacific Communications to Petition for Clarification or In the Alternative for Partial Reconsideration, WC Docket No. 06-122, at 10-11 (filed July 6, 2010).

from its customer), but its customer ultimately does not contribute, resulting in revenues not being subject to contributions at any point in the value chain. Commenters should address the time frame in which such notification should occur, and what specific procedures should be followed. To the extent that parties support elimination of certifications in favor of an alternative system or a bright line, we ask them to provide specific details on how any such alternatives would be implemented, administered, and enforced.²⁸⁹

174. Another alternative on which we seek comment is whether we should assess wholesalers at their point of sale, but not their customers, so long as the wholesaler certifies that the contribution has been or will be paid. Would such an approach be easier to administer? Are there disadvantages to such an approach? Commenters should indicate, to the extent possible, the reduction to the contribution base if we were to adopt such an approach and how such an approach would impact contribution burdens.

175. *Improved Certification Requirements Compared to Value Added Revenues System.* We discuss above a value-added revenues system to address recurring issues arising in the wholesale/resale context.²⁹⁰ Commenters are encouraged to compare and comment on both the improved certification system discussed here and the value-added system discussed immediately above in this Notice.²⁹¹ Is there a particular advantage over one approach over the other? Do aspects of both approaches need to be adopted? If we adopt a value-added revenues system, should we adopt modifications to our contributor certification rules on an interim or transitional basis while we implement the value-added approach?

176. *Improved Certification Requirements for Alternative Contribution Methodologies.* The improved contributor certification requirements discussed above assume retaining a revenues-based contribution system. In this Notice, we also seek comment on moving from a revenues-based contribution system to a system based on assessing connections or numbers.²⁹² Commenters should indicate whether similar contributor certification requirements as discussed above should be developed for a connections-based or numbers-based contribution system. If improved certification requirements are needed or advisable for such other contribution systems, commenters should explain the basis for such analysis, and should indicate how the contributor certifications would work in such instances.

177. We ask commenters whether a connections or numbers-based system may also raise concerns of double counting, and if so, how a contributor certification could be crafted to address this issue.²⁹³ More generally, we seek comment on whether avoiding double counting remains a significant policy concern, and if it should inform the structure of a contributions methodology system.

178. In particular, we seek comment here on whether improved contributor certifications similar in concept to the proposals discussed above might be desirable for connections, and if so, how such a system would operate. If we were to adopt a service-based definition of connections, there could be situations in which a wholesaler sells a “connection” to a customer who adds value by separately selling more than one service over that connection. We also seek comment on how one might adopt contributor certifications for a numbers-based system.

²⁸⁹ At least one industry group has suggested that the Commission consider elimination of “provider-to-provider certifications” in favor of a bright-line rule based on widely accessible information in a Commission-maintained database. See USTelecom Mar. 28, 2012 *Ex Parte* Letter at 7.

²⁹⁰ See *supra* Section V.A.4.a.

²⁹¹ *Id.*

²⁹² See *infra* Sections V.B. and V.C.

²⁹³ See *supra* para. 159 & n.275.

5. Reporting Prepaid Calling Card Revenues

179. Our rules require prepaid calling card providers to contribute to the Fund based on their end-user revenues. We seek comment on modifying existing rules to provide clarity to the industry in response to requests from USAC and record evidence suggesting different prepaid calling card providers may be interpreting our rules in different ways, which may result in an unlevel playing field for competitors of these services. In this section we seek comment on revising the rules for prepaid calling card providers, consistent with our proposed reform goals of simplifying compliance and ensuring fairness across competitors.

180. *Background.* On the Telecommunications Reporting Worksheet, contributors report revenues based on the amount paid by end users for prepaid cards, whether the prepaid calling card is purchased by the end user directly from the prepaid calling card provider or from a marketing agent, distributor, or retailer.²⁹⁴ On August 24, 2009, USAC sought guidance on universal service reporting and contribution obligations on revenues from prepaid calling card services.²⁹⁵ In particular, USAC asked the Commission to provide guidance on how prepaid calling card providers must report revenues where: (1) the prepaid calling card does not have a face value, or where the customer pays less than face value because of discounting; (2) the prepaid calling card provider does not know how much the end user paid for the card;²⁹⁶ and (3) the cards are measured in units of time rather than by dollar amounts.²⁹⁷ USAC also asked the Commission to clarify when prepaid calling card providers should report revenues from prepaid calling card services.²⁹⁸ Many parties assert that the Commission should adopt rules or requirements that clarify contribution obligations for prepaid calling card providers and address the unique characteristics of prepaid calling card services.²⁹⁹

181. *Discussion.* We seek comment on adopting a rule to require prepaid calling card providers to report and contribute on all end-user revenues, and who should be deemed the end user for purposes of such a rule. We ask whether prepaid calling card providers should only report amounts paid by the entity to which the provider directly sells the prepaid service. Alternatively, we seek comment on adopting a rule to require prepaid calling card providers to contribute based on the amounts paid by end users for prepaid cards, whether the prepaid calling card is purchased by the end user directly from the prepaid calling card provider or from a marketing agent, distributor, or retailer. We also ask about the application of the value-added contribution paradigm, discussed above, to assessment of prepaid calling card service. In addition, we seek comment on measures to standardize how providers report prepaid calling card revenues, eliminating incentives or opportunities for providers to avoid their USF

²⁹⁴ See, e.g., 2012 FCC Form 499-A Instructions at 17-18.

²⁹⁵ USAC 2009 Guidance Request at 2. USAC also sought guidance on other issues not related to reporting requirements for prepaid calling card providers. *Id.*

²⁹⁶ This may occur where the prepaid calling card provider does not sell the cards directly to the end user.

²⁹⁷ USAC 2009 Guidance Request at 1-2.

²⁹⁸ *Id.* at 2. Several parties filed comments on the issue of contribution reporting requirements for prepaid calling card providers in response to USAC's request for guidance. See Letter from Jonathan S. Marashlian, Ad Hoc Coalition of International Telecommunications Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et al.*, at 1-6 (filed Nov. 18, 2009); Comments of AT&T Inc., WC Docket No. 05-337 *et al.*, at 6-11 (filed Oct. 28, 2009) (AT&T Guidance Comments); Comments of Network Enhanced Telecom, LLP, WC Docket No. 05-337 *et al.*, at 1-10 (filed Oct. 28, 2009) (NetworkIP Oct. 28, 2009 Comments); Verizon Oct. 28, 2009 Comments at 7-9; Comments of STi Prepaid, LLC, WC Docket No. 05-337 *et al.*, at 1-10 (filed Oct. 28, 2009) (STi Oct. 28, 2009 Comments).

²⁹⁹ See, e.g., USTelecom Mar. 28, 2012 Ex Parte Letter at 7-8; Request for Review of AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45, at 17-20 (filed Oct. 10, 2006) (AT&T Prepaid Calling Card Request for Review); STi Oct. 28, 2009 Comments.

contribution obligations. We also solicit comment on whether adopting these reforms would further our proposed goals for reform and the potential impact on the Fund if we were to adopt the measures described below.

182. *Defined Terms.* We first seek comment on modifying the definition of prepaid calling cards as explained below. The terms “prepaid calling cards,” and “prepaid calling card providers” are defined in section 64.5000 of our rules, as adopted by the Commission in the *Prepaid Calling Card Services Order*.³⁰⁰ The definition of a prepaid calling card is fairly expansive, encompassing not just physical cards that require the input of a personal identification number (PIN) but also any “device” that provides end users with the same or similar functionality.³⁰¹ Although we propose retaining these definitions, we seek comment on whether we should add the phrase “or service” to the definition to make clear that our prepaid calling card rules will encompass new ways to market prepaid telecommunications services that do not involve using a PIN or a device. Such a modification could read as follows (new language in italics):

- (a) Prepaid calling card. The term “prepaid calling card” means a card or similar device *or service* that allows users to pay in advance for a specified amount of calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service.
- (b) Prepaid calling card provider. The term “prepaid calling card provider” means any entity that provides telecommunications service to consumers through the use of a prepaid calling card.

183. We also seek comment on whether we should define, for purposes of prepaid calling cards, the term “prepaid calling card distributor” as we use it in the context of reporting prepaid calling card revenues. The use of such term would acknowledge that prepaid calling cards are often sold by means of marketing agents, distributors or retailers. We seek comment on the following proposed definition:

Prepaid calling card distributor. A marketing agent, distributor, retailer, or other third party that sells or resells prepaid calling cards on behalf of a prepaid calling card provider.

184. *Reporting Prepaid Calling Card Revenues.* We also seek comment on alternative methods prepaid calling card providers should use to report revenues from prepaid calling card services. Today, prepaid calling card providers are required to report and contribute on the end-user revenues from the sale of prepaid calling card services.³⁰² The current version of the Telecommunications Reporting

³⁰⁰ *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7316 (2006) (*Prepaid Calling Card Services Order*); 47 C.F.R. § 64.5000.

³⁰¹ See 47 C.F.R. § 64.5000; see also Letter from Pete Pattullo, Chief Executive Officer, Network Enhanced Telecom, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 1-2 (filed Sept. 28, 2010) (NetworkIP Sept. 28, 2010 *Ex Parte* Letter) (noting the growing trend toward “CARD-less and PIN-less prepaid products,” and questioning if these products qualify as prepaid calling cards under our rules).

³⁰² See *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18505, App. C (identifying prepaid calling card providers as contributors); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*; *Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827, paras. 4-5 (2005) (*AT&T Prepaid Calling Card Services Declaratory Ruling*); *Prepaid Calling Card Services Order*, 21 FCC Rcd at 7300, para. 27; see also 2012 Telecommunications Reporting Worksheet, FCC Form 499-A, Line 411; 2012 *FCC Form 499-A Instructions* at 17–18.

Worksheet instructions calls for reporting of such revenues by the prepaid calling card provider, whether the end user purchases the card from the prepaid calling card service provider or a marketing agent, distributor, or retailer.³⁰³ Some stakeholders contend that this method, which requires providers to report the “face value” of a card as assessable revenue—not the amount actually paid by the provider’s end-user customer—is unrealistic considering that many cards do not have a face value, and contributing providers often do not know and have no control over the ultimate retail price of a calling card.³⁰⁴

185. We first seek comment on limiting the contribution and reporting requirements of prepaid calling card providers to report amounts paid only by the person or firm to whom the provider directly sells the prepaid card. Prepaid calling card providers that sell directly to an end-user customer would, as now, easily identify and report the assessable revenue amount. However, in situations where the provider sells the card to an intermediate distributor or retailer, rather than an end-user customer, under this paradigm we would require the provider to report revenue actually received from the intermediate distributor. This concept presumably would make it simpler for prepaid providers to report accurate revenues because they would recognize actual assessable revenue amounts from the sale to the end-user customer or the intermediate distributor and would not be required to estimate the amount paid by an end-user customer with whom the provider has no retail relationship. This approach could benefit providers and the Fund by permitting providers to report the revenue realized in a more timely fashion. We seek comment on this alternative and ask whether including an intermediate distributor or retailer in the definition of an end user for the purpose of reporting prepaid calling card revenue would create any competitive distortions or create disparities among different types of contributors.

186. In the alternative, we seek comment on codifying in greater detail the approach reflected in the existing Form 499 instructions. We first specifically inquire how prepaid calling card providers should report revenues from sales of prepaid calling card services to marketing agents, distributors, or retailers. The Form 499 instructions state that the revenue to be included in a provider’s contribution calculation is the amount actually paid by the end-user customer, not the price paid to the prepaid calling card provider by intermediate marketing agents, distributors, or retailers, even when the distributor pays a different amount than the end user.³⁰⁵

187. Should there be symmetry in the way that prepaid calling card service transactions and other transactions are treated for USF contribution purposes? For example, the Form 499 instructions also state that payphone providers should not deduct from reported revenues commission payments to owners of premises where payphones are located.³⁰⁶ Should we also adopt a rule that payphone providers may deduct from reported revenues discounts provided to intermediate distributors? We seek comment on potential bright lines that would simplify administration of contributions reporting for prepaid calling providers.

188. Under the current system, filers may be using disparate methods for reporting prepaid calling card revenues when the prepaid cards do not have a face value or the customer paid less than face

³⁰³ See, e.g., *2012 FCC Form 499-A Instructions* at 17-18.

³⁰⁴ See USTelecom Mar. 28, 2012 *Ex Parte* Letter at 7-8.

³⁰⁵ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18510, App. C (“[Line 411] should include all revenues from prepaid calling cards provided either to customers or to retail establishments. Gross billed revenues should represent the amount actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments. All prepaid card revenues are classified as end-user revenue.”). In 2002, the FCC Form 499-A instructions were clarified to include “distributors.” *2002 FCC Form 499-A Instructions* at 20.

³⁰⁶ See *2012 FCC Form 499-A Instructions* at 16 (prohibiting payphone providers from deducting commission payments to premises’ owners).

value because of discounting.³⁰⁷ Our current contribution reporting requirements permit prepaid calling card providers to use “good faith estimates” where actual revenues cannot be determined from the provider’s books of account.³⁰⁸ The lack of a uniform and bright-line standard for estimating end-user revenues may give some prepaid calling card providers undue discretion, with an inherent incentive to underreport such revenues.³⁰⁹ The lack of a bright-line standard may also limit the ability for USAC and the Commission to conduct meaningful audits of reported revenues. Adopting a bright-line standard for reporting end-user revenues could reduce or eliminate competitive disparities among providers of similar services.³¹⁰ We seek comment generally on adopting a bright-line standard that contributors must use to report prepaid calling card revenues. Would a bright-line standard create an incentive for prepaid calling card providers to establish a process with their marketing agents, distributors, and retailers to specifically identify and report the *actual* prices paid by end users? Should we also consider implementing a safe harbor for providers to estimate end-user revenues when the price paid by the end-user customer cannot readily be determined by the prepaid calling card provider?³¹¹

189. If we adopt a bright-line standard as suggested above, we seek comment on what mark-up would be appropriate for prepaid calling card providers to use in determining end-user revenues. Previously, Verizon suggested that a 35 percent mark-up on the price paid by marketing agents, distributors or retailers to the prepaid calling card provider, would be a reasonable proxy for determining the price paid for the card by end users, in part because the Internal Revenue Service (IRS) historically used that percentage to calculate and report prepaid calling card revenues for excise tax purposes.³¹² AT&T notes that mark-ups of 50 percent are common in its experience,³¹³ while others have suggested mark-ups as high as 100 percent.³¹⁴ Given this wide range of estimated mark-ups, we seek comment on whether a standard mark-up of 50 percent would be a reasonable mid-point between the various estimates that have previously been suggested by commenters. We also seek comment on whether a higher or lower standard mark-up would be more representative of industry practice or would better serve in creating an incentive for providers to work with their marketing agents, distributors and retailers to

³⁰⁷ USAC 2009 Guidance Request at 1–2; *see, e.g.*, AT&T Guidance Comments at 7–9; NetworkIP Oct. 28, 2009 Comments at 10.

³⁰⁸ 47 C.F.R. § 54.711(a).

³⁰⁹ *Cf.* Reply Comments of AT&T Inc., WC Docket No. 05-337 *et al.*, at 5-6 (filed Nov. 12, 2009) (AT&T Nov. 12, 2009 Comments); STi Oct. 28, 2009 Comments at 4-6; Reply Comments of Verizon and Verizon Wireless, WC Docket No. 06-122 at 5-6 (filed Nov. 12, 2009) (Verizon Nov. 12, 2009 Comments).

³¹⁰ USTelecom Mar. 28, 2012 *Ex Parte* Letter at 4.

³¹¹ *See Wireless Safe Harbor Order*, 13 FCC Rcd at 21255-257, paras. 6-11 (creating safe harbor percentages to approximate the percentage of interstate revenue because providers asserted they could not identify without substantial difficulty, the amount of their revenues that are interstate as opposed to intrastate).

³¹² *See* Verizon Oct. 28, 2009 Comments at 9; 26 C.F.R. § 49.4251-4. The IRS determined that a 35% mark-up “corresponds to markups in the retail sector generally” in 2000 for purposes of collecting an excise tax. T.D. 8855, 2000-4 I.R.B. 374 (Jan. 24, 2000). We note that the excise tax no longer applies to long-distance service or bundled service. I.R.S. Notice 2006-50, 2006-25 I.R.B. 1141.

³¹³ AT&T Nov. 12, 2009 Comments at 9 (stating that markups of 50% are common in the industry).

³¹⁴ *See* STi Oct. 28, 2009 Comments at 4 n.5 (“Most prepaid calling cards are sold through retailers, who sell the cards at face value but purchase them at discounts of up to 50 percent.”) (quoting Sprint Reply Comments, WC Docket No. 05-68, at 7 n.21 (filed Oct. 23, 2006)). If a prepaid calling card distributor purchases a card at a 50% discount, then the end-user revenues from that card are 100% higher than the price paid by the prepaid calling card distributor. *See also* NetworkIP Sept. 28, 2010 *Ex Parte* Letter at 3 (describing how prepaid calling card distributors regularly pay 55–75% of the face value of the card to the prepaid calling card provider; for example, if a prepaid calling card has a face value allowing the end user \$100 of call time, the retailer purchasing such card would pay the underlying carrier from \$55 to \$75).

identify the actual price paid by end-users. Adopting a standard mark-up that falls at the higher end of the scale, for example, may provide a greater incentive for prepaid calling card providers to determine and report the actual prices paid by end users. Parties should provide specific data to support their arguments.

190. To further ensure that all reporting entities are reporting prepaid calling card revenues in a consistent manner under the current system, we seek comment on requiring prepaid calling card providers to report revenues derived from the sale of prepaid calling cards not later than 60 days after the date the cards are sold by the prepaid calling card provider to a prepaid calling card distributor. The Telecommunications Reporting Worksheet instructions presently state that prepaid calling card providers should report their prepaid calling card revenues at the time the cards are sold to the end user, as opposed to the time the end user activates the prepaid minutes on the card.³¹⁵ In the case of cards sold indirectly through prepaid calling card distributors, the underlying service provider may not, in some instances, be able to identify the actual date the cards are purchased or activated by the end users. Adopting a rule that creates an appropriate time limit for recognizing revenue derived from the sale of prepaid calling cards could serve to further reduce competitive distortions that arise from disparate interpretations and application of our rules. We seek comment on this analysis. We also seek comment on whether it is reasonable to expect that most cards are sold within sixty days of the date the provider bills the prepaid calling card distributor for the cards, taking into account a 30-day billing cycle and an additional 30 days for the end user to purchase the card.

191. We seek comment on whether these alternative ideas further our proposed goal of ensuring that contribution assessments are fair. Would such a rule be simple to administer? Are there policy reasons prepaid calling card providers should be allowed to reduce or adjust reported revenues based on discounts provided to prepaid calling card distributors?

192. We also ask about the relationship between assessment of prepaid calling card providers and the “value-added” approach to assessing revenues discussed above.³¹⁶ Under this approach, each telecommunications provider in a service value chain (including wholesalers, distributors, and reselling retailers) would contribute based on the value the provider adds to the service.³¹⁷ As applied to the prepaid calling card marketplace, any firm that derives revenue from the sale of prepaid calling card services would report and contribute based on that revenue and would be permitted to take a credit based on contributions made by other contributors in the chain. Given the structure of the prepaid marketplace, this concept would presumably require any intermediate distributor or retailer to report and make contributions, including some retail stores that would be contributing to the Fund for the first time. We seek comment generally on this approach and inquire about the potential impact on firms that are not already reporting revenue or contributing to the Fund, such as retailers and other non-contributors. Should we consider an exemption from any reporting and contribution obligations for certain categories of retailers or distributors? If so, what would be the basis for such an exemption? What would be the impact on other contributors in the prepaid card chain, such as the service provider? Should we also consider a more limited exemption such that we require these companies only to report revenue derived from the card in order to ensure the Fund is fully compensated? Finally, we seek comment on what steps would need to be taken to implement any of the ideas discussed above or any alternative proposals to modify the contribution reporting requirements for prepaid calling card revenues. We also seek comment on how much time parties would need to transition to any such new rules.

³¹⁵ See, e.g., 2012 FCC Form 499-A Instructions at 17-18.

³¹⁶ See *supra* Section V.A.4.a.

³¹⁷ In 1997, the Joint Board recommended a value-added system, but the Commission adopted an end-user revenue system. See *Universal Service First Report and Order*, 12 FCC Rcd at 9205-06, paras. 842-44.

6. International Telecommunications Providers

193. In this section, we seek comment on whether we should eliminate the limited exemption for providers whose revenues are exclusively or predominantly international. In addition, consistent with our proposed goals, we seek comment on how we could modify our rules regarding international revenues so as to avoid competitive distortions in the market.

194. *Background.* As currently used in the USF contributions system, interstate and international telecommunications means communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.³¹⁸ “International revenues” do not currently include revenues between two points outside of the United States and its territories. Also, carriers that only have international revenues, but have no interstate revenues, are not currently required to contribute to the Fund.

195. Section 254(d) provides that “[e]very telecommunications carrier that provides *interstate* telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. . . . Any other provider of *interstate* telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires”.³¹⁹ In the *Universal Service First Report and Order*, the Commission concluded that contributions to the Fund will be based on the interstate and international revenues of providers of interstate telecommunications services.³²⁰ Regarding contributors’ international revenues, the Commission determined that interstate providers that also provide international telecommunications services should contribute to universal service based on revenues derived from both their interstate and international services. The Commission reasoned that contributors that provide international telecommunications services benefit from universal service because they must either terminate or originate telecommunications on the domestic public switched telephone network. The Commission did not include in the revenue base revenues derived from communications between two international points or foreign countries.³²¹ Nor did the Commission require carriers that provide only international telecommunications services to contribute to universal service because such carriers are not “telecommunications carriers that provide interstate telecommunications,” as required by section 254(d) of the Act.³²²

196. The Commission created the current international-revenues exemption even though the Commission recognized that it would result in some providers of international services being treated differently from other such providers and that international-only providers benefited from federal universal service policies.³²³ Later, in response to the Fifth Circuit’s *TOPUC* decision, the Commission created a limited international revenues exemption (LIRE) for providers that offer predominantly

³¹⁸ 2012 FCC Form 499-A Instructions at 22. “International” for USF purposes includes all “foreign communication,” which is defined as “communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.” 47 U.S.C. § 153(21).

³¹⁹ 47 U.S.C. § 254(d) (emphasis supplied).

³²⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 9205, para. 841.

³²¹ *Id.* at 9174, para. 779.

³²² *Id.*

³²³ *Id.*

international service.³²⁴ The LIRE exempts international revenues from reporting and contribution where a provider's interstate revenue is less than 12 percent of its combined interstate and international revenue.³²⁵ The LIRE is designed to ensure that no contributor's universal service obligation exceeds its total interstate revenues³²⁶ and allows a qualifying contributor to exclude its international telecommunications revenues from its contribution base.³²⁷

197. Industry trends highlight the need to take a fresh look at how international end-user telecommunications revenues are assessed under the contribution system.³²⁸ Although the Commission once predicted that the "disparity among providers [caused by the international-revenues exemption] should be minimal,"³²⁹ recent data suggest otherwise. As an example, the prepaid calling card market has grown from \$955 million in revenues in 1997 to \$2.0 billion in 2010.³³⁰ Because many of the calls placed using prepaid calling cards are international and because per-minute rates for international calls tend to be higher than rates for interstate calls, it is unsurprising that 87.2 percent of prepaid calling card revenues are international revenues,³³¹ or that many providers that specialize in prepaid calling cards qualify for the LIRE and thus do not contribute on their international revenues.³³² A provider that does not qualify for the LIRE may not be able to compete in the prepaid calling card market because it must contribute on its international prepaid calling card revenues, suggesting that the current exemption may distort the competitive market among international-only providers, LIRE-qualifying providers, and providers that must contribute on all of their international revenues.

198. In 1999, the international revenue exemptions were minimal—international revenues not subject to assessment totaled only \$333 million, or 0.4 percent of the total assessable revenue base.³³³

³²⁴ The Fifth Circuit in *TOPUC* held that the Commission's previous rule, which had required providers with limited interstate telecommunications revenues to contribute based on both their interstate and international revenues but exempted providers without interstate telecommunications revenues, was not "equitable and nondiscriminatory." *TOPUC*, 183 F.3d at 434.

³²⁵ See 47 C.F.R. § 54.706(c).

³²⁶ See *Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19.

³²⁷ See 47 C.F.R. § 54.706(c) (allowing reporting entities whose projected collected interstate telecommunications revenues are less than 12% of all assessable revenues to exclude their international revenues from their contribution base).

³²⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 9175, para. 779. We note that ending the exemption for international-only telecommunications providers would not change our contribution rules' treatment of revenues from telecommunications that neither originate nor terminate in the United States or its territories or possessions.

³²⁹ *Id.*

³³⁰ See 2011 Telecommunications Reporting Worksheets, FCC Form 499-A (reporting calendar year 2010 revenues). See also *1997 Revenues Report*, Table 6.

³³¹ This information was calculated based on a review of the Telecommunications Reporting Worksheets filed in April 2011.

³³² See, e.g., Letter from Craig Neeld, Budget Prepay Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68, at 2 (filed Sept. 28, 2010) (reporting that only 4.5% of Budget Prepay's interstate and international prepaid calling card revenues were interstate); Letter from Wael Manasra, ChitChat Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68, at 2 (filed Sept. 30, 2010) (reporting that only 2.9% of ChitChat's interstate and international prepaid calling card revenues were interstate).

³³³ See Indus. Analysis & Tech Div., *Telecommunications Industry Revenues: 1999*, Table 4 (Common Carrier Bur., 2000), available at <http://www.fcc.gov/wcb/stats> (last visited Apr. 3, 2012) (*1999 Revenues Report*). We use figures for 1999 because that is the first reporting year in which both the exemption for international-only providers and the LIRE were in effect.

Since that time, the revenues foregone through these exemptions have increased more than tenfold, with international revenues not subject to assessment representing about \$3.4 billion, or almost five percent of the assessable revenue base in 2010.³³⁴ One potential reason for this increase is that our contribution rules narrowly focus on the amount of a provider's end-user interstate revenues, rather than whether or not the provider provides interstate telecommunications. As such, these exemptions may shelter not only international providers with a limited presence in the domestic market, but also domestic providers that report limited revenues for interstate telecommunications provided to end users. For example, of the 383 filers who qualified for the LIRE in 2010, 86 filers reported that less than half of their total domestic revenues came from the sale of international telecommunications. Thirty filers reported higher interstate telecommunications revenues from resellers than from end users.³³⁵ Indeed, other providers have even offered free interstate calling while only charging customers for international calls.³³⁶ The current system's focus on the ratio of each provider's end-user interstate telecommunications revenues to its total interstate and international telecommunications revenues ignores the fact that international-only and LIRE-qualifying providers may have a substantial, non-*de minimis* presence in the domestic market—and amending the *de minimis* rules may be a better means of exempting telecommunications providers that truly have a *de minimis* presence.

199. *Discussion.* In this section, we seek comment on modifications to our current rules regarding the contribution obligations of international providers.

200. *Eliminating the “International Only” and the “Limited International Revenues” Exemptions.* We seek comment on whether the Commission should eliminate the exemption for international-only providers and LIRE-qualifying providers, and our legal authority for doing so. In 1997, the Commission interpreted section 254 of the Act, and specifically our authority to assess all “providers of interstate telecommunications,” as drawing a three-way distinction between intrastate, interstate, and international telecommunications.³³⁷ We seek comment on whether, in light of the changes in the industry and telecommunications marketplace, section 254's reference to interstate telecommunications in the context of universal service contributions is better viewed as drawing a jurisdictional line between the authority of the states (which have authority over providers of intrastate telecommunications under section 254(f)) and the authority of the Commission (which has authority over providers of interstate telecommunications under section 254(d)).³³⁸ Such a reading of section 254 would parallel the Commission's reading of other sections of that Act that divide responsibility between the state and federal jurisdictions and include international services within the Commission's jurisdiction.³³⁹

³³⁴ This information was calculated based on a review of the Telecommunications Reporting Worksheets filed in April 2011.

³³⁵ This information was calculated based on a review of the Telecommunications Reporting Worksheets filed in April 2011.

³³⁶ See, e.g., David Pogue, *Google Shakes It Up Again With Free Phone Calls*, Pogue's Posts, N.Y. Times (Aug. 25, 2010), available at <http://pogue.blogs.nytimes.com/2010/08/26/google-shakes-it-up-again-with-free-phone-calls/> (“The idea, clearly, is that Google will make enough money from the overseas calls to make the domestic ones free.”).

³³⁷ See *Universal Service First Report and Order*, 12 FCC Rcd at 9174–75, para. 779 (interpreting 47 U.S.C. § 254(d)).

³³⁸ Compare 47 U.S.C. § 254(f) (giving states authority over “every telecommunications carrier that provides intrastate telecommunications services”), with 47 U.S.C. § 254(d) (Commission has authority over every “provider of interstate telecommunications”).

³³⁹ See, e.g., 47 U.S.C. § 225(d)(3)(B) (stating that “costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction”); 47 C.F.R. § 64.604(c)(5)(iii)(A) (defining “interstate services” to include “international . . . services”); see also, e.g., 47 U.S.C. § 410(c) (requiring referral of (continued...))

Alternatively, we seek comment on whether we could rely on section 254(b)(4)'s principle of "equitable and nondiscriminatory contributions" to require international-only and LIRE-qualifying providers to contribute because these providers also benefit from being able to originate or terminate traffic in the United States.³⁴⁰ We note that the Act distinguishes "foreign communication" from both interstate and intrastate.³⁴¹ Does that distinction affect the Commission's authority to treat interstate and foreign telecommunications in the same manner?

201. We also seek comment on whether the *TOPUC* decision limits our ability to re-examine the international-only and LIRE exemptions today. The Fifth Circuit in *TOPUC* held that the Commission's previous rule, which had required providers with limited interstate telecommunications revenues to contribute based on both their interstate and international revenues but exempted providers without interstate telecommunications revenues, was not "equitable and nondiscriminatory."³⁴² The court held that the previous rule "damage[d] some international carriers [*i.e.*, limited-interstate-revenue providers] more than it harm[ed] others [*i.e.*, no-interstate-revenue providers]."³⁴³ The court also found the rule inequitable because it required limited-interstate-revenue providers "to incur a loss to participate in interstate service."³⁴⁴ The court did not, however, make any findings or opine about the Commission's jurisdiction to assess international revenues. Thus the Commission should have significant discretion to revise its rules regarding contributions on international revenues, consistent with the Fifth Circuit decisions, so long as the new rule is equitable and nondiscriminatory. We seek comment on this analysis and our ability to eliminate the LIRE and to assess one hundred percent of a contributor's interstate and international revenues, without a LIRE exemption.

202. Commenters that oppose the elimination of the "international only" and the "limited international revenues" exemptions should provide specific alternative rules and explain how their proposals will support the proposed goals set forth in this Notice. We ask commenters to provide data to quantify how our proposals or alternatives will impact the Fund and reduce compliance costs and burdens.

203. *Modifying the Limited International Revenues Exemption.* If we were to assess all international telecommunications revenues, as suggested above, should we also eliminate the LIRE? In the alternative, if we maintain an exemption for international-only providers, we seek comment on whether modifying the LIRE and the contribution obligations of LIRE-qualifying contributors may be appropriate.

204. Today's LIRE is designed to ensure that no contributor's universal service obligation exceeds its total interstate (*i.e.*, non-international) revenues.³⁴⁵ As explained above, the exemption of

(Continued from previous page)

matters regarding the "jurisdictional separation of common carrier property and expenses between interstate and intrastate operations"; 47 C.F.R. Part 36 (requiring carriers to separate costs based on usage but not distinguishing between interstate and international telecommunications).

³⁴⁰ 47 U.S.C. § 254(b)(4); *see* 47 U.S.C. §§ 154(i) ("The Commission may . . . make such rules and regulations . . . not inconsistent with this Act, as may be necessary in the execution of its functions."); 201(b) (The Commission "may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999) (Section 201(b) "explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."); Telecommunications Act of 1996, Pub. L. No. 104-104, § 101(a), 110 Stat. 56, 71-75 (1996) (adding section 254 to the Act).

³⁴¹ *See, e.g.*, 47 U.S.C. §§ 151-153.

³⁴² *TOPUC*, 183 F.3d at 434.

³⁴³ *Id.* at 435.

³⁴⁴ *Id.*

³⁴⁵ *See Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19.

international telecommunications revenues for LIRE-qualifying providers may potentially distort certain markets for international telecommunications. If we nonetheless retain the LIRE, modifying it may be appropriate to limit the advantage that LIRE-qualifying providers have over their competitors and to ensure that all providers fairly and equitably contribute to supporting universal service. Specifically, if we do not require LIRE-qualifying providers to contribute on *all* of their end-user international telecommunications revenues, we propose to require LIRE-qualifying providers to contribute on at least a portion of those revenues. Moreover, the LIRE-qualifying factor codified in our current rules (12 percent) may no longer provide the “adequate margin of safety” it once did for providers that primarily offer international services,³⁴⁶ given that the contribution factor has remained above 12 percent over the past two years.³⁴⁷ We therefore seek comment on ways to modify the LIRE-qualifying factor.

205. If we retain the LIRE, we seek comment on whether we should modify the LIRE as follows:

If the ratio of an entity’s collected interstate end-user telecommunications revenues to its combined collected interstate and international end-user telecommunications revenues is less than that year’s LIRE-qualifying factor, that entity’s assessable revenues shall be its collected interstate end-user telecommunications revenues plus an equal amount of its collected international end-user telecommunications revenues, net of contributions.

(1) The LIRE-qualifying factor for a given year shall be equal to the highest contribution factor established for any quarter of the previous year plus three percent.

(2) For purposes of this subsection, an “entity” shall refer to the entity that is subject to the universal service reporting requirements and shall include all of that entity’s affiliated providers of interstate and international telecommunications and telecommunications services.

206. We seek comment and (if appropriate) examples of how the LIRE results in a competitive advantage for some providers. Providers that qualify for the LIRE compete against non-qualifying providers that must include *all* of their international revenues in calculating their contribution base.³⁴⁸ LIRE-qualifying providers benefit from being able to originate and terminate both interstate and international calls in the United States. Further, we seek comment on whether the proposed modification of the LIRE would advance the goal of fairness by treating competitive providers in a like manner. Would it advance other of our proposed goals for contribution reform, such as ensuring a stable contribution base? Would requiring LIRE-qualifying providers to contribute based on an amount of their

³⁴⁶ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3806, para. 125.

³⁴⁷ The average contribution factor for 2010 was 13.97 percent and the average contribution factor for 2011 was 15.9 percent. The quarterly factor for the second quarter 2012 is 17.4 percent. See *Public Notices on Proposed Contribution Factors for 2010-2012*, Contribution Factor and Quarterly Filings—Universal Service Fund Management Support, available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support> (last visited Mar. 8, 2012).

³⁴⁸ As discussed above, the Commission adopted the LIRE in 1997 in response to the *TOPUC* decision. See *Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19; *TOPUC*, 183 F.3d at 433–35. The Fifth Circuit and the Commission focused at the time on the need to ensure that our rules do not discriminate against primarily international providers vis-à-vis purely international providers. See, e.g., *TOPUC*, 183 F.3d at 435 (holding that requiring “companies such as COMSAT to incur a loss to participate in interstate service” is inequitable and discriminatory, especially when “the agency concedes that its rule damages some international carriers like COMSAT more than it harms others”).

international revenues equal to their interstate revenues be a more equitable approach in today's marketplace? Would the modification proposed above reduce the potential regulatory advantage that LIRE-qualifying providers have over their competitors? What impact would such a modification have on the Fund?

207. We also seek comment on whether we should set the LIRE-qualifying factor based upon a formula rather than fixed percentage. A fixed percentage assumes that the Commission can easily forecast changes in the contribution base as well as changes in the demand for universal service support. Neither of these assumptions has been valid in recent years. The Commission has already had to increase the LIRE-qualifying factor once to respond to the rising contribution factor.³⁴⁹ Using a formula to establish the LIRE-qualifying factor should eliminate the need for us to periodically rewrite our rules. Moreover, a formula tied to the current contribution factor would also respond to changes in the contribution factor. If, for example, future events bring the contribution factor down, the LIRE-qualifying factor would automatically decrease in future years, which should increase the contribution base. Should we set the LIRE-qualifying factor one year at a time to provide regulatory certainty for contributors? A three percent increase tied to the current or anticipated contribution factor is generally in line with previous increases to the LIRE.³⁵⁰ Would a three percent increase, for example, over the previous year's highest contribution factor, be sufficient to address unexpected events in the future?³⁵¹

208. We seek comment on what steps would need to be taken to implement the potential modifications outlined above or alternative proposals to modify the contribution requirements for international-only and predominantly international providers. We also seek comment on how much time parties would need to transition to any modified or new reporting requirements.

7. Reforming the *De Minimis* Exemption

209. In this section, we seek comment on streamlining the *de minimis* exemption to ease administrative burdens. In particular, we seek comment on whether we should modify the *de minimis* exemption to base the threshold on a provider's assessable revenues rather than on the amount of its contributions. We also seek comment on how we could potentially reform our rules to minimize the filing requirements for companies that may be subject to the exemption.

210. *Background.* The Act gives the Commission authority to exempt a carrier from contributing to universal service if the carrier's telecommunications activities "are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be *de minimis*."³⁵² Accordingly, our rules exempt from contribution any telecommunications provider whose "contribution to universal service in any given year is less than \$10,000."³⁵³ These *de minimis* telecommunications providers also are not required to file the

³⁴⁹ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3806-07, paras. 123-128.

³⁵⁰ When the Commission established the LIRE at 8 percent in 1999, the universal service contribution factor was 5.8995 percent. In 2002, when the Commission raised the LIRE to 12 percent, the contribution factor had risen to 6.808 percent, and the Commission anticipated that it would exceed 8 percent for the year. See 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3806, para. 125.

³⁵¹ Although we anticipate that the contribution factor will be less likely to increase above that year's LIRE-qualifying factor if we use a formula rather than a fixed percentage, the Commission's waiver rules would remain in effect even with revision of the LIRE, as discussed herein. See 47 C.F.R. § 1.3.

³⁵² 47 U.S.C. § 254(d).

³⁵³ 47 C.F.R. § 54.708.

Telecommunications Reporting Worksheet unless required by our rules governing contributions to other federal regulatory programs.³⁵⁴

211. In 2010, about 55 percent of all Telecommunications Reporting Worksheet filers qualified for the *de minimis* exemption; absent that exemption, 1,708 additional filers would have been required to contribute to universal service directly.³⁵⁵ We estimate that, during that same year, 96 percent of the financial benefits of the *de minimis* exemption went to the largest 1,020 *de minimis* telecommunications filers, all of whom would have contributed more than \$1,000 to universal service that year.³⁵⁶

212. Today's *de minimis* exemption creates administrative burdens and uncertainty for many qualifying providers and USAC.³⁵⁷ Specifically, tying *de minimis* status to a telecommunications provider's annual contribution amount means that some providers cannot project with reasonable certainty whether or not they will qualify as *de minimis* each year until mid-September, when the Commission announces the fourth-quarter contribution factor.³⁵⁸ Because of this uncertainty, many telecommunications providers close to the existing *de minimis* threshold must file the quarterly Telecommunications Reporting Worksheet and contribute on a quarterly basis out of precaution—if a provider fails to do so and it turns out not to qualify for the exemption, it faces late filing fees, penalties, and other sanctions.³⁵⁹ Moreover, the uncertainty caused by today's *de minimis* exemption extends beyond potentially qualifying entities to any providers from which they purchase telecommunications—if the potentially qualifying provider turns out to be *de minimis*, then the underlying provider should have contributed on its revenues from sales to that provider; if not, then the underlying provider has no such obligation.

213. *Discussion.* We seek comment on whether we should modify the Commission's *de minimis* rules in an effort to reduce administrative burdens. Specifically, we seek comment on revising the rule as follows to base the *de minimis* threshold on a provider's assessable revenues rather than on the amount of its contributions:

If a potential contributor's annual assessable revenues in any given year is \$50,000 or less, that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do

³⁵⁴ *Id.*

³⁵⁵ The 55 percent includes 1,920 filers that reported no revenue. This information was calculated based on a review of the Telecommunications Reporting Worksheets filed in April 2011.

³⁵⁶ *De minimis* telecommunications providers may indirectly contribute to the universal service support mechanisms through contribution pass through charges that they pay to their wholesale providers. *De minimis* telecommunications providers still benefit from the exemption, however, because their wholesale provider only contributes on its (wholesale) revenues rather than the *de minimis* telecommunications provider's (retail) revenues.

³⁵⁷ See, e.g., Letter from L. Charles Keller, Counsel for Network Enhanced Telecom LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 7 (filed Aug. 19, 2010) ("It is very difficult for these [*de minimis*] carriers to determine, in a forward-looking way, whether they will be *de minimis* for the coming year . . .").

³⁵⁸ For example, assume that a provider projects that it will collect \$14,500 each quarter in assessable revenues. If the provider assumes that the contribution factor will remain constant throughout this next year at its current level (17.4%), the provider's contribution obligation would be \$10,092 and the provider would not qualify as *de minimis*. If the contribution factor drops to 17%, however, the provider's calculated obligation would drop to \$9,860 and the provider would not need to contribute at all.

³⁵⁹ 47 C.F.R. § 54.708.

so by our rules governing TRS, numbering administration, or shared costs of local number portability. ...

A potential contributor may—but need not—file the quarterly Telecommunications Reporting Worksheet for the year after it qualifies as a de minimis telecommunications provider.

214. Such a rule would set the *de minimis* threshold based on a telecommunications provider's assessable revenues rather than what it would have contributed. A potentially qualifying telecommunications provider (and its underlying providers) should know with increased certainty whether it will actually qualify as a *de minimis* telecommunications provider as the exemption will no longer depend on each year's quarterly contribution factors. We seek comment on this analysis.

215. If we adopt this approach, is \$50,000 the right cutoff for assessable revenues to qualify for the *de minimis* exemption, or should we adopt some other cutoff? We use \$50,000 as a potential cut off because today the *de minimis* exemption applies when the contribution would be less than \$10,000. If a contributor (under the existing *de minimis* rule) has \$50,000 in annual assessable revenues, and we assume an average contribution factor for the year of 17 percent, that contributor would qualify for the *de minimis* exception. We believe that adopting a \$50,000 revenues threshold would not change the number of contributors that would qualify for the *de minimis* exemption, but would simplify the application of the *de minimis* rule. Modifying the *de minimis* exemption in this manner could be more equitable, could have a smaller marginal impact, and may better align our requirements for reporting and contributing without affecting those whose "telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be *de minimis*."³⁶⁰ We seek comment on this analysis.

216. We also seek comment on whether such a rule would also reduce the reporting obligations and regulatory uncertainty for *de minimis* telecommunications providers with growing revenues. If so, we ask commenters to quantify the savings. Should we make it optional for contributors to file quarterly Telecommunications Reporting Worksheets for a year after which a contributor qualified as *de minimis*? To illustrate, consider a telecommunications provider that had \$9,000 in assessable revenues in 2011. Currently, the provider would need to have projected its assessable revenues for 2012 (and thus forecast whether or not it would still qualify for the *de minimis* exemption) by November 1, 2011, when the Telecommunications Reporting Worksheet projecting revenues for the first quarter of 2012 was due. Further, the telecommunications provider could face late filing fees and other sanctions if it did not file the quarterly Telecommunications Reporting Worksheet, but later determines that it should have (because it no longer qualifies for the *de minimis* exemption). We seek comment on whether we should adopt a rule that allows telecommunications providers in that position to avoid filing quarterly Telecommunications Reporting Worksheet in the first year for which they are no longer a *de minimis* filer. Such a rule could strike a reasonable balance between providing certainty to small (and growing) businesses in the telecommunications marketplace and the need for all telecommunications providers with a substantial presence to contribute to universal service in an equitable manner. We note that such a rule would not alter the obligation of telecommunications providers to file the *annual* Telecommunications Reporting Worksheet.

217. We also seek comment on other reforms the Commission could make to all of its *de minimis* rules—in the context of funding universal service, Telecommunications Relay Services (Interstate TRS), North American Numbering Plan, Local Number Portability, and regulatory fees administration programs—to relieve *de minimis* companies of the burden of filing the annual Telecommunications Reporting Worksheet. The *de minimis* exemption is meant to relieve small

³⁶⁰ 47 U.S.C. § 254(d).

businesses of the cost of complying with our contribution rules when that cost would outweigh the contributions we could expect from the provider.³⁶¹ Today, however, thousands of *de minimis* telecommunications providers must nevertheless complete the annual Telecommunications Reporting Worksheet. We seek comment on whether we should reform our rules for filing the annual Telecommunications Reporting Worksheet and set the *de minimis* threshold based on a metric that does not require completing the entire worksheet. For example, should we establish an abbreviated form for telecommunications providers with less than some cutoff value in gross revenues? What metric should the Commission use for determining *de minimis* status? We ask commenters to discuss whether and how alternative metrics would be consistent with the language of section 254(d).³⁶² What threshold should the Commission establish to permit filing of the abbreviated form? How could we ensure that any revisions to these *de minimis* rules will not undermine the stability of funding for various federal regulatory programs or allow telecommunications providers to evade contribution obligations? Commenters that oppose such suggested rules should provide specific alternative rules and explain how their proposals will support the goals of universal service. We also seek comment on what changes, if any, may be needed in our *de minimis* rules if we were to assess the international telecommunications revenues of all telecommunications providers.

218. We seek comment on what steps would need to be taken to implement any of the potential modifications detailed above or alternative proposals to improve the contribution reporting requirements for *de minimis* providers. We also seek comment on how much time, if any, parties would need to transition to any new rules.

B. Assessing Contributions Based on Connections

219. In this section, we seek comment on moving from a revenues-based contribution assessment system to a system based on connections. Nothing in the Act requires contributions to be based on revenues, and the Commission has explored a connections-based methodology in the past. We ask whether a connections-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters.

220. Under a connections-based system, providers would be assessed based on the number of connections to a communications network provided to customers. Providers would contribute a set amount per connection, regardless of the revenues derived from that connection. Under various proposals, there would be one standard monthly assessment for certain kinds of connections, typically provided to individuals, and a higher standard monthly assessment for higher speed or capacity connections, typically provided to enterprise customers. There might be several tiers for assessment based on speed or capacity. The standard assessment and higher assessment levels for higher speed or capacity connections would be calculated by applying a formula based on the USF demand requirement and the number of connections, however that term is defined. This contribution factor would apply equally for all connections that fall into the same category, such that assessments would no longer be based on revenues.

221. In 2001, the Commission first sought comment on replacing the existing revenues-based methodology with one that assesses contributions on the basis of a flat fee “per unit” charge.³⁶³ In early 2002, the Commission proposed an assessment mechanism based on the number or speed of connections

³⁶¹ See 2001 Contribution Methodology Notice, 16 FCC Rcd at 9906–07, para. 31.

³⁶² 47 U.S.C. § 254(d) (“The Commission may exempt a carrier or class of carriers from [the requirement to contribute] if the carrier’s telecommunications activities are limited to such an extent that the level of such carrier’s contribution to the preservation and advancement of universal service would be *de minimis*.”).

³⁶³ 2001 Contribution Methodology Notice, 16 FCC Rcd at 9905-06, paras. 25-30.

a contributor provides to a public network.³⁶⁴ The Commission subsequently sought comment on various iterations of a connections-based system,³⁶⁵ including hybrid systems that would include a connections and revenues component.³⁶⁶

222. Proponents of connections-based methodologies have argued that a connections-based system may provide a more stable contribution base than a revenue-based system because the number of connections has historically been more stable than end-user interstate telecommunications revenues.³⁶⁷ In addition, proponents have suggested that connections-based assessments may mitigate the need to differentiate between revenues from interstate and intrastate jurisdictions and from telecommunications and non-telecommunications services.³⁶⁸ Others have raised concerns that a connections-based system would impose new costs on both industry and USAC in the form of new data collection and reporting requirements, necessitating changes to billing and reporting systems.³⁶⁹ Some have argued that a connections-based system may be at least as complex to implement and administer as a revenue-based system,³⁷⁰ with many operational details that would need to be resolved. Despite several rounds of comment, the industry as a whole has not reached consensus about whether connections-based assessments are the best way to reform the contribution system: some providers have strongly opposed a

³⁶⁴ 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3766, para. 34. In the 2002 NPRM, the Commission used the term “capacity” to refer to the bandwidth, or speed, of a connection. *Id.* Here, we use the term “speed” instead of “capacity” for such purposes. We use the term capacity here in the sense we used it in our recent *USF/ICC Transformation Order*, to refer to “the total volume of data sent and/or received by the end user over a period of time.” See *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17689, para. 97.

³⁶⁵ The Commission has inquired about various assessment methodologies including: (1) assessing residential, single-line business, and mobile connections \$1 and multi-line business customers a residual amount calculated to meet with the remaining needs of the USF, 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3766, para. 35; (2) assessing a mandatory minimum annual contribution of \$10,000 per provider, offset by an assessment for each end-user connection based on the nature or capacity of the connection, 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24986, 24989, paras. 72, 78; and (3) assessing all connections based solely on capacity, without regard for whether the connections are residential or business and sharing the contribution obligation for switched end-user connections between switched and access providers, *Id.*

³⁶⁶ In the 2002 *Second Contribution Methodology Order and FNPRM*, the Commission sought comment on a hybrid connections and revenues proposal and a hybrid numbers and connections proposal. 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24991–97, paras. 86–100. In 2008, the Commission sought comment on assessing business connections as part of a hybrid numbers and connections methodology. See 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6686, App. B, para. 81. See also Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, NBP Notice #19, GN Docket Nos. 09-47, 09, *et al.*, Public Notice, 24 FCC Rcd 13757-58 (Wireline Comp. Bur. 2009) (seeking comment on numbers or connections-based methodology, an expanded revenues-based methodology, or some combination thereof).

³⁶⁷ 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24985, para. 70. See Letter from Ad Hoc Telecommunications Users Committee, Google, Inc. *et al.*, to Julius Genachowski, Chairman, FCC *et al.*, WC Docket No. 10-90 *et al.* (filed Aug. 8, 2011); Comments of SouthernLINC Wireless, GN Docket No. 09-47 *et al.*, at 7-8 (filed Dec. 7, 2009); Comments of the USA Coalition, GN Docket No. 09-47 *et al.*, at 9 (filed Dec. 7, 2009).

³⁶⁸ 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24985, para. 70; see, e.g., Comments of the United States Telecommunications Association, WC Docket No. 05-337 *et al.*, at 12 (filed Nov. 26, 2008) (USTA Nov. 26, 2008 Comments).

³⁶⁹ See, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 4.

³⁷⁰ See, e.g., *id.* at 3; Letter from L. Charles Keller, Counsel for Inmarsat, *et al.* to Marlene H. Dortch, Secretary, FCC (filed Aug. 13, 2010) (Inmarsat Aug. 13, 2010 *Ex Parte* Letter).

connections system,³⁷¹ others have been agnostic about whether a connections-based system is the optimal reform,³⁷² and still others who once supported a move to a system that includes a connections-based component appear to be re-evaluating their position on this issue.³⁷³ In light of the varied connections-based proposals, the evolution of the communications ecosystem, and the comments received over the past decade, we now seek to refresh the record on the operation of a connections-based system, as well as the costs and benefits of such a system, as discussed below. We ask parties claiming significant costs or benefits of a connections-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

1. Legal Authority

223. Section 254(d) of the Act requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”³⁷⁴ It also gives the Commission broad permissive authority to require contributions from a variety of providers. We seek to refresh the record on whether a connections-based assessment would satisfy the requirements of section 254(d). In responding to the specific questions below, we invite commenters to address how a connections-based system should be structured to fulfill the statutory requirement that telecommunications service providers contribute on an equitable and nondiscriminatory basis. If we were to adopt a connections-based contribution methodology, should we also explicitly exercise our permissive authority over specified providers to make clear that connections provided by those providers would be assessed? How would we ensure that all entities that contribute under a connections-based system are providers of interstate telecommunications?

224. In 2002, the Commission proposed a hybrid revenues/connections-based system that would require a mandatory minimum contribution based on interstate telecommunications revenues for all providers of interstate telecommunications. Under this proposal, all non-*de minimis* telecommunications carriers would contribute a mandatory minimum, either based on a percentage of total interstate revenue, or based on increasing percentages of telecommunications revenues or increasing flat-fee amounts tied to their telecommunications revenues.³⁷⁵ Providers with end-user customers would also be assessed on a flat fee basis for residential, single line business, and mobile connections, and on a tiered basis based on speed or capacity for multi-line businesses. Providers with end-user assessments could offset their connections-based assessment against their minimum contribution.³⁷⁶ In crafting this proposal, the Commission was specifically addressing concerns that a connections-based proposal would be inconsistent with section 254(d)’s requirement that every provider of interstate telecommunications service contribute.³⁷⁷ We seek to refresh the record on this proposal and seek comment on whether, in fact, a mandatory contribution

³⁷¹ See, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 3; *Omaha Plan* at 22 (arguing that proposals to collect USF costs through connections are outdated, noting that connections fail to measure demand placed on the network by modern day electronic multi-media communications).

³⁷² See, e.g., Letter from Jeffrey S Lanning, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-22 (filed Sept. 10, 2010) (supporting numbers and/or connections or revenues).

³⁷³ Compare, e.g., Comments of AT&T Inc., GN Docket No. 09-51 *et al.*, at 3-5 (filed Dec. 7, 2009) with Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, *et al.*, (filed Oct. 13, 2010) (setting out principles for contribution reform but not advocating a particular methodology).

³⁷⁴ See 47 U.S.C. § 254(d).

³⁷⁵ 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24989-90, paras. 78, 80.

³⁷⁶ *Id.* at 24989, para. 78.

³⁷⁷ *Id.* at 24985, para. 71.

from every interstate telecommunications carrier is required to satisfy the requirements of section 254(d) that contributions be equitable and nondiscriminatory.

225. We also seek specific comment on whether a connections-based methodology is consistent with the Fifth Circuit's *TOPUC* decision, which held that section 2(b) of the Act prohibits the Commission from assessing revenues associated with intrastate telecommunications service.³⁷⁸ The Fifth Circuit also interpreted the Act as limiting the Commission's authority to assess international revenues, finding that the Commission's contribution system may not inequitably and discriminatorily assess providers more in universal service contributions than the provider generates in interstate revenues.³⁷⁹ We seek comment on the Commission's authority under a connections-based system to assess international connections that either originate or terminate in the United States and whether *TOPUC* would apply under such a system. We also seek comment on whether, if we were to adopt a connections-based system, we should adopt an exemption similar to the LIRE under the current revenues-based system for connections that are primarily international in nature,³⁸⁰ and if so, how to craft such an exemption.

2. Defining "Connections"

226. *Background.* Unlike revenues, "connections" is not a universally-recognized or tracked unit, and the Commission would need to create a definition of "connection" for purposes of moving to a new connections-based contribution methodology. The definition of an assessable "connection" is therefore integral to any connections-based proposal.³⁸¹ And whereas total revenues are tracked and reported for non-USF purposes, such as for IRS or Securities Exchange Commission (SEC) requirements, connections generally are not tracked for other governmental purposes.³⁸²

227. Over the years, the Commission and the industry have grappled with the appropriate definition of connection for a connections-based methodology.³⁸³ In general, a "connection" can be viewed as a physical *facility* (wired or wireless) that connects Point A to Point B, or a *service* provided over some physical facility.

228. The Commission has sought comment for purposes of universal service contributions on the definition of "connection" several times over the last decade in a series of Notices. As such, the

³⁷⁸ *TOPUC*, 183 F.3d at 446-48. *But see* State Members of Joint Board CAF Comments at 121-24 (both the Commission and states should be able to assess interstate and intrastate telecommunications revenues; *TOPUC* was wrongly decided).

³⁷⁹ *TOPUC*, 183 F.3d at 434-35.

³⁸⁰ Under the LIRE, a contributor need not contribute on its projected collected international end-user telecommunications revenues if that contributor's projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenue. 47 C.F.R. § 54.706(c).

³⁸¹ *See, e.g.*, Inmarsat Aug. 13, 2010 *Ex Parte* Letter; Letter from Andrew M. Brown, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, et al., at 3 (filed Apr. 13, 2012) (Ad Hoc Telecom Users Apr. 13, 2012 *Ex Parte* Letter) (details of implementation will determine whether connections-based system is fair).

³⁸² As discussed in further detail below, the Commission collects information about broadband connections to end user locations, wired and wireless local telephone services, and interconnected VoIP service in individual states through FCC Form 477 filings. *See infra* para. 229.

³⁸³ *See, e.g.*, Comments of the Coalition for Rational Universal Service and Intercarrier Reform, WC Docket No. 03-109, et al., at 18 (filed Nov. 26, 2008) (arguing that proposed numbers-and-connections fees are based on historical time-division multiplexing network technical constructs, and become clouded when applied to new packet-based voice services).

Commission has several potential definitions of the term “connection” on which to draw. In early 2002, the Commission sought comment on a facilities-based definition that would define a connection as “a facility that provides an end user with independent access to a public network regardless of whether that connection is circuit-switched, packet-switched, or a leased line (e.g., special access).”³⁸⁴ Later in 2002, the Commission sought further comment on a modified definition which deleted the qualifier “independent” before “access” and included private as well as public networks. Under that definition, a connection is a facility that provides end users “with access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line.” Subsequently, in 2008, the Commission proposed a service-based definition for business connections as part of a hybrid numbers-connection methodology, when it sought comment on defining a connection as “an interstate telecommunications *service* or an interstate *service* with a telecommunications component that connects a business end-user’s physical location (e.g., premises) on a dedicated basis to the contributor’s network or the PSTN.”³⁸⁵

229. In addition to the definitions proposed in the various Notices in the contributions rulemaking proceeding, the Commission also currently collects data from certain communications providers about “connections” as defined in the FCC Form 477. FCC Form 477 requires four types of providers to report on their connections: (1) “facilities-based providers of broadband connections to end user locations,” whether wireline or wireless;³⁸⁶ (2) providers of “wired or fixed wireless local exchange telephone service”;³⁸⁷ (3) providers of interconnected VoIP service;³⁸⁸ and (4) providers of “mobile

³⁸⁴ The Commission did not define the term “independent access,” but asked whether a connection should be considered “independent” if it does not require the presence of any other activated end-user connection to provide access to the network. The Commission then invited comment on whether, for example, two activated voice-grade connections via a single loop might be deemed “independent” because each allows stand-alone access to a public network. The Commission, likewise, sought comment on whether line-shared or line-split voice-band service and digital subscriber line (DSL) service provided over the same loop might both be deemed “independent,” and therefore separately assessed, because each allows stand-alone access to a public network. The Commission also pointed out that certain information services, such as voice mail or dial-up Internet access, may not be deemed “independent” because they would not allow access to a public network without an activated voice-grade connection. *2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3769-70, para. 42.

³⁸⁵ See *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6686, App. B, para. 81 (emphasis added).

³⁸⁶ For FCC Form 477 purposes, facilities-based providers of broadband connections must report wired lines or wireless channels that enable an end user to receive information from, or send information to, the Internet at transfer rates exceeding 200 kbps in at least one direction. 2012 Instructions for Local Telephone Competition and Broadband Reporting, Form 477 at 2 (*2012 FCC Form 477 Instructions*). For the purposes of FCC Form 477, a broadband “end user” is a residential, business, institutional, or government entity who uses broadband services for its own purposes and who does not resell such services to other entities or incorporate such services into retail Internet-access services. For purposes of Part I of FCC Form 477, an Internet Service Provider (ISP) is not an “end user” of a broadband connection. *Id.* For the purposes of FCC Form 477, an entity is a “facilities-based” provider of broadband connections to end user locations if any of the following conditions are met: (1) it owns the portion of the physical facility that terminates at the end user location; (2) it obtains unbundled network elements (UNEs), special access lines, or other leased facilities that terminate at the end user location and provisions/equips them as broadband, or (3) it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum. *Id.*

³⁸⁷ Providers of wired or fixed wireless local exchange telephone service must report voice grade equivalent lines and voice grade equivalent wireless channels. *2012 FCC Form 477 Instructions* at 2.

³⁸⁸ Interconnected VoIP service providers must report service that enables real-time, two-way voice communications; requires a broadband connection from the user’s location; requires Internet-protocol compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched network and to terminate calls to the public switched network. *2012 FCC Form 477 Instructions* at 3.

telephony services.”³⁸⁹ Form 477 thus effectively categorizes connections according to services, so that a given provider may report separately about voice and broadband services delivered over the same physical facility.

230. *Discussion.* We seek comment on the definition of an assessable connection that best meets our proposed goals of promoting efficiency, fairness, and the sustainability of the Fund, as well as other goals identified by commenters. As described below, the question of the appropriate definition of an assessable connection is related to, but may be distinct from, the questions raised in Section IV of this Notice regarding what providers and services should contribute to universal service.³⁹⁰

231. *Facilities-Based Definition.* A facilities-based definition focuses on the physical facility – either wired line or wireless channel – that is provided by the contributor. Under a facilities-based definition, the connection itself, and not the services that are provided over the connection, would be assessed. For example, a physical line to a residential home would be assessed as one “assessable connection” even if it provided multiple assessable services to the customer. A multi-line business connection would likewise be assessed based on speed or capacity of the facility and not the services provided over the facility. A facilities-based approach raises complexities, however, to the extent that the assessment varies based on the speed of the facility, in circumstances where the physical connection provides variable speed on demand.

232. If we were to adopt a facilities-based definition, would it be appropriate to build on the definition that was suggested in late 2002: a facility that provides end users with “access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line”?³⁹¹ For example, we seek comment on the following potential definition of connection:

Connection. A facility that provides end users with access to any assessable service, whether circuit-switched, packet-switched, wireline or wireless, leased line or provisioned wireless channel.

Alternatively, we seek comment on the following potential definition of connection, building on the FCC Form 477:

Connection. A wired line or wireless channel used to provide end users with access to any assessable service.

233. Are there any significant differences in what would qualify as “connections” under these definitions?

234. We believe either definition could be used with either of the two general approaches to defining assessable services described in Section IV of this Notice. That is, either definition could be used either if, as described in Section IV.B, we were to continue defining assessable services as

³⁸⁹ Facilities-based mobile telephony service providers must report real-time, two-way switched voice service that is interconnected with the public switched network using an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls. *2012 FCC Form 477 Instructions* at 3. A mobile telephony service provider is considered “facilities-based” if it serves a subscriber using spectrum for which the entity holds a license that it manages, or for which it has obtained the right to use via lease or other arrangement with a Band Manager. *Id.*

³⁹⁰ See *supra* Section IV.

³⁹¹ See, e.g., *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24987, para. 76.

telecommunications services plus certain enumerated other services, or if, as described in Section IV.C, we were to adopt a more general definition of assessable services. We seek comment on this analysis.

235. We also seek comment on the impact of adopting a facilities-based definition of connection. How would adopting such a definition affect the distribution of contribution obligations among different industry sectors, or the relative contribution burden borne by mass market versus enterprise customers? Would such a definition provide predictability for contributors, while retaining sufficient flexibility to accommodate the evolution of the telecommunications marketplace? Are there variations on the definitions, or alternate definitions, that would better meet our proposed goals for contribution reform?

236. *Service-Based Definition.* Under a service-based definition, the definition of the connection “unit” would focus on the service or services that are delivered over the facility. Under such a definition, each interstate telecommunications service using the connection would be assessed as one “unit,” as could any service that had an interstate telecommunications component. For example, in contrast to the facilities-based definition, if a customer purchases two services that we have determined are assessable and that are delivered over the same facility, the provider would be assessed for two connections.³⁹² Multi-line business services could likewise be assessed based on the services that are provided over the connection.

237. For example, we seek comment on the following potential service-based definition of connection:

Connection. An assessable service provided to an end user.

238. As above, we seek comment on the impact of adopting this definition of connection. How many total connections would there be under this definition, given the different approaches to defining assessable services in Section IV of this Notice? Would this definition raise questions regarding whether particular offerings were one “service” or multiple bundled services? For example, under such a definition, should a subscriber purchasing both text messaging service and voice service be counted as two connections or one? How would family plans or other multi-user or multi-device scenarios be treated?

239. How would adopting this definition affect the distribution of contribution obligations among different industry sectors, or the relative contribution burden borne by mass market versus enterprise customers? Would this definition provide predictability for contributors, while retaining sufficient flexibility to accommodate the evolution of the telecommunications marketplace? Are there variations on this definition, or alternate definitions, which would better meet our proposed goals for contribution reform?

240. We also seek comment on alternative service-based definition that would focus on *usage* (i.e., how much throughput actually traverses the connection in a given period).

241. *Defining “End User.”* We also seek comment on whether a definition of connection should be limited to connections provided to “end users.” In prior years, the Commission sought comment on whether to apply the same definition of end user that is used under the current revenue-based system.³⁹³ As discussed above, under the existing system, “end users” include purchasers of retail interstate telecommunications or telecommunications services that do not contribute on their finished

³⁹² The question of which services are assessable would be addressed separately, as discussed in Part IV.

³⁹³ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3769, para. 41.

offerings.³⁹⁴ End users do not include entities that purchase wholesale inputs and contribute on the services they provide to other customers.³⁹⁵ Would including the use of the term “end user” in the definition of a connection perpetuate some of the challenges we see under the current revenue-based system discussed above, such as, for example, the difficulty of determining whether a customer is an end user or reseller of specific services for purposes of USF contribution obligations?³⁹⁶ How should we define end user if we adopt a connections-based approach? Should we, for instance, define an end user as a residential, business, institutional, or governmental entity who uses the services provided for its own purposes, and does not sell the service to other entities, or incorporate the service into another service sold to other entities?

242. Would a system that requires each provider to “pay its own way” – that is, each provider would contribute based on the connection it provides to another entity – be simpler from a compliance and administrative perspective? In 2002, the Commission sought comment on a proposal that would split connections-based contribution obligations between switched access and interstate transport providers.³⁹⁷ Under such an approach, a provider of both local and interexchange services to the end user would be assessed two units per connection (one for access and one for transport), while a provider that provided only local service would be assessed one unit and the interexchange carrier would be assessed one unit.³⁹⁸ We invite comment on whether a more general system of this type that requires each provider of connections to contribute would be simpler from a compliance and administration perspective than a system that requires only the provider with the relationship to the end user customer to contribute. For instance, as discussed above, if we were to adopt a service definition of connection, and Carrier A sells a private line to Carrier B, and Carrier B in turn uses that circuit to provide both an enterprise communications service and VoIP to its retail customer, should Carrier A be assessed one unit for that high-speed line, while Carrier B is assessed one unit for the communications service and a second unit for the VoIP service?

243. *Connections Provided to Lifeline Subscribers.* Today there are approximately 14.8 million Lifeline subscribers.³⁹⁹ We seek comment on whether the Commission has statutory authority to exclude from assessment connections provided to Lifeline subscribers. Would it be consistent with section 10 to forbear from imposing contribution obligations on such connections?

244. How would the exclusion of such connections impact a connections-based regime? What would be the policy justifications for excluding these connections from contribution obligations? Alternatively, should such connections associated with Lifeline services be assessed at a pro-rated or reduced rate, and if so, what would be an appropriate amount?

3. Trends in Connections

245. We seek comment regarding trends in connections over time. We seek data to project the number of connections that exist today under the facilities-based definitions discussed above. If we were to adopt a service-based definition, the number of connections would largely depend on how narrowly or broadly we were to define the relevant assessable services. We invite commenters to present data and

³⁹⁴ See *Universal Service First Report and Order*, 12 FCC Rcd at 9207, para. 844.

³⁹⁵ See *id.* at 9207, 9208, paras. 844, 848.

³⁹⁶ See *supra* Section V.A.4.

³⁹⁷ *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24991, para. 86.

³⁹⁸ *Id.*

³⁹⁹ USAC Second Quarter 2012 Filings, LI08 - Lifeline Subscribers by State or Jurisdiction.xls available at <http://www.usac.org/about/tools/fcc/filings/2012/q2.aspx>.

their underlying assumptions regarding the number of connections under the alternative connection definitions discussed above.

246. The FCC Form 477 data collection provides some information that may be useful in projecting the number of connections. As discussed above, FCC Form 477 counts broadband connections separately from connections that are used for local telephone service, which provides some basis for estimating the number of connections if we were to exercise our permissive authority over broadband Internet access services and also adopted a definition of connections that counted broadband separately from voice. Notably, because the form is designed mainly to track residential connections, it does not capture many connections provided to businesses, governmental entities, and other large institutions.

247. As shown in Chart 6 below,⁴⁰⁰ there were 616 million connections reported under the FCC Form 477 connection categories in 2010: 117 million local landlines (switched access lines), 32 million interconnected VoIP subscriptions, 285 million mobile telephone subscriptions, and 182 million broadband connections. If one assumes continued growth in mobile subscriptions, interconnected VoIP and broadband connections, the total number of connections could grow to approximately 800 million connections under the FCC Form 477 connection categories by 2015.

248. We seek comment on our analysis of the 477 data and invite commenters to present their own analysis and underlying assumptions. In particular, how many enterprise connections are there under different definitions of connections and of assessable enterprise services? And if we were to adopt a facilities-based definition of connections, rather than the service-based approach used in Form 477, how many connections are there, and what is the likely trend in the number of connections over time? To what extent are the landlines or mobile subscriptions reported in FCC Form 477 also providing broadband?

⁴⁰⁰ The FCC Form 477 data contain counts of connections, subscriptions, and lines for a diverse set of voice and data services. Counts may be sensitive to assumptions on how specific services are defined. Projections are based on staff estimates.

Chart 6

4. Assessment and Use of Speed or Capacity Tiers

249. Another key question is whether a connections-based assessment should be based on speed or capacity tiers and how to define any such tiers. In the past, the Commission's proposals have assumed a connections-based methodology would classify connections into various tiers, and each connection within a tier would be assessed the same flat fee.⁴⁰¹ We seek comment on how assessment based on speed or capacity tiers would operate under a service or facilities-based definition of "connection," and whether such an assessment structure would further our proposed reform goals of promoting efficiency, fairness, and sustainability of the Fund.

250. *Determining the Per-Unit Assessment.* In the past, the Commission has sought comment on grouping residential, single-line business, and mobile wireless connections together in a separate

⁴⁰¹ See, e.g., *2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3774, para. 52 (proposing three tiers of up to 1.544 Mbps, 1.544 to 45 Mbps, and 45 Mbps or higher for multi-line business connections); *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24989-90, para. 81 (proposing four tiers of up to 725 kbps, 726 kbps to 5 Mbps, 5.01 Mbps to 90 Mbps, and greater than 90 Mbps for multi-line business connections); *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6686, App. B, para. 81 (proposing two tiers of up to 64 kbps and over 64 kbps for business services). See also, e.g., Letter from Mary L. Henze, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 1-2 (filed Oct. 29, 2008) (AT&T Oct. 29, 2008 *Ex Parte* Letter) (proposing three tiers of up to 25 Mbps, over 25 Mbps up to and including 100 Mbps, and over 100 Mbps for dedicated business connections). In addition, some parties have questioned whether it is appropriate to base the tiers on capacity rather than usage. See, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 3.

category from multi-line business connections, and assessing each based on a flat fee.⁴⁰² Under such a system, the initial proposed amount for the residential, single-line business, and mobile wireless connections has been in the range of \$1 per month.⁴⁰³ The residual USF demand would then be met through assessments on multi-line business connections based on the number and capacity of the connections.⁴⁰⁴ We seek comment to refresh the record on such an approach. How would the contribution amount for a typical consumer vary under such an approach compared to the revenues-based approach in place today?

251. In the past, in response to proposals based on a per-unit assessment, various segments of the industry have requested that they be treated differently for USF contribution purposes. For example, paging providers have sought a reduced assessment because of the limited functionality of the service and because the proposed per-unit assessment exceeds by a large multiple the amount of assessment paid under the current revenue-based system.⁴⁰⁵ Likewise, providers offering free services, telematics, wireless prepaid plans, and family wireless plans have, in the past, all requested that such connections be treated differently because a flat \$1 per month assessment would increase their USF obligation dramatically.⁴⁰⁶ If we were to adopt a connections-based approach, should certain providers be eligible for special consideration or exemption? We seek comment on whether a connections-based system that provides special treatment for a myriad of services would meet our proposed goals of ensuring sustainability of the Fund, while simplifying compliance and administration.

252. As noted above,⁴⁰⁷ a recent development is the growth in machine-to-machine connections,⁴⁰⁸ enabling such innovations as smart meter/smart grids, remote health monitoring, or supply

⁴⁰² 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3766-67, para. 35. See 2008 Comprehensive Reform FNPRM, 24 FCC Rcd at 6678, App. B, para. 59; AT&T Oct. 29, 2008 *Ex Parte* Letter at 1.

⁴⁰³ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3766-67, para. 35 (proposing a \$1.00 fee per residential, single-line business, and mobile connection). See 2008 Comprehensive Reform FNPRM, 24 FCC Rcd at 6678, App. B, para. 59 (proposing an \$0.85 fee per telephone number for each residential, single-line business, and mobile connection); AT&T Oct. 29, 2008 *Ex Parte* Letter at 1 (proposing an \$0.85 fee per telephone number for each residential, single-line business, and mobile connection).

⁴⁰⁴ See, e.g., 2008 Comprehensive Reform FNPRM, 24 FCC Rcd at 6686, App. B, para. 81 (proposing monthly per-connection assessments of \$5 and \$35 for higher capacity connections); AT&T Oct. 29, 2008 *Ex Parte* Letter at 1-2 (proposing monthly per-connection assessments of \$2, \$15, and \$250 for higher capacity connections); 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24989-90, para. 81 (seeking comment on four-tier structure, with Tier 1 having a “maximum capacity” of up to 724 Kbps, a Tier 2 between 725 Kbps and 5 Mbps, a Tier 3 between 5.01 Mbps and 90 Mbps, and a Tier 4 for connections with maximum capacity greater than 90 Mbps). As used in the earlier contribution methodology Notices, the term “capacity” referred to the maximum speed available for a given connection.

⁴⁰⁵ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3768, para. 39.

⁴⁰⁶ See, e.g., Letter from Samuel L. Feder, Counsel for j2 Global Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 20, 2010) (arguing that free and low-volume services should be exempt from flat-rate, per unit assessment); Letter from Matthew A. Brill, Counsel for Toyota Motor Sales, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1-2 (filed Aug. 12, 2010) (arguing against a connections system because of the dramatically higher costs on telematics providers); Letter from Scott Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 01-92 *et al.*, Attach. at 8 (filed Apr. 14, 2010) (arguing for assessment of prepaid wireless service on a per-minute-of-use basis and assessment of non-primary wireless family plan at 50% of the flat-rate, per unit charge).

⁴⁰⁷ See *supra* Section IV.C.

⁴⁰⁸ See generally OECD Digital Economy Papers, Machine-to-Machine Communications, Connecting Billions of Devices (Working Paper No. 192, 2012), available at <http://dx.doi.org/10.1787/5k9gsh2gpg043-en> (last visited Apr. 16, 2012).

chain tracking. To the extent we were to exercise permissive authority over some or all machine-to-machine connections, should they be assessed at the same level, or flat rate, as other connections? If not, how should they be assessed?

253. Another question that would need to be resolved under a connections-based approach with tiers is whether and how to update the tiers and/or assessment amounts as business and residential users move to higher bandwidth services and new technologies and services develop.⁴⁰⁹ In previous Notices, the Commission recognized that, to ensure an appropriate amount of funds for universal service, it would need to revisit and adjust the assessment amount periodically.⁴¹⁰ Recently, the Commission has taken significant strides to minimize future growth of the Fund by adopting a budget in the recent *USF Transformation Order* and a savings target in the *Lifeline and Link-Up Reform and Modernization Order*.⁴¹¹ These measures to instill fiscal responsibility in these programs are in addition to the caps on other universal service support mechanisms (*i.e.*, the schools and libraries and rural health care mechanisms).⁴¹² We seek comment on how often we should revisit any per-unit amount, if we were to adopt a connections-based proposal, in light of these reforms. Would a semi-annual or annual review be sufficient to meet the needs of the Fund? We also seek comment on whether any re-evaluation of the assessment should happen on a set schedule or an ad hoc basis, either on our own motion or at the request of industry participants or USAC. What factors should we consider in determining whether to adjust the assessment? When periodically readjusting the unit amounts, should we aim to maintain the relative proportion of contribution burdens between residential and business consumers? How could that proportion be accurately determined?

254. *Tiers.* In 2002, the Commission proposed that contributions from providers of multi-line business connections be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for residential, single-line business, and mobile connections. The Commission reasoned that this proposal would make contribution obligations more predictable and understandable for residential, single-line business, and mobile customers, and that multi-line businesses may be better equipped to understand the fluctuations in assessments from quarter to quarter.⁴¹³ We seek comment on whether this reasoning remains valid in today's marketplace.

255. In the past, the Commission sought comment on defining a connection as either a residential/single-line business or a multi-line business connection based on whether the residential/single-line business or multi-line business subscriber line charge (SLC) is assigned to the connection.⁴¹⁴ We seek to update the record on whether this delineation is an effective way to identify

⁴⁰⁹ See Internet Society, *Growing Pains: Bandwidth on the Internet* 6 (Mar. 2010) (Briefing Paper), available at <http://www.isoc.org/isoc/conferences/bwpanel/docs/bp-growingp-201003-en.pdf> (last visited Apr. 9, 2012) (discussing studies showing that the annual growth rate for global Internet bandwidth lies somewhere between 40 percent and 50 percent).

⁴¹⁰ See, e.g., 2001 *Contribution Methodology Notice*, 16 FCC Rcd at 9908, paras. 33-35; 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3787, para. 78; 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24988, para. 77.

⁴¹¹ See *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17672, para. 18; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11, para. 358.

⁴¹² See *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17672, para. 18; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11, para. 358.

⁴¹³ 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3773, para. 51. *But see*, Ad Hoc Telecom Users Apr. 13, 2012 *Ex Parte* Letter at 3 (no residual funding requirements should be imposed on business users or services).

⁴¹⁴ 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3766-67, para. 35.

residential and single-line business connections in today's market, particularly given the growth in wireless and VoIP connections—which typically do not charge SLCs or their equivalent.⁴¹⁵ Not only is such a method for distinguishing residential connections from business connections possibly outdated today, but we are concerned it will become increasingly more so as users move to alternative providers that do not charge SLCs.⁴¹⁶ We seek comment on whether, if we adopt a connections-based approach, we should distinguish between residential/mass market connections and business/enterprise connections. And, if so, we seek comment on other objective measures aside from the SLC that we could use to distinguish between these two categories of connections.

256. We understand anecdotally that many companies are moving away from purchasing mobile service directly for employees in favor of providing employees with reimbursements for their personal mobile monthly plans.⁴¹⁷ To the extent we were to make a distinction between residential and business connections, how should such connections be classified as residential or multi-line business connections? How would contributors distinguish such connections absent a corporate identifier on the account? We seek comment on these issues and whether such a distinction serves our proposed policy goals of administrative efficiency, fairness, and sustainability.

257. *Tier Structures.* Over the years, the Commission and the industry have proposed various tiers to calculate assessments for multi-line business connections, with no one approach emerging as the preferred alternative. In 2002, the Commission proposed a structure of three tiers of up to 1.544 Mbps, 1.544 to 45 Mbps, and 45 Mbps or higher for multi-line business connections.⁴¹⁸ Later in 2002, the Commission updated the proposed tiers to four tiers of up to 725 kbps, 726 kbps to 5 Mbps, 5.01 Mbps to 90 Mbps, and greater than 90 Mbps for multi-line business connections.⁴¹⁹ At that time, the Commission sought to set the speed ranges so that then-common service offerings would fall well within each tier in order to minimize market distortion.⁴²⁰ Subsequently in 2008, the Commission proposed just two tiers of up to 64 kbps and over 64 kbps for business services.⁴²¹ Commenters have also proposed different set of tiers. AT&T, for example, proposed three tiers of up to 25 Mbps, over 25 Mbps up to and including 100 Mbps, and over 100 Mbps for dedicated business connections.⁴²²

⁴¹⁵ See *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11, paras. 55-56 (noting that many Lifeline subscribers take service from competitive ETCs, who do not assess SLCs on their subscribers and whose cost structure is unrelated to the SLC). See also *Universal Service First Report and Order*, 12 FCC Rcd at 8970-71, paras. 366-67.

⁴¹⁶ Moreover, we note that the recent *USF/ICC Transformation Order* sought comment on the continuing relevance of SLCs even for incumbent LECs and sought comment on reexamining and possibly phasing out SLCs. See *USF/ICC Transformation Order*, 26 FCC Rcd at 18121-23, paras. 1330-33. See also Ad Hoc Telecom Users Apr. 13, 2012 *Ex Parte* Letter at 3 (there is no basis for distinguishing between residential and business connections).

⁴¹⁷ See *Global Survey: Dispelling Six Myths of Consumerization of IT*, Avana (Jan. 2012), available at <http://www.avanade.com/Documents/Resources/consumerization-of-it-executive-summary.pdf>; see also Roger Cheng, *So You Want to Use Your iPhone for Work? Uh-oh.*, Wall St. J. (Apr. 24, 2011), available at <http://online.wsj.com/article/SB10001424052748704641604576255223445021138.html>.

⁴¹⁸ *2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3774, para. 52.

⁴¹⁹ *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24989-90, para. 81.

⁴²⁰ *Id.* at 24990-91, para. 83.

⁴²¹ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6686, App. B, para. 81.

⁴²² See, e.g., AT&T Oct. 29, 2008 *Ex Parte* Letter at 1-3.

258. In today's ever evolving marketplace, there is increased demand for multi-line business connections to have more bandwidth.⁴²³ One of the proposed goals of our reformed contribution system is to simplify administration and reporting. Is there a way to structure the speed tiers in a future-proof manner? Or, would a system based on available speed tiers inevitably become outdated as the communications industry continues to evolve? Is there a reasonable way to have tiers automatically adjusted, for example by setting tiers based on percentile, such that the slowest quartile of connections would fall into one tier, the next quartile in another tier, etc.?

259. We seek comment on whether any of the previously proposed tier structures would be appropriate in today's marketplace, and whether any such tiers should be limited to business customers or whether they should extend to residential or mass market connections as well. We seek to refresh the record in light of recent actions taken in the *USF-ICC Transformation Order and FNPRM* and other pending proceedings.⁴²⁴ For instance, in establishing tiers, to what extent, if at all, should we take into account the Commission's decision to establish 4 Mbps down/1 Mbps up as the minimum speed for fixed broadband connections under the Connect America Fund? Should speed tiers for universal service contribution purposes be based on actual speeds or advertised speeds? Is one approach preferable to another for purposes of auditing and enforcing compliance with our contributions rules?

260. To the extent commenters believe one of the previously proposed tier structures is appropriate for today's market, we seek detailed comments to support such a position. Additionally, we encourage commenters to propose a tier structure that accounts for the qualities of connections in the marketplace today. In the past, the Commission sought comment on a tier structure based on speed. Should tiers also be set based upon capacity, or the total volume of data that can be sent and/or received over the connection by the end user over a period of time? Commenters should explain why they propose tiers at the particular capacity range and propose the appropriate assessment amount for each tier. Commenters should also discuss how we can structure the tiers so that they will accommodate future evolution. We seek to minimize the potential for market distortion based on the tier structure; commenters should address how their proposal addresses this concern in their responses.⁴²⁵ Commenters proposing new tier structures should also provide an analysis of the impact on the Fund and the relevant burdens to residential and business consumers.

261. Would the current FCC Form 477 tier structure work in the context of a USF connections-based assessment? For example, FCC Form 477 tracks facility-based broadband connections in ten different technology categories (e.g., asymmetrical and symmetrical xDSL, cable modem, fiber-to-the-home, mobile wireless) based on transfer rates ranging from 200 kbps to greater than 100 mbps.⁴²⁶ We seek comment on whether this categorization and tier structure as well as the other data collection requirements in the FCC Form 477 could work for universal service contribution purposes, or whether they could be easily modified to satisfy the requirements of both the FCC Form 477 and any established USF contribution rules and requirements. If we were to modify our FCC Form 477 data collection, should we also make corresponding modifications to the tiers for purposes of USF contributions?

⁴²³ See, e.g., Cisco Visual Networking Index: Forecast and Methodology, 2010–2015, at Table 17 (Jun. 1, 2011) available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360.pdf.

⁴²⁴ See, e.g., *Modernizing the FCC Form 477 Data Program, et. al.*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2001) (seeking comment on whether and how to reform the FCC Form 477 data program).

⁴²⁵ See, e.g., *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24990, para. 80.

⁴²⁶ *2012 FCC Form 477 Instructions* at 8-9; 2012 Local Telephone Competition and Broadband Reporting Form 477, Part I.

262. While multi-line business connections may provide a specific maximum level of speed or capacity, other connections provide customers, through contractual agreements, with the option of utilizing additional speed or capacity on a short-term basis.⁴²⁷ One of the challenges of a tiered connections-based approach is how it would address connections that provide varying speed at different points in time. For example, should we consider how “burstable” bandwidth would be assessed under a connections-based system? Burstable bandwidth allows a connection to exceed its stated speed, usually up to a pre-chosen maximum capacity for a period of time, such as during periods of heavy network activity or peak network usage.⁴²⁸ We seek comment on what rules should be adopted to address such situations, if we were to adopt a connections-based system.

263. Some commenters argue that there is little correlation between connection speed and telecommunications usage.⁴²⁹ These commenters ask whether it is more appropriate to base the tiers on usage rather than speed.⁴³⁰ Under prior connections-based proposals, contributors would be assessed for multi-line business connections based on the maximum amount of bandwidth they allocate to the connection, not the actual amount of bandwidth used.⁴³¹ Because customers often purchase excess bandwidth for backup or future growth, some commenters argue that assessing a connection at the maximum available speed taxes spare bandwidth and could lead to poor network management practices.⁴³² We seek comment on this position. We also seek comment on how a provider would measure the actual usage of a customer’s connection and the burdens associated with such reporting. Finally, we seek comment on how we would audit actual usage.

5. Policy Arguments Related to Connections-Based Assessment

264. In 2002, the Commission outlined a number of potential benefits of a connections-based assessment methodology: the number of connections has been more stable than interstate revenues and therefore connections-based assessment may provide a more predictable and sufficient funding source for universal service; under a connections-based approach, providers would not have to allocate revenues between interstate and intrastate jurisdictions or between telecommunications and non-telecommunications services; and under a connections-based end-user approach, only one entity – the one with the direct relationship with the end user – would be responsible for contributing, thereby potentially reducing the complexities associated with collecting and reporting USF fees.⁴³³ We seek comment to

⁴²⁷ See, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 3. In 2002, the Commission used the example of Centrex services that offer the potential to utilize additional capacity in those instances where the demand for capacity exceeds the amount of capacity that the carrier has allocated for the customer. For example, if a private branch exchange switch has a 1.544 Mbps trunk, and all of that capacity is being used, the customer would be unable to make or receive phone calls. A customer that uses a Centrex switch, however, that has a 1.544 Mbps trunk in which all of the capacity is being used would be able to continue to make or receive phone calls because the carrier establishes the service with reserve capacity. 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3775, para. 55 & n.134.

⁴²⁸ See, e.g., H. Newton, *Newton’s Telecom Dictionary* 217 (25th ed. 2009) (“burstable T1”).

⁴²⁹ See, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 3.

⁴³⁰ See, e.g., *id.*

⁴³¹ See 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3773, para. 50; 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24987, para. 75.

⁴³² See, e.g., XO Sept. 17, 2010 *Ex Parte* Letter at 3.

⁴³³ 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3784, para. 71. Although payphone aggregators may not have a direct relationship with the end user, the Commission requires that payphone aggregators contribute because they directly compete with mandatory contributors and the public interest so requires. *Universal Service First Report and Order*, 12 FCC Rcd at 9184-85, para. 797 (exercising its permissive authority).

refresh the record on these issues given the changes that have occurred in the telecommunications marketplace since 2002 and the potential rule changes discussed in this Notice. Is a connections-based contribution methodology consistent with the proposed goals of having a contribution methodology that is efficient, fair, and sustainable?

265. *Distinguishing Telecommunications from Non-Telecommunications.* In 2002, the Commission and commenters suggested as a potential benefit that a connections-based methodology might not require carriers to distinguish between telecommunications and non-telecommunications services, distinctions that may be increasingly difficult as the marketplace evolves.⁴³⁴ We seek comment above on approaches to provide clarity to contributors with respect to specific services, without the need to classify those services as either information services or telecommunications services. We also seek comment on assessing revenues associated with information services.⁴³⁵ In light of those potential approaches, is this potential advantage of a connections-based methodology still relevant? If we were to adopt a facilities-based connections approach, should we make an affirmative finding that each connection within the scope of our definition “provides interstate telecommunications” in order to subject that connection to assessment?

266. *Jurisdictional Considerations.* As discussed above, the current revenues-based system requires contributors to separately account for revenues derived from interstate, intrastate, and international services.⁴³⁶ The Commission and industry participants have suggested in the past that a connections-based system might mitigate the need to differentiate between interstate and intrastate jurisdictions.⁴³⁷ We seek comment on whether this remains a relevant consideration.

267. In the connections-based methodology proposed in 2002, the Commission stated that international-only and intrastate-only connections would be exempt because they do not have an interstate component.⁴³⁸ We seek comment on how specifically we would determine whether a particular connection should be deemed to be intrastate-only for contribution purposes, if we were to adopt a connections-based methodology, and how such a rule could be applied. We note that today, private lines with less than ten percent interstate traffic are deemed to be jurisdictionally intrastate.⁴³⁹ For contribution purposes, the Form 499 instructions specify that if over ten percent of the traffic is interstate, all of the revenues for that line are classified as interstate.⁴⁴⁰ We seek comment above in this Notice on a revenues-based approach that would be simpler to administer, which would allocate revenues to the different jurisdictions according to a set percentage.⁴⁴¹ If we were to adopt a connections-based approach, should we adopt a rule that any connection that provides the capability to originate or terminate communications

⁴³⁴ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3784, para. 71; 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24985, para. 70.

⁴³⁵ See *supra* Section V.A.1.

⁴³⁶ See *supra* Section V.A.2.

⁴³⁷ 2002 First Contribution Methodology Order and FNPRM, 17 FCC Rcd at 3784, para. 71; 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24985, para. 70; see, e.g., USTelecom Nov. 26, 2008 Comments.

⁴³⁸ 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24987, para. 76.

⁴³⁹ MTS and WATS Market Structure; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72, 80–286, Decision and Order, 4 FCC Rcd 5660, 5660, paras. 2, 6 (1989).

⁴⁴⁰ See 2010 FCC Form 499-A Instructions at 22.

⁴⁴¹ See *supra* Section V.A.3.

that may cross state lines is subject to assessment, regardless of the physical end points of the facility or the actual traffic carried on a particular circuit?⁴⁴²

268. To the extent we exercise our permissive authority to assess broadband Internet access connections, we seek comment on whether such connections should be presumed interstate for purposes of universal service contributions. Should we conclude that any connection that connects to an Internet point of presence should be deemed interstate for federal USF contribution purposes? Would such a rule allow states to assess connections (or revenues associated with connections) to support state universal service funds? Would a connections-based system increase compliance burdens if states continue to employ a revenues-based assessment for state-based funds? What is a simple way to determine jurisdiction for connections in a manner that is fair and competitively neutral, and could such an approach reduce compliance burdens on contributors?

269. *Consumer Impact.* In the past, certain contributors have argued that a connections- or numbers-based contribution methodology would disproportionately impact vulnerable populations, such as low-income consumers and the elderly.⁴⁴³ How would moving to a connections-based approach change the relative distribution of the contribution burden between enterprise users and consumers, as well as among different types of enterprise users and consumers? Is moving to a connections-based approach where connections are assessed a flat rate (or a flat rate within a tier) fair to low-income consumers and other users on low-cost service plans? Are there modifications that could be made to a connections-based methodology to make the level of assessment fairer to consumers on low-cost service plans? If we were to adopt a connections-based approach, would low-income households be likely to see a contribution pass-through charge for a larger percentage of their monthly telecommunications bill than higher-income households? Would low-volume customers bear an assessment that constitutes a larger percentage of their bill than high-volume users?

6. Implementation

270. Implementing a connections-based system would presumably require new data collection and reporting requirements and, at least in the near term, impose additional costs on both filers and USAC to implement new reporting systems. A connections-based system could also present complexities related to compliance and auditing, particularly because connections are not generally reported for other governmental purposes. Further, a move to a connections-based system may affect other programs that currently report on the FCC Form 499, including Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration. Finally, a new system would require some period of transition. We seek comment on all these issues below.

271. *Reporting.* We seek comment on how to implement reporting requirements under a connections-based contributions system. Under the existing revenue-based contribution methodology, contributors report to USAC their historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on the FCC Form 499-Q and their gross-billed and actual collected end-user interstate and international revenues annually on the FCC Form 499-A.⁴⁴⁴

⁴⁴² This issue, application of the so-called “10% rule” is the subject of pending appeals. *See, e.g.*, XO Request for Review at 11; Grande Communications Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122, at 7-12 (filed Dec. 28, 2009).

⁴⁴³ *See, e.g.*, Comments of TracFone Wireless, Inc., WC Docket No. 05-337 *et al.*, at 3 (filed Nov. 26, 2008); Reply Comments of TracFone Wireless, Inc., WC Docket No. 05-337 *et al.*, at 2-4 (filed Dec. 19, 2008); Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et al.*, at 1-3 (filed Dec. 3, 2008).

⁴⁴⁴ 47 C.F.R. §§ 54.706(b), 54.709, 54.711. Filers are required to file revisions to FCC Form 499-A by March 31 of the year after the original filing date. *See 2012 FCC Form 499-A Instructions* at 8.

USAC then bills contributors for their universal service contribution obligations on a monthly basis based on the contributors' quarterly projected collected revenue.⁴⁴⁵ Contributors report actual revenues on the FCC Form 499-A, which USAC uses to perform true-ups to the quarterly projected revenue data.⁴⁴⁶

272. How should a connections-based system be implemented? In particular, we seek comment on the specific changes necessary to enable USAC to administer the Fund under a connections-based system. How would contributors report the number and speed or capacity of their connections under a connections-based assessment methodology? For a service-based connections methodology, how should providers report the service type? Should we continue to use a FCC Form 499 or use a different system, and why? What would be the administrative impact of a new reporting system on providers and on USAC as the administrator of the Fund? Could we modify the FCC Form 477 to capture the data necessary for a connections-based system, thus eliminating the need to file separately for contribution purposes? What measures should we take to ensure that providers would not be able to avoid their contribution obligation? To what extent do connections fluctuate due to churn or other factors, and, as a result, how often should providers report their data to ensure the stability and sufficiency of the Fund? Should we limit reporting requirements to twice a year, to coincide with the requirement to report connections data on the FCC Form 477? We seek comment on whether reporting only twice a year would satisfy our proposed goal of a more simplified contribution system. We also seek comment on the potential impact of a six-month reporting interval on periodic adjustments to the per-connection assessment. Would such a reporting schedule provide USAC and the Commission with the data necessary to effectively administer the universal service programs? We specifically seek comment and data on whether it is necessary to monitor individual provider fluctuations through frequent reporting or whether less frequent reporting would suffice.

273. Alternatively, we seek comment on the costs and benefits of reporting at monthly or quarterly intervals. Since a more frequent interval would likely provide a larger number of "snapshots" of a contributor's connection counts over a year, would a more frequent interval provide more accurate data and lead to more stability in the Fund than would a six-month interval? Would a more frequent reporting period make adjustments to the contributions requirements more incremental? Would longer or shorter reporting intervals advantage or disadvantage some types of providers more than others? In 2002, the Commission sought comment on a monthly reporting system under which the contributor would report the number and speed or capacity of their connections at the end of each month on a new FCC Form 499-M. Under that approach the new form would also serve as a contributor's monthly bill. We seek comment on the costs and benefits of such an approach.

274. *Costs Associated with Implementing a Connections System.* We seek comment on contributors' out-of-pocket costs for implementing a new connections-based contribution methodology. Would contributors be able to use their current billing and operating systems to report connections for universal service contributions? If not, what would be the incremental costs associated with modifying billing systems and internal controls and processes to collect and track connections for purposes of reporting and contributing to the Fund? Would contributors have to implement entirely new systems to track the type of data needed to report connections? Does the answer to this question depend on whether the Commission adopts the FCC Form 477 connection categories as opposed to other categories of providers or services whose connections are assessable? Are there cost savings that could be realized by moving away from the current system, which requires contributors to report revenues quarterly (projected) and annually (actual) for USF purposes? Would those costs vary depending on the definition of connections we adopt? We also seek comment on whether the cost of updating billing and internal systems for this regulatory purpose would outweigh any benefit achieved. What would be the

⁴⁴⁵ 47 C.F.R. §§ 54.702(b), 54.709(a).

⁴⁴⁶ See 47 C.F.R. §54.709.

implications for reporting for other regulatory programs such as regulatory fees, Interstate TRS, and the North American Numbering Plan? Would increased operational costs negatively impact certain carriers more as compared to other carriers (for example, smaller rate of return companies that recover some of these costs from high-cost loop support, which is capped)?

275. We specifically seek comment on any implementation costs associated with other programs that rely on the data reported on the FCC Form 499-A. For example, if we were to move to a connections-based system for contributions, would there be additional costs associated with reporting for the Interstate TRS Fund, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs which currently rely on the FCC Form 499-A data? Would a change in the contribution system to a connections-based approach only be feasible and cost-effective if these other programs also changed to a connections-based approach? We also ask whether adopting a connections-based system would increase compliance burdens if states continue to employ a revenues-based assessment.

276. We also seek to refresh the record on whether there are other costs associated with a connections system, and in particular ask providers if there are any new costs that were not foreseen when we last asked for comments on this methodology. Would the cost of a new assessment methodology increase for certain classes of customers or certain industry segments? To what extent would this analysis change depending on how a connection is defined and assessed? Do the additional costs associated with implementation and reporting requirements outlined below outweigh the benefits of moving to a connections-based methodology?

277. *Auditing.* Audits are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse. Among its duties, USAC conducts regular audits of USF contributors to monitor compliance with our contribution reporting rules and requirements. Any new connections methodology must be auditable in order to ensure that contributors are reporting accurately, and that the system operates in an equitable and nondiscriminatory manner, maintains stability in the contribution base, and minimizes market distortions and gamesmanship. Auditing a connections-based system could be difficult, however, if the manner in which providers track their connections for business reasons does not overlap with the Commission's definitions of "connections" and "tiers." As previously noted, unlike revenues, connections are not universally tracked, and thus there are no standards or regular means of auditing a "connection." In addition, unlike revenues, "connections" are not reported to other federal agencies, such as the SEC, nor are connections routinely tracked on a company's books. Because companies would be tracking connections solely or primarily for the Commission, we seek comment on how to structure a connections-based system to be auditable and enforceable. How, in fact, would companies track their connections for USF contribution reporting purposes? Would companies need to create internal records solely for this purpose? How would an auditor verify the accuracy of the internal records, especially in light of customer churn and customer change orders? Because revenue is reported for other governmental purposes there are, to some extent, inherent checks and balances built into a revenues-based system.⁴⁴⁷ We seek comment on whether any potential lack of checks and balances under a connections system is a fatal flaw, or if it could be remediated. Proponents of a connections-based system should provide specific details about how contributors would report their data and how auditors could verify the accuracy of connections data reported. In addition to audits, what other steps should be taken under a connections-based system to detect and deter waste, fraud, and abuse?

278. Under the current revenues-based system, filers are required to maintain records and documentation to justify information reported on the FCC Form 499 for five years.⁴⁴⁸ These include

⁴⁴⁷ See, e.g., Department of Treasury, Internal Revenue Service Form 1120 - U.S. Corporation Income Tax Return; Securities and Exchange Commission, Form 10-K Annual Report, 15 U.S.C. §§ 78m or 78o(d).

⁴⁴⁸ 47 C.F.R. §54.706(e).

financial statements and supporting documentation, accounting records, historical customer records, and general ledgers, which companies generally retain for other purposes, not just compliance with the USF contribution rules and requirements.⁴⁴⁹ Filers must make available all documents and records, including those of contractors and consultants working on their behalf, to the Commission or to USAC, and to auditors upon request.⁴⁵⁰ In addition, providers track and retain financial information for other regulatory programs that carry criminal and/or monetary sanctions for inaccurate filings.⁴⁵¹ In contrast, other than the Commission's FCC Form 477, there are no other regulatory programs that we are aware of that require providers to collect and report connections, and the FCC Form 477 filing requirements do not carry financial penalties for inaccurate reporting.⁴⁵² We seek comment on how, under a connections-based system, we could create the proper incentives for providers to accurately report connections data. What types of procedures are necessary to verify the accuracy of the number of connections reported by a provider? How would USAC measure the accuracy of the data, especially given customer churn that may occur between reporting periods?

279. *Effect on Other Programs.* As in previous comment cycles, we ask parties to provide comment on the impact of moving to a connections-based approach on the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.⁴⁵³ The revenue information currently reported on an annual basis in FCC Form 499-A is also used to calculate assessments for these programs.⁴⁵⁴ As in previous comment cycles, we ask parties to provide comment on the best approach for ensuring proper funding of these programs were we to move to a connections-based methodology.⁴⁵⁵ Should contributors continue reporting gross billed end-user revenues for purposes of these programs, and if so, should they continue to report on an annual basis? Could we dramatically simplify the FCC Form 499 for purposes of revenue reporting in that instance, such as by eliminating the multi-line breakout of reported revenues into sub-categories? We specifically seek comment on whether to maintain revenue-based reporting for the regulatory fee program if we move to a connections-based approach for USF contributions and/or the other programs.

280. If we were to adopt a connections-based approach for the USF, should we also move to a connections-based approach for Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs? If so, would a connections-based approach for these programs vary, if at all, from a connections-based approach for the USF? We specifically seek comment on how a connections-based system could be implemented to satisfy the requirements of section 715 of the Act. This section requires that each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Interstate Telecommunications Relay Services Fund in a manner "consistent with and comparable to the obligations of other contributors

⁴⁴⁹ *Id.*

⁴⁵⁰ 47 C.F.R. §54.711(a).

⁴⁵¹ Providers must keep financial records for tax purposes. *Cf.* 26 U.S.C. § 6662 (imposing penalties for "substantial understatement" of income tax), 18 U.S.C. § 1520 (providing criminal penalties for corporations that fail to keep audit records for five years). Additionally, a number of states have regulatory programs that require providers to file regular reports and provide for penalties if reports are inaccurate. *See, e.g.,* N.Y. Pub. Serv. Law § 95; 52 Pa. Code § 63.36.

⁴⁵² 47 C.F.R. § 0.111. We note, however, that failure to comply with the Commission's reporting rules could subject an entity to the enforcement provisions of the Act. *See* 47 U.S.C. § 503.

⁴⁵³ 2001 Contribution Methodology Notice, 16 FCC Rcd at 9909, para. 38.

⁴⁵⁴ *See* 47 C.F.R. §§ 159(a), 159(b)(1)(A), 159(g), 52.17, 52.32(b), 64.604(c)(5)(iii)(B).

⁴⁵⁵ *See* 2001 Contribution Methodology Notice, 16 FCC Rcd at 9909, para. 38.

to such Fund.”⁴⁵⁶ Finally, are there alternative ways to calculate contributions for the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees programs?

281. *Transition.* A connections-based methodology would constitute a substantial change from the current *revenue*-based system and would likely require a transition period, especially if reporting entities need to implement new billing and accounting systems and a process for recording connection counts in a manner that is auditable. We seek comment on what steps would need to be taken to transition between the current revenues-based system and a connections-based system and how much time would be needed to ensure that the new process is applied in an equitable manner.

282. If we were to adopt a connections-based methodology, the Commission and USAC would likely need to go through multiple reporting cycles to determine whether information is being reported consistently and to determine whether contributors understand what information they are being asked to report. In addition, contributors and USAC would need time to update their billing and tracking systems to accommodate the new methodology. Is a one-year transition period sufficient to ensure that all affected parties would have adequate time to address any implementation issues that arise? How much time would be necessary for contributors, including new contributors, to adjust their record-keeping and reporting systems in order to comply with new reporting procedures? Are there new considerations that would favor a longer or shorter transition period? Would there be a benefit in adopting different transition periods for residential and business markets?

283. We also seek comment on the value of requiring dual reporting during all or some of the transition time – where reporting entities would continue to report and pay under the current revenues-based system, while they also begin reporting under the new system. Would having providers report under both systems for a specified amount of time during the transition provide the opportunity for both providers and USAC to address unforeseen implementation issues that are likely to arise under the new reporting system? Should new filers begin reporting sooner since USAC does not have any historical data on their revenues and services?

C. Assessing Contributions Based on Numbers

284. In this section, we seek comment on moving away from the current revenues-based contribution system and adopting a numbers-based contribution methodology. The Commission has explored a numbers-based methodology in the past, including as recently as 2008, when it sought comment on using telephone numbers as the basis for a new contributions system.⁴⁵⁷ We seek to refresh the record given developments in technology and communications.

285. Under a numbers-based system, in its simplest form, providers would be assessed based on their count of North American Numbering Plan (NANP) phone numbers. There would be a standard monthly assessment per phone number, such as \$1 per month, with potentially higher and lower tiers for certain categories of numbers based on how these numbers are assigned or used. The monthly assessment per number would be calculated by applying a formula based on the USF demand requirement and the relevant count of numbers, however that term is defined. This contribution factor would no longer be based on revenues.

286. In 2002, the Commission first sought comment on replacing the existing revenues-based methodology with a system that would assess providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned

⁴⁵⁶ 47 U.S.C. § 616.

⁴⁵⁷ See 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24995, para. 96; 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 1639, para. 40.

numbers based on their speed.⁴⁵⁸ The Commission also sought comment on how to treat multi-line switched business services, such as Centrex and private branch exchange, and other types of services, such as electronic fax services under a telephone-number based approach.⁴⁵⁹ Thereafter, in the *2008 Comprehensive Reform FNPRM*, the Commission sought comment on a series of proposals to adopt a new contribution methodology based on assessing telephone numbers.⁴⁶⁰ The FNPRM contained three proposals, each with a numbers-based assessment component. Two of the proposals (2008 Appendix A Proposal and 2008 Appendix C Proposal) would have assessed USF contributions based on telephone numbers used for residential services, at a flat \$1.00 per month charge for each number, and would have assessed business services based on connections.⁴⁶¹ The third proposal (2008 Appendix B Proposal) would have assessed USF contributions based on telephone numbers used for consumer and business services, at a flat \$.85 per month charge for each number.⁴⁶²

287. Proponents of numbers-based methodologies have historically argued that such a system would enhance the specificity and predictability of the carriers' contributions by eliminating the need to distinguish between information and telecommunications revenues, or interstate and intrastate revenues.⁴⁶³ Proponents have argued that a numbers-based system would benefit end users because it is technologically and competitively neutral—consumers would pay the same pass-through charge regardless of the type of services they choose—and such pass-through charges would be more stable.⁴⁶⁴ Parties have also asserted that assessing universal service contributions based on telephone numbers would promote number conservation.⁴⁶⁵ Others, however, have raised concerns that a numbers-based methodology would not satisfy the Act's statutory requirements that telecommunications service providers contribute to universal service on an "equitable and nondiscriminatory basis" because it could reduce contributions from certain industry segments and increase them for others.⁴⁶⁶ Some assert that assessing a flat universal service charge (such as a telephone-number based charge) is inherently unfair because it does not take into account the fact that some people make many interstate and international

⁴⁵⁸ See *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24995, para. 96.

⁴⁵⁹ *Id.* at 24995-96, para. 97.

⁴⁶⁰ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 1639, para. 40.

⁴⁶¹ *Id.* at 6536, App. A, para. 92 & at 6735, App. C, para. 88.

⁴⁶² *Id.* at 6669, App. B, para. 39.

⁴⁶³ Letter from Mary L. Henze, AT&T Services, Inc., and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. 2 at 1 (filed Sept. 11, 2008) (AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter).

⁴⁶⁴ See, e.g., Comments of National Cable and Telecommunications Association, WC Docket No. 06-122, at 5 (filed Aug. 9, 2006); Comments of Vonage America, Inc., WC Docket No. 06-122, at 6 (filed Aug. 9, 2006) (Vonage Aug. 9 2006 Comments); AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 1.

⁴⁶⁵ See, e.g., Comments of the Information Technology Industry Council, WC Docket No. 06-122, at 6 (filed Aug. 9, 2006) (IT Aug. 9 2006 Comments); Vonage Aug. 9 2006 Comments at 7.

⁴⁶⁶ See, e.g., Comments of Fred Williamson & Associates, Inc., CC Docket No. 96-45 *et al.*, at 13-15 (filed Apr. 12, 2002); Comments of NRTA and OPASTCO, CC Docket No. 96-45 *et al.*, at 7-11 (filed Apr. 22, 2002); Comments of SBC Communications, Inc., C Docket No. 96-45 *et al.*, at 18 (filed Apr. 22, 2002); Reply Comments of Verizon Wireless, CC Docket No. 96-45 *et al.*, at 6 (filed May 13, 2002); Comments of Verizon Wireless, CC Docket No. 96-45, at 5-6 (filed Apr. 22, 2002); see also State Members of Joint Board CAF Comments at 121-23; Letter from Michael R. Romano, Senior Vice President-Policy, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2 (filed Feb. 3, 2012).

calls, while others make few calls in a given month, yet all users (heavy users or light users) would be subject to the same flat monthly assessment amount.⁴⁶⁷

288. In light of the varied numbers-based proposals in the record, the evolution of the communications ecosystem, and the comments received over the past decade, we now seek to refresh the record on a numbers-based assessment methodology, as discussed below. We seek comment on whether a numbers-based methodology would further our proposed reform goals of greater administrative efficiency, fairness, and sustainability of the Fund. We also seek comment on the costs and benefits of a numbers-based contribution methodology. We ask parties claiming significant costs or benefits of a numbers-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

289. As with connections, questions related to the design of a numbers-based assessment system are distinct from, although complementary to, questions raised in Section IV of this Notice regarding which providers and services should contribute to universal service.⁴⁶⁸ While it is true that in an exclusively numbers-based system, services that do not rely on numbers would not be assessed, even within such an approach, we might choose to include or exclude from assessment particular number-reliant services. We therefore encourage commenters who advocate a numbers-based methodology to address the questions raised in Section IV of this Notice in addition to specific definitional questions in this section, such as which numbers should be assessable.

1. Legal Authority

290. In this section, we seek comment on our legal authority to adopt a numbers-based contributions methodology. As noted above, section 254(d) of the Act requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁴⁶⁹ Section 254(d) also provides the Commission with permissive authority to require “providers of interstate telecommunications” to contribute to the Fund.⁴⁷⁰ Title I of the Act gives the Commission ancillary jurisdiction over matters reasonably related to “the effective performance of [its] various responsibilities” where the Commission has subject matter jurisdiction over the service.⁴⁷¹

291. The Commission previously has sought comment on whether the Commission’s “plenary authority” over numbering in section 251(e) provides additional authority to adopt a numbers-based methodology.⁴⁷² The Commission has “exclusive jurisdiction over those portions of the NANP that pertain to the United States.”⁴⁷³ In the *VoIP 911 Order*, the Commission relied on its section 251(e)

⁴⁶⁷ See, e.g., Letter from Maureen A. Thompson, Executive Director, Keep USF Fair Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 5–7 (filed Mar. 27, 2006); see also Letter from David C. Bergmann, NASUCA, to Kevin Martin, Chairman, FCC *et al.*, WC Docket No. 08-152 *et al.*, at 9 (filed Sept. 30, 2008).

⁴⁶⁸ See *supra* Section IV.

⁴⁶⁹ 47 U.S.C. § 254(d). See *supra* Section IV.A.

⁴⁷⁰ 47 U.S.C. § 254(d).

⁴⁷¹ See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979); *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-178 (1968); see also *American Library Ass’n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

⁴⁷² See *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6539, para. 98.

⁴⁷³ 47 U.S.C. § 251(e)(1).

authority to require interconnected VoIP providers to provide E911 services.⁴⁷⁴ In so doing, the Commission noted that it exercised its authority under section 251(e) because, among other reasons, “interconnected VoIP providers use NANP numbers to provide their services.”⁴⁷⁵

292. We seek to refresh the record on the Commission’s authority pursuant to sections 254(d), 251(e), and Title I of the Act to establish a numbers-based contributions methodology. Under a numbers-based approach, some providers could be required to contribute directly to the Fund that historically may have contributed indirectly or not at all. For example, under a numbers-based approach based on “assessable numbers,” any provider who provides a service or device with an assessable number to an end user could be required to contribute, irrespective of whether the provider is a “telecommunications carrier” subject to the mandatory contribution obligation of section 254.⁴⁷⁶ We seek comment on whether the public interest would be served if the Commission were to exercise its permissive authority to require these providers to contribute to the Fund. What is the extent of the Commission’s ancillary authority under Title I of the Act? Does the provision of a service that relies on the assignment of an assessable number to an end user bring such a service offering under the Commission’s broad subject matter jurisdiction because it involves, in some manner, “interstate...communication by wire or radio?”⁴⁷⁷ Does the Commission’s plenary authority over numbering under section 251 of the Act support use of a numbers-based contribution methodology?

293. In responding to the questions below, we invite commenters to address how a numbers-based system should be structured to fulfill the statutory requirement that telecommunications service providers contribute on an equitable and nondiscriminatory basis. If we were to adopt a numbers-based contribution methodology, should we also explicitly exercise our permissive authority over providers of telecommunications or specified services to make clear that providers of those services would be assessed? How would we ensure that all entities that contribute under a numbers-based system are providers of interstate telecommunications?

2. Defining Assessable Numbers for Contribution Purposes

294. Below, we seek comment on *which* numbers should be assessed under a numbers-based contribution methodology. We also seek comment on whether defining assessable numbers or alternatives that commenters may suggest would best further our proposed goals for contribution reform. We specifically ask commenters to estimate the per-number assessment under their preferred definition of assessable numbers and the scope of any exemptions that they propose. We also ask parties to address the impact of differing definitions of assessable numbers on who would contribute in the future, compared to today.

295. *Definition of Assessable Numbers.* We seek comment on how the Commission should define an “assessable” number for purposes of a numbers-based contributions methodology. In other contexts, the Commission has defined “numbers” for purposes of Commission reporting requirements. For example, the Commission requires that each telecommunications carrier that receives numbering resources from the North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or another telecommunications carrier, report its numbering resources in each of six defined categories of numbers set forth in section 52.15(f) of our rules.⁴⁷⁸ In the regulatory fee context, the Commission has

⁴⁷⁴ See *VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33.

⁴⁷⁵ *Id.*

⁴⁷⁶ A proposed definition of “assessable number” is discussed below. See *infra* Section V.B.2.

⁴⁷⁷ 47 U.S.C. § 152(a); see also *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 (providing detailed explanation of why interconnected VoIP falls within the Commission’s subject matter jurisdiction).

⁴⁷⁸ These six categories of numbers are defined in 47 C.F.R. §52.15(f) as follows:

(continued...)

adopted the category of “assigned numbers” as the starting point for determining how to assess fees on certain providers, but found it necessary to modify that definition to account for different regulatory contexts.⁴⁷⁹ Specifically, in assessing regulatory fees for commercial mobile radio service (CMRS) providers that report number utilization to NANPA based on the reported assigned number count in their Numbering Resource Utilization and Forecast (NRUF) data, the Commission requires these providers to adjust their assigned number count to account for number porting. The Commission found that adjusting the NRUF data to account for porting was necessary for the data to be sufficiently accurate and reliable for purposes of regulatory fee assessment.⁴⁸⁰ We seek comment on whether we should adopt any of these definitions of numbers for purposes of defining an “assessable number” for USF contributions.

296. Specifically, we seek comment on the following definition of assessable numbers:⁴⁸¹

An “Assessable Number” is a NANP telephone number that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telecommunications network in the United States and its Territories and possessions. Assessable Numbers include geographic as well as non-geographic telephone numbers (such as toll-free numbers and 500-NXX numbers) as long as they meet the other criteria described in this part for Assessable Numbers.

297. We seek comment on whether the above definition furthers our overall proposed goals of reform. Is the above definition sufficiently broad to capture all types of numbers, including those

(Continued from previous page)

- (i) Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.
- (ii) Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.
- (iii) Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.
- (iv) Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.
- (v) Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer’s service to another service provider shall not be classified as intermediate numbers.
- (vi) Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 days shall not be classified as reserved numbers.

⁴⁷⁹ 47 C.F.R. § 52.15(f)(iii).

⁴⁸⁰ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005; Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Dockets Nos. 05-59, 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12271, paras. 39–40 (2005).

⁴⁸¹ See *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6547-6548, App. A, para. 116, at 6680, App. B, para. 63, & at 6746, App. C, para. 112.

associated with services aimed primarily at international calls that either commence or end in the United States and its Territories? Should we include in the above definition of numbers toll-free numbers that are also part of the North American Numbering Plan, but are governed by sections 52.101 through 52.111?⁴⁸²

298. We also seek comment on alternatives. For instance, should we define assessable numbers consistent with the definition of “Assigned numbers” in Part 52: “Assessable numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assessable numbers.”⁴⁸³ Would such a definition include NANP numbers assigned to mobile broadband-only devices, such as 3G tablets or laptop cards? If not, should we modify this definition, or would it be appropriate to exclude numbers associated with such devices and services associated with them? Commenters proposing alternative definitions of “assessable numbers” should explain how their proposal satisfies our proposed goals for contributions reform.

299. We note that any definition of assessable numbers may exclude special access services and possibly other services that are clearly assessed today, but that do not include a telephone number. In addition, such a definition may exclude some of the services mentioned in Section IV.B of this Notice.⁴⁸⁴ We seek comment on how such services should be treated under a pure numbers-based approach.

300. *Cyclical Numbers.* We seek comment below on whether contributors should report numbers on a monthly basis.⁴⁸⁵ If we were to adopt such a rule, should numbers used for intermittent or cyclical purposes (and that may not be fully in use at the time of a monthly reporting obligation) be excluded or included from the definition of Assessable Numbers?

301. For purposes of this discussion, we define numbers used for cyclical purposes as numbers designated for use that are typically “working” or in use by the end user for regular intervals of time. These numbers include, for example, an end-user’s summer home telephone number that is in service for six months out of the year.⁴⁸⁶ In the *NRO III Order*, the Commission clarified that these types of numbers should generally be categorized as “assigned” numbers if they meet certain thresholds and that, if they do not meet these thresholds, they “must be made available for use by other customers” (*i.e.*, they are “available” numbers).⁴⁸⁷ Is there a bright-line way for providers to determine, and for the Commission or

⁴⁸² See 47 C.F.R. § 52.101 – 52.111.

⁴⁸³ See 47 C.F.R. § 52.15(f)(iii).

⁴⁸⁴ See *supra* Section IV.B.

⁴⁸⁵ See *infra* Section V.C.7.

⁴⁸⁶ See *Numbering Resource Optimization et al.*, CC Docket No. 99-200 *et al.*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252, 303, para. 119 (2001) (*NRO III Order*).

⁴⁸⁷ *NRO III Order*, 17 FCC Rcd at 304, para. 122 (“With this requirement, we seek to limit the amount of numbers that are set aside for use by a particular customer, but are not being used to provide service on a regular basis. Thus, in order to categorize such blocks of numbers as assigned numbers, carriers may have to decrease the amount [of] numbers set aside for a particular customer. We also clarify that numbers ‘working’ periodically for regular intervals of time, such as numbers assigned to summer homes or student residences, may be categorized as assigned numbers, to the extent that they are ‘working’ for a minimum of 90 days during each calendar year in which they are assigned to a particular customer. Any numbers used for intermittent or cyclical purposes that do not meet these requirements may not be categorized as assigned numbers, and must be made available for use by other customers.”).

USAC to verify and audit, which numbers are cyclical versus which numbers are not cyclical? If not, would excluding such numbers be consistent with our proposed goals for contribution reform? What are the implications of excluding such numbers in the contribution base? Would excluding these numbers be consistent with the requirements of section 254(d)? What would be the policy justifications for excluding or including these numbers in the contribution base? For example, one policy reason for assessing cyclical numbers would be that each cyclical number obtains the full benefits of accessing the public network. If cyclical numbers are not excluded from the definition of assessable numbers, should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the count of numbers that would fall into the category of cyclical numbers, and explain how the Commission and USAC would verify and audit the use of such numbers.

302. *Assigned but Not Operational Numbers.* Section 52.15 of our rules define “assigned numbers” as numbers that have been assigned to a customer (within a period of five days or less) but have not yet been put into service.⁴⁸⁸ Since providers generally do not bill for services that have yet to be provisioned and therefore are not compensated for services during the pendency of the service order, should such numbers be excluded from the definition of Assessable Numbers? We seek comment on whether our definition of assessable numbers should include numbers that are not yet operational to send or receive calls. Would it be consistent with the “equitable and non-discriminatory” language in section 254(d) to exclude these numbers? Would the exclusion of assigned but not operational numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? In the alternative, should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into the category of “assigned but not operational numbers.”

303. *Available but Not Assigned Numbers.* We seek comment on whether the definition of assessable numbers should include or exclude other numbers that are held by service providers from the definition of Assessable Numbers. In particular, should we exclude from the definition of Assessable Numbers those numbers that meet the definition of an Available Number, an Administrative Number, an Aging Number, or an Intermediate Number as those terms are defined in section 52.15(f) of the Commission’s rules?⁴⁸⁹ Carriers will not have an end user associated with a number in any of these categories of numbers. For example, an intermediate number is a number that is “made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer.”⁴⁹⁰ Should the receiving provider be responsible for including the number as an Assessable Number only when it provides the number to an end user? We seek comment on whether a numbers-based approach should assess Reserved Numbers. Would it be consistent with the “equitable and non-discriminatory” language in section 254(d) to exclude these numbers? Would the exclusion of available but not assigned numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into the category of “reserved numbers.”

304. *Assigned but Non-Working Numbers.* The 2008 proposals sought comment on excluding non-working telephone numbers from the definition of Assessable Number.⁴⁹¹ Several commenters

⁴⁸⁸ 47 C.F.R. § 52.15(f)(iii).

⁴⁸⁹ See 47 C.F.R. § 52.15(f).

⁴⁹⁰ See 47 C.F.R. § 52.15(f)(v).

⁴⁹¹ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6549, App. A, para. 119, at 6682-83, App. B, para. 67, & at 6748, App. C, para. 118.

supported the Commission's proposal that assigned but non-working numbers should be excluded from contributions.⁴⁹² Carriers report as assigned numbers for NRUF purposes entire codes or blocks of numbers dedicated to specific end-user customers if at least fifty percent of the numbers in the code or block are working in the PSTN.⁴⁹³ Would it be consistent with the definition of an Assessable Numbers above for carriers to exclude the non-working numbers in these blocks in their Assessable Number counts, because the non-working numbers portion of these blocks are not "in use by an end user"? We seek to update the record on whether a numbers-based approach, if adopted, should assess non-working numbers. Would it be consistent with the "equitable and non-discriminatory" language in section 254(d) to exclude these numbers? Would the exclusion of non-working numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? Would this create loopholes and make it difficult for the Commission or USAC to audit a provider to determine if non-working numbers were properly counted? In the alternative, should such numbers be assessed at a pro-rated or reduced rate? We also seek comment on the count of non-working numbers, as well as the trend for this category.

305. *Numbers Used for Routing Purposes.* The 2008 *Comprehensive Reform FNPRM* sought comment on excluding from the definition of "Assessable Number" numbers that are used merely for routing purposes in a network, as long as such numbers are always—without exception—provided without charge to the end user, are used for routing only to Assessable Numbers for which a universal service contribution has been paid, and the ratio of such routing numbers to Assessable Numbers is no greater than 1.⁴⁹⁴ We seek to update the record on whether a NANP number used solely to route or forward calls should be excluded from the definition of Assessable Number in a numbers-based approach, if such routing number were provided for free, and such number routes calls only to Assessable Numbers. Should these numbers be assessed on a different basis, if such routing or forwarding were provided for a fee, such as with remote call forward service or foreign exchange service? We seek comment on whether such numbers should be excluded under a numbers-based contribution system. Would it be consistent with the "equitable and non-discriminatory" language in section 254(d) to exclude these numbers? Would the exclusion of numbers used for routing purposes have a material impact on the contribution base and associated per month charge for assessable numbers? How would the exclusion of routing numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We also seek data on numbers used for routing purposes, including trend information for this category of numbers.

306. *Toll-Free Numbers.* We seek comment on whether a numbers-based methodology should make special accommodations for toll-free numbers. Toll-free numbers are different from other NANP numbers in that the toll-free subscriber pays the long distance charges associated with calls it receives, rather than the persons making the calls.⁴⁹⁵ For this reason, the Commission has adopted rules specific to the administration of toll-free numbers, as opposed to local area numbers.⁴⁹⁶ Under the current revenues-

⁴⁹² See Letter from Jeanine Poltronieri, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Oct. 24, 2005); Comments of Time Warner Inc., WC Docket No. 06-122, at 5 (filed Aug. 9, 2006); Letter from Patricia Todus, President, ACUTA, & Mark Luker, Vice President, EDUCAUSE, CC Docket No. 96-45, Attach. at 2 (filed May 31, 2006).

⁴⁹³ *NRO III Order*, 17 FCC Rcd at 304, para. 122.

⁴⁹⁴ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6550, App. A, para. 123, at 6683, App. B, para. 71, & at 6748-49, App. C, para. 119.

⁴⁹⁵ The term "subscriber" refers to the Toll-Free Subscriber, currently defined in § 52.101 (e) of the rules.

⁴⁹⁶ See 47 C.F.R. § 52.101 – 52.111.

based system, there is no specific exemption for revenues associated with toll-free numbers. We seek comment on whether the proposed definition for assessable number should exclude from assessment toll-free numbers. Would it be consistent with the “equitable and discriminatory language” in section 254(d) to exclude these numbers? How would the exclusion of toll-free numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We also seek data on toll-free numbers, including trend information for this category of numbers.

307. *All Public or Private Interstate Networks.* We note that the *2008 Comprehensive Reform FNPRM* definition of an “assessable number” would include numbers associated with services that traverse any interstate private or public network, which would not necessarily be limited to numbers for calling that originate or terminate on the PSTN. In the *2008 Comprehensive Reform FNPRM*, the Commission discussed the evolution in communications technology away from the PSTN to alternative networks that may only partially (if at all) traverse the PSTN as one of the causes in the erosion of the contribution base under the current revenue-based methodology.⁴⁹⁷ As more services migrate to alternative networks that only partially traverse the PSTN, is there a danger that a NANP numbers-based contributions methodology in time could result in declines in the base, and may conflict with our proposed reform goals of ensuring sustainability in the Fund and promoting fairness in the USF contribution assessment system?⁴⁹⁸ Or are NANP numbers being used in association with new technologies that do not originate or terminate on the PSTN? If so, do commenters expect that growth in these alternative usages will outpace other declines? We seek comment generally on whether a contribution system based on NANP numbers would be sustainable as the marketplace evolves in the future.

308. *Numbers Provided to End Users.* We seek comment on which providers should contribute to the Fund under a numbers-based contribution methodology. We seek comment on whether the provider with the retail relationship with the end user should have the contribution obligation under a numbers-based approach.⁴⁹⁹ We note that in 2008, several telecommunications providers, including Qwest, XO Communications, AT&T, and Verizon supported the Commission’s proposal that providers with the retail relationship to the residential customer should be the providers contributing under a numbers-based methodology.⁵⁰⁰ Would such a provider have the most accurate and up-to-date information about how many Assessable Numbers it currently has assigned to end users and how many are in use? If we adopt a different approach for numbers used for consumer versus enterprise services,

⁴⁹⁷ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6550-51, App. A, para. 126, and at 6683-84, App. B, para. 74, and at 6749-50, App. C, para. 122.

⁴⁹⁸ See, e.g., Technical Advisory Council Chairman’s Report (Apr. 22, 2011) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306065A1.pdf (last visited Apr. 12, 2012); Technology Advisory Council, Summary of Meeting, June 29, 2011 available at <http://transition.fcc.gov/oet/tac/tacdocs/tac-meeting-summary-6-29-11-final.docx> (last visited Apr. 12, 2012) (suggesting the transition away from the PSTN should end by 2018); *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17670, 17676-17677, paras. 11, 34-35 (citing promotion of the transition to IP networks as a goal of ICC reform).

⁴⁹⁹ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6548, App. A, para. 117, at 6680-6681, App. B, para. 64-65, & at 6746-6747, App. C, para. 113 (seeking comment whether the provider with the retail relationship to the end user should be the entity responsible for contributing)

⁵⁰⁰ See Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 7 (filed Sept. 24, 2008); AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 1-2, Letter from Brad E. Mutschelknaus, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 *et al.* Attach. at 9 (filed Oct. 3, 2008); Letter from Donna N. Lampert, Counsel for Google Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 3, 2008).

would the provider with the retail relationship be in the best position to distinguish consumer users from business users?

309. We seek comment on how a numbers-based approach should be implemented with respect to wholesalers, resellers, and other providers incorporating NANP numbers into retail services. Would a system that assesses only numbers provided to end-users invite problems similar to those that exist today under the current revenues-based system, whereby some providers do not contribute for services provided?⁵⁰¹ We note that in some instances wholesalers may provide telecommunications services to customers with numbers. For example, would a numbers-based system create wholesale/reseller/retailer problems of the type discussed earlier in this Notice?⁵⁰²

3. Trends in Numbers

310. We seek comment and data on the count of numbers that would be assessable under a number-based USF contribution assessment system. Neustar, the administrator of the NANP, estimates that there are currently 770 million numbers in active use in the United States.⁵⁰³ As shown in Chart 7 below,⁵⁰⁴ one projection suggests there could be over 832 million numbers in active use by 2015.

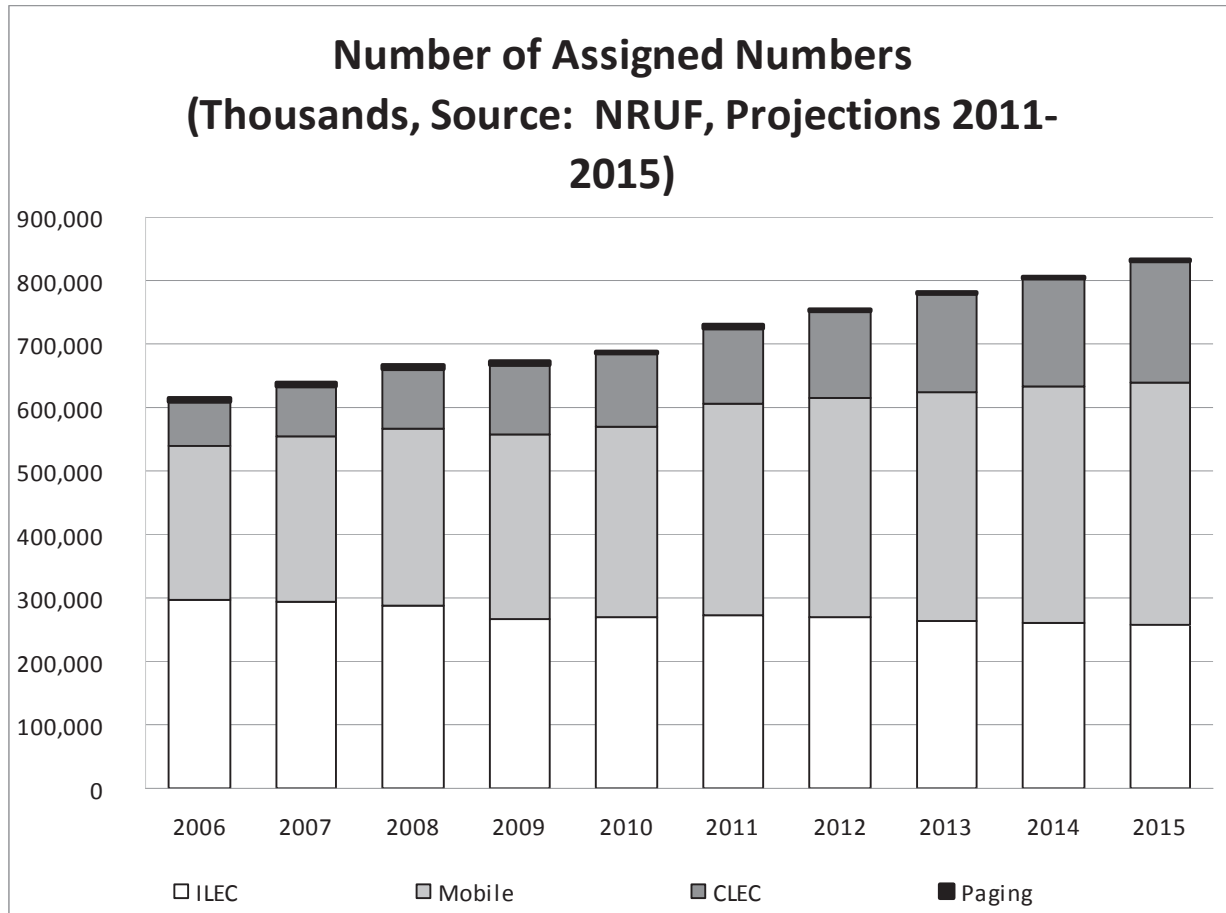
⁵⁰¹ See *supra* Section V.A.4.

⁵⁰² *Id.*

⁵⁰³ Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 07-149 (filed Mar. 9, 2012).

⁵⁰⁴ The number of assigned numbers presented in Chart 8 is from NRUF Table 1. Missing values for June in the earlier years are interpolated. Historical data are as of end December 2006 to 2010. Projected number of incumbent local exchange carrier (ILEC) assigned numbers and total assigned numbers (ILEC, mobile, competitive local exchange carrier (CLEC), and paging) assume a linear trend. Projected numbers of paging assigned numbers assumes a logarithmic trend. Bass model is used to project mobile wireless assigned numbers. CLEC assigned numbers are assumed to be residual. CLEC figures include numbers provided to VoIP providers.

Chart 7



We seek comment on this estimate and the underlying assumptions, and invite commenters to present their own estimates for the growth or decline in the count of actively-used numbers as well as any additional data regarding their own estimates and the key drivers for such growth or decline. To what extent is the growth in the volume of numbers due to new services and applications, and to what extent is it due to greater penetration of phone service, such as cell phone family plans and usage by younger children? Do commenters believe the volume of numbers will increase in the foreseeable future? Is the growth trend sustainable given anticipated technology changes? What other factors will impact the continued growth in the volume of numbers? What impact would the growth in numbers have on future contribution assessments? To the extent commenters predict the volume of numbers in use will decline over time rather than grow, they should similarly identify the basis for their assumptions and describe in detail their projections for the foreseeable future. What challenges would a numbers-based contribution system face if the volume of numbers were to shrink?

311. We note that in 2008, AT&T and Verizon estimated that under a numbers-based assessment methodology, the contribution would be between \$1 and \$1.10 per number per month.⁵⁰⁵ They further estimated that if the Commission were to move to a numbers-based system, the residential share of the contribution burden would drop from 50 percent to 46 percent, while the business share would rise from 50 percent to 54 percent.⁵⁰⁶ We seek to update the record on what the per-number charge

⁵⁰⁵ AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 2.

⁵⁰⁶ *Id.*

would be, given current and projected trends in numbers and overall universal service demand. Commenters also should provide revised estimates of the impact on different industry contributors, and residential and business consumers, in light of current marketplace developments. Commenters should indicate which definition of “assessable numbers” (and exclusions from assessable numbers) they use in their projections.

4. Differential Treatment of Certain Types of Numbers

312. In this section, we seek comment on whether to provide differential treatment or exclude altogether certain types of numbers from the definition of Assessable Numbers under a numbers-based contribution methodology, and whether doing so would further or undermine our proposed goals for contributions reform. To the extent commenters contend certain types of numbers should be assessed at a different rate, *i.e.* a percentage of the basic per number assessment per month, we ask commenters to include a policy rationale for their proposal. For example, is there a reason why certain types of numbers should be assessed at some fraction, such as 33 or 50 percent, of other numbers based on usage? Would assessing numbers used for certain types of services promote or discourage innovation?

313. *Family Plan Numbers.* In the 2008 *Comprehensive Reform FNPRM*, the Commission sought comment on including additional numbers in a family plan in the definition of an Assessable Number because (1) each number associated with a family plan obtains the full benefits of accessing the public network, and (2) an exemption for additional family plan handsets would not be competitively neutral and would advantage wireless family plan consumers over other residential service consumers.⁵⁰⁷ Parties have argued in the past that telephone numbers assigned to the additional handsets in family wireless plans should be assessed at a reduced rate, either permanently or for a transitional period.⁵⁰⁸ These commenters suggested that assessing contributions at the full per-number rate would cause family plan customers to experience “rate shock.”⁵⁰⁹

314. We seek to refresh the record on this issue. We seek comment on whether a numbers-based approach should count equally all numbers that are used for family plans. If we were to adopt a differentiated approach for family plans, how would we define a “family plan” that would be subject to such differential treatment? Would this create incentives for service providers to consolidate accounts and take other measures to characterize service offerings as “family plans”? Would such a rule be limited to mass market consumers, and if so, how should we distinguish between mass market plans and enterprise plans? Would differential treatment of such numbers satisfy the statutory requirements that contributions by telecommunications service providers be equitable and non-discriminatory? What would be the policy justifications for assessing such numbers at a pro-rated or reduced rate? We ask commenters to provide data with underlying assumptions as to the count of numbers that would fall into this category, specifically, how many phone numbers are associated with a primary phone number in a family plan.

⁵⁰⁷ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6560, App. A, para. 145.

⁵⁰⁸ See, e.g., AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 4; Comments of CTIA-The Wireless Association, WC Docket No. 06-122, at 5-6 (filed Aug. 9, 2006) (CTIA Aug. 9, 2006 Comments); Comments of Leap Wireless International, Inc., WC Docket No. 06-122 *et al.*, at 2-3 (filed Aug. 9, 2006) (Leap Wireless 2006 *Contribution FNPRM* Comments); Letter from Thomas J. Sugrue, Vice President—Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, at 2 (filed Apr. 4, 2006) (T-Mobile Apr. 4, 2006 *Ex Parte* Letter).

⁵⁰⁹ AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 4; CTIA Aug. 9, 2006 Comments at 5-6; Leap Wireless Aug. 9, 2006 Comments at 2-3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 2-3. *But see* Letter from Kenneth E. Hardman, American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (filed Oct. 9, 2008).

315. *Services-Based Exceptions.* Prior commenters have proposed that we should exempt from any numbers-based contribution methodology services provided by telematics providers,⁵¹⁰ one-way service providers,⁵¹¹ two-way paging services,⁵¹² and alarm companies.⁵¹³ In 2008, the Commission sought comment on excluding such services from any numbers-based system.⁵¹⁴ Various commenters argued for special treatment for these services.⁵¹⁵ In response, other commenters opposed granting exemptions for these services because it would provide them with an advantage over other services that are required to contribute based on residential telephone numbers.⁵¹⁶ We seek to update the record on these proposals, noting that since 2008, additional marketplace developments have emerged that may similarly not fit neatly into the numbers paradigm, including numbers assigned to devices reliant on mobile broadband, such as data cards, e-readers, and tablet computers. Should these types of numbers be assessed at a different rate, e.g., a percentage of the basic per number monthly assessment? For example, should a number assigned to a telematics device, where the customer is not paying a monthly fee and the device can only make a “call” in an emergency situation be assessed differently from a number assigned to a consumer cell phone or a business landline? Would exclusion of numbers associated with such services be consistent with the statutory requirement that all carriers providing interstate telecommunications services shall contribute on an equitable and non-discriminatory basis?⁵¹⁷ How

⁵¹⁰ Telematics is a service that is provided through a transceiver, which is usually built into a vehicle but can also be a handheld device, that provides public safety information to public safety answering points (PSAPs) using global positioning satellite data to provide location information regarding accidents, airbag deployments, and other emergencies in real time. See, e.g., Letter from David L Sieradzki, Counsel for OnStar, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Mar. 2, 2006); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Systems*, CC Docket No. 94-102, Order, 18 FCC Rcd 21531, 21531–33, paras. 2, 8 (2003).

⁵¹¹ One-way services include, but are not limited to, one-way paging, electronic facsimile (e-fax), and voicemail services (other than stand-alone voicemail services, as discussed above).

⁵¹² See, e.g., Letter from Matthew Brill, Counsel for USA Mobility, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (filed Oct. 24, 2008) (opposing the assessment of a numbers-based fee on paging carriers and their customers); Letter from Kenneth Hardman, Counsel for the American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at Attach. (filed Oct. 22, 2008).

⁵¹³ See Letter from Donald J. Evans, Counsel for Corr Wireless Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 06-122, WT Docket No. 05-194, at 2 (filed Oct. 23, 2008).

⁵¹⁴ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6690-91, App. B, para. 92, & at 6756-57, App. C, para. 139.

⁵¹⁵ See Letter from Ari Q. Fitzgerald, Counsel, Mercedes-Benz USA, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Apr. 12, 2006); see also Letter from John E. Logan, ATX Group, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Mar. 16, 2006); Letter from David M. Don, Counsel for j2 Global Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Nov. 18, 2005); Letter from William B. Wilhelm, Jr., Counsel for Bonfire Holdings, to Tom Navin, Chief, Wireline Competition Bureau, FCC, CC Docket No. 96-45 (filed Feb. 13, 2006); Comments of j2 Global Communications, Inc., CC Docket No. 96-45, at 2 (filed Feb. 28, 2003); Letter from Kenneth E. Hardman, Counsel for the American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Oct. 6, 2005); Letter from Frederick M. Joyce, Counsel for USA Mobility, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1–3 (filed Mar. 22, 2006).

⁵¹⁶ See, e.g., Letter from James S. Blaszk, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Aug. 15, 2006) (Ad Hoc Telecommunications Users Aug. 15, 2006 Comments); Letter from Douglas D. Orvis, Counsel for IDT Corporation, to Marlene H. Dortch, Secretary, FCC, Docket No. 96-45, Attach. A at 5 (filed Feb. 23, 2006).

⁵¹⁷ 47 U.S.C. § 254(d).

would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers altogether from contribution obligations? We ask commenters to provide data as to the volume of numbers that would fall into this category.

316. *Numbers Provided to Lifeline Subscribers.* In 2008, the Commission sought comment on a proposal to prohibit contributors from passing through any universal service charges to their Lifeline subscribers.⁵¹⁸ Several contributors suggested that telephone numbers assigned to Lifeline subscribers should be excluded from the universal service contribution base and providers of Lifeline service should not pass-through contribution assessments to Lifeline subscribers.⁵¹⁹ As a threshold matter, we seek comment on whether the Commission has statutory authority to exclude numbers associated with service offerings provided to Lifeline subscribers, given the mandatory contribution obligation for telecommunications service providers. To the extent such numbers are provided with telecommunications services, would it be consistent with our section 10 authority to forebear from imposing contribution obligations on such numbers?⁵²⁰

317. In our prior proceedings, consumer groups, large telecommunications customers, LECs, and wireless providers all supported an exemption for numbers provided to Lifeline subscribers, and no commenter opposed an exemption for numbers provided to Lifeline subscribers.⁵²¹ We seek to update the record on whether it is appropriate to not assess numbers for Lifeline subscribers, if we were to adopt a numbers-based contribution methodology. We note that today there are approximately 14.8 million Lifeline subscribers.⁵²² How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Alternatively, should such numbers associated with Lifeline services be assessed at a pro-rated or reduced rate, and if so, what would be an appropriate amount?

318. *Free Services.* Some providers have argued in the past that their services are offered on a free, or nearly-free basis, and if these services are assessed on a per telephone number basis, providers will no longer be able to offer such services for free.⁵²³ In 2008, the Commission sought comment on a proposal to include free services in a number-based contributions system, noting that although these services may be marketed as “free” to the end user, these services are not truly free.⁵²⁴ Commenters,

⁵¹⁸ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6557, App. A, para. 141, at 6683, 6689, App. B, para. 71, 90, & at 6756-57, App. C, para. 136, 137.

⁵¹⁹ See, e.g., Letter from Mary L. Henze, AT&T Services, Inc. & Kathleen Grillo, Verizon, WC Docket No. 06-122, CC Docket No. 96-45, Attach. at 4 (filed Oct. 20, 2008) (AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter) (proposing that numbers assigned to Lifeline subscribers be excluded from the monthly number count for contribution purposes).

⁵²⁰ We seek comment below on the separate question of whether ETCs should be prohibited from passing through to Lifeline subscribers any contribution obligations they may have with respect to Lifeline services. See *infra* Section VII.C.

⁵²¹ See, e.g., CTIA Aug. 9, 2006 Comments at 5; Reply Comments of Consumers Union *et al.*, WC Docket No. 05-337, CC Docket No. 96-45, at 58 (filed June 2, 2008); Letter from James S. Blaszk, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 4 (filed Nov. 19, 2007); AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 5.

⁵²² USAC Second Quarter 2012 Filings, LI08 - Lifeline Subscribers by State or Jurisdiction.xls available at <http://www.usac.org/about/tools/fcc/filings/2012/q2.aspx>.

⁵²³ See, e.g., j2 Global Feb. 28, 2003 Comments at 7 (arguing that a connections-based universal service methodology would force many heavily used one-way communications services out of existence).

⁵²⁴ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6689-90, App. B, para. 91, & at 6756-57, App. C, para. 139.

other than the providers of such free services, generally supported the inclusion of these numbers.⁵²⁵ We seek to refresh the record on this issue. Since commercial providers of free or nearly-free services generate revenue in other ways, such as through advertising or through more sophisticated paid service offerings or product offerings, should they be exempt from contribution obligations? Whether these providers continue to offer free services would be a business decision based upon the circumstances of the particular business. Would the inclusion of such services under a numbers-based approach be equitable? Some commenters have argued in the past that assessing a per-number contribution obligation on these services is consistent with prior Commission determinations that services that benefit from a ubiquitous public network are fairly charged with supporting the network.⁵²⁶ We ask commenters to provide estimates with supporting data regarding the number of numbers that would fall into this category.

319. *Community Voice Mail.* In 2008, the Commission sought comment on whether stand-alone voice mail service, provided for free to “phoneless” people, should be exempted from direct contribution obligations under a numbers-based methodology.⁵²⁷ Such services are provided for free, and therefore generate no revenues. Provided we did not otherwise exempt free services, we seek comment on whether a numbers-based approach should assess numbers associated with services such as community voicemail. Would exclusion of these numbers satisfy the statutory requirements for universal service contributions from providers of telecommunications services? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into this category.

320. *TRS and VRS Numbers.* Some parties have previously suggested that if we adopt a numbers-based contribution methodology, we should exempt Internet-based telecommunications relay services (TRS), including video relay services (VRS) and IP Relay services.⁵²⁸ Such services are provided for free to people with hearing and speech disabilities, under Congressional mandate.⁵²⁹ The 2008 *Comprehensive Reform FNPRM* did not propose to exempt these services, because the treatment of costs related to the acquisition of numbers for TRS and VRS was pending in another proceeding.⁵³⁰ We seek to update the record on this issue. Would inclusion of these numbers satisfy the statutory

⁵²⁵ See, e.g., Ad Hoc Telecommunications Users Aug. 15, 2006 Comments at 2 (stating that there should only be an exemption for Lifeline subscriber numbers).

⁵²⁶ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6689-90, App. B, para. 91, & at 6756-57, App. C, para. 139.

⁵²⁷ *Id.* at 6557-58, App. A, para. 142. Appendix B and C proposals were against an exemption for such services. *Id.* at 6690-91, App. B, para. 92, & at 6756-57, App. C, para. 139. Specifically, Community Voice Mail National (CVM) argued that stand-alone voice mail services that consist of free voice mail access to “phoneless” people should be exempt. Letter from Jennifer D. Brandon, Executive Director, Community Voice Mail National, to Tom Navin, Wireline Competition Bureau, FCC, CC Docket No. 96-45, at 1 (filed May 30, 2006) (CVM provides “free, personalized voicemail access to people in crisis and transition (homeless, victims of domestic violence, and other ‘phoneless’ people”).

⁵²⁸ See Letter from Deb MacLean, Communication Access Center for the Deaf and Hard of Hearing, *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 1-2 (filed Sept. 29, 2008).

⁵²⁹ 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, 251, 254, 303(r)

⁵³⁰ 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6691, App. B, para. 91, & at 6756-57, App. C, para. 139. In each proposal, the Commission deferred to an open TRS proceeding in which the Commission considered whether certain costs related to the acquisition of ten-digit numbers by TRS customers should be reimbursed by the TRS Fund. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 02-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11646, para. 100 (2008).

requirements for universal service contributions? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into this category.

321. *Other Exemptions.* Are there other types of numbers or services that should be excluded from a numbers-based contribution mechanism, if we were to adopt such an approach? For instance, should we adopt exemptions for numbers used by non-profit health care providers,⁵³¹ libraries, colleges and universities, entities that typically administer their own numbers? Would inclusion of these numbers satisfy the statutory requirements for universal service contributions? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into each category of proposed exemptions.

5. Use of a Hybrid System with a Numbers-Component

322. We seek specific comment on adopting a hybrid numbers-connections based methodology. As previously discussed, the Commission sought comment in 2008 proposals on two hybrid approaches. Under the 2008 proposals, consumer numbers would be assessed on a numbers-based methodology, and business lines would be assessed on a connections-based methodology.⁵³² The Commission has also sought comment on a hybrid numbers-connections methodology that would assess providers a flat fee for each assessable NANP telephone number and assess services not associated with a telephone number as connections.⁵³³ A hybrid numbers and connections system may have advantages over a numbers-only system insofar as it captures services that are provided without numbers. In other respects, however, such a system might incorporate all of the potential disadvantages of both numbers-based and connections-based systems. Moreover, regardless of the particular methodologies used, hybrid systems may be more complex and expensive to administer than a single system.⁵³⁴ Should carriers that

⁵³¹ This proposal is consistent with the current exemption under the revenues contribution methodology. See 47 C.F.R. § 54.706(d).

⁵³² 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6536, App. A, para. 92 & at 6735, App. C, para. 88.

⁵³³ In 2002, the Commission sought comment on a proposal to assess providers based on telephone numbers assigned to end users, but to assess special access and private lines that do not have assigned numbers based on capacity. 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24995–97, paras. 96–100. In 2008, the Commission sought comment on two proposals to assess contributions based on numbers for residential services and connections for business services. 2008 *Comprehensive Reform FNPRM*, 24 FCC Rcd at 6536–64, paras. 92–156 (App. A); *id.* at 6735–6762, paras. 88–151 (App. C). The Commission has also previously sought comment on a hybrid connections and revenues system. See 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24991–95, paras. 86–95.

⁵³⁴ See, e.g., Verizon and Verizon Wireless Comments, GN Docket No. 09-47 *et al.*, at 9 (filed Dec. 7, 2009) (arguing that a numbers-only system is preferable to a numbers-connections system or a numbers-revenues system because there are significant costs associated with tracking and assessing contributions based on multiple contribution units, regardless of the mechanisms involved); Comments of Broadview Networks, Inc. *et al.*, GN Docket No. 09-47 *et al.*, at 15-17 (filed Dec. 7, 2009) (describing burdens imposed by hybrid numbers and revenues systems and hybrid numbers and connections systems); TCA Comments, GN Docket No. 09-47 *et al.*, at 4 (filed Dec. 7, 2009) (arguing that a revenues-connections methodology would add unnecessary complexity and consumer confusion).

do not have working numbers or end-user connections continue to contribute based on their interstate telecommunications revenues?⁵³⁵ We ask parties to refresh the record and seek comment on this analysis.

323. To what extent would a hybrid system create competitive distortions in the marketplace? Any system that would make distinctions between mass market and enterprise users would require an ability for contributors in the first instance, and USAC and this Commission, to distinguish between the two, in order to ensure that contributions are appropriately made. Would such a system advance our proposed reform goals of administrative efficiency, fairness and sustainability? Would a hybrid system satisfy the statutory requirements that contributions be equitable and non-discriminatory? Would using a different methodology for contributions for the provision of service to businesses dissuade investment in higher speed and robust communications facilities?⁵³⁶ Recognizing that the answer may depend on the specific tiers that are adopted, and the assessment levels for each tier, would such a system, potentially, unfairly advantage or disadvantage purchasers of higher speed connections?⁵³⁷

324. Commenters who support a numbers-connections methodology should address the feasibility of the methodology in light of recent industry developments and the continuing evolution of telecommunications technology.⁵³⁸ Commenters should also address the advantages and disadvantages of such a system. Are there any entities that would be contributing for the first time, if we were to adopt a hybrid approach? We specifically seek comment on whether a hybrid numbers-connections methodology would better meet our goals for reform in comparison to the options discussed above, including an improved revenues system, a connections-based approach, and a numbers-based contribution assessment system. We ask parties claiming significant costs or benefits of a hybrid approach to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

6. Policy Arguments Related to Numbers-Based Assessment

325. In the *2008 Comprehensive Reform FNPRM*, the Commission sought comment on several potential benefits of a numbers-based contribution methodology. The Commission noted that adoption of a numbers-based approach would benefit both consumers and contributors by simplifying the basis for assessments and stabilizing assessments at a set amount (for example, \$1.00 per month per consumer telephone number).⁵³⁹ The Commission also noted that a numbers-based contribution methodology could benefit consumers because it would be technologically and competitively neutral in that a consumer would pay the same universal service charge regardless of whether the consumer receives service from a cable provider, an interconnected VoIP provider, a wireless provider, or other wireline

⁵³⁵ CTIA Aug. 9, 2006 Comments at 5 (carriers without working numbers or end-user connections could contribute based on their interstate revenues).

⁵³⁶ Comments of Verizon and Verizon Wireless, WC Docket No. 05-337 *et al.*, at 37-39 (filed Nov. 26, 2008) (Verizon Nov. 26, 2008 Comments) (assessing business lines that are equivalent to residential broadband products at a higher business rate will discourage providers from “rolling out innovative, high speed products” at reasonable prices).

⁵³⁷ See Letter from J.G. Harrington, ACUTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. at 14 (filed May 31, 2006)(capacity tiers should not provide an unfair advantage or disadvantage for purchases of higher-capacity connections).

⁵³⁸ See AT&T Aug. 24, 2010 *Ex Parte* Letter at 1 (“While a numbers only-based system was adequate just a few years ago . . . changes in the marketplace and the direction of USF reform require a more inclusive methodology.”)

⁵³⁹ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6543, App. A, para. 105, at 6675-76, App. B, para. 53, & at 6742, 6743, App. C, para. 103, 106.

provider.⁵⁴⁰ As a result, the Commission stated that such an approach would enable consumers to choose the providers and services they want without regard to any distortions that may otherwise be caused by differing contribution charges.⁵⁴¹ The *2008 Comprehensive Reform FNPRM* also noted that, by subjecting contributors to the same regulatory framework for assessments on services regardless of technology, the numbers-based methodology would eliminate incentives under the current revenues-based system for providers to migrate to services and technologies that are either exempt from contribution obligations or are subject to safe harbors.⁵⁴²

326. We seek to refresh the record on the potential benefits of a numbers-based contribution methodology. We also seek comment on whether a numbers-based system (compared to a connections-based system or the current revenues-based system) would be simpler to understand. Would it be competitively neutral? Would a numbers methodology be inequitable or discriminatory for low volume users?⁵⁴³ Would a numbers-based system, be easier to audit for compliance? Could such a system reduce compliance costs for contributors? Could it also reduce marketplace distortions that may be present in either the consumer or enterprise markets? We ask parties claiming significant costs or benefits of a numbers-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

327. In the past, several commenters have argued that moving to a numbers-based approach where numbers are assessed with fixed amounts is disproportionately burdensome for low-income consumers and other users on low-cost service plans.⁵⁴⁴ Are there modifications that could be made to a numbers-based methodology to make assessment fairer to consumers on low-cost service plans? Would a numbers-based system shift the universal service contributions from higher-volume users of communications services to lower-volume users? Overall, would low-income households pay a larger percentage of communications bills in contribution assessments than higher income households compared to today?

328. Would adoption of a numbers-based contribution approach discourage the emergence of innovative new functions and services, such as “follow-me” services or unified communications applications?⁵⁴⁵ If the Commission were to adopt a numbers-based contribution methodology, how could it structure such a system so as not to inhibit innovation? For example, should the Commission exempt numbers associated with certain services to be exempt for a defined period of time, analogous to the Commission’s pioneer’s preference rules?⁵⁴⁶

⁵⁴⁰ *Id.* at 6554, App. A, para. 108, at 6676-77, App. B, para. 55, & at 6742-43, App. C, para. 104. *But see supra* Section V.C.4, para. 311 (discussion of family plans).

⁵⁴¹ *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6554, App. A, para. 108, at 6676-77, App. B, para. 55, & at 6742-43, App. C, para. 104.

⁵⁴² *Id.* at 6544, App. A, para. 109, at 6677, App. B, para. 56, & at 6743, App. C, para. 105.

⁵⁴³ Comments of AT&T, Inc., WC Docket No. 05-337 *et al.*, at 47-49 (filed Nov. 26, 2008) (AT&T Nov. 26, 2008 Comments).

⁵⁴⁴ *See, e.g.*, IDT Corp. May 2008 Comments at 1; Leap Wireless Aug. 9, 2006 Comments at 3; and CTIA Aug. 9, 2006 Comments at 4.

⁵⁴⁵ *See, e.g.*, Google Voice, *available at* <http://www.google.com/googlevoice/about.html> (last visited Apr. 10, 2012); Twilio Home Page, *available at* <http://www.twilio.com/> (last visited Apr. 10, 2012).

⁵⁴⁶ The Commission’s pioneer’s preference program was established in 1991 to provide a means of extending preferential treatment in the Commission’s spectrum licensing processes to parties that demonstrated their responsibility for developing new spectrum-using communications services and technologies. Under the pioneer’s preference rules, a necessary condition for the grant of a preference was that the applicant demonstrate that it had developed the capabilities or possibilities of a new service or technology, or had brought the service or technology to (continued...)

329. *Distinguishing Telecommunications from Non-Telecommunications.* Would a numbers-based methodology more easily accommodate new services and technologies without requiring service providers or the Commission to make service classification judgments?⁵⁴⁷ We seek comment above on approaches to provide clarity to contributors with respect to specific services, without the need to classify those services as either information services or telecommunications services.⁵⁴⁸ We also seek comment on assessing revenues associated with information services.⁵⁴⁹ In light of those potential approaches to determining who should contribute, would a numbers-based methodology continue to offer advantages as a relatively simple basis for assessing those providers' contributions? To what extent have numbers become increasingly associated with information services? Would a numbers-based assessment mechanism ensure that contribution obligations are applied in a fair and predictable manner to all interstate telecommunications providers?

330. *Jurisdictional Considerations.* As discussed above, the current revenues-based system requires contributors to separately report revenues derived from interstate, intrastate and international services.⁵⁵⁰ The Commission and industry participants have suggested in the past that a connections-based system might mitigate the need to differentiate between interstate and intrastate jurisdictions.⁵⁵¹ We seek comment on whether the same is true for a numbers-based system.

331. Given that NANP numbers enable users to connect with other users across state lines, is it reasonable to conclude that a numbers-based methodology would be directed at interstate providers and therefore consistent with the statutory requirements of section 254? We seek specific comment on the implications of the Fifth Circuit's *TOPUC* decision, which held that section 2(b) of the Act prohibits the Commission from assessing revenues associated with intrastate telecommunications service.⁵⁵² Does *TOPUC* impose any limitations on a numbers-based contribution system, particularly in light of the Commission's authority over numbering in section 251? We also seek comment on whether *TOPUC* raises any concerns related to assessing international services. If so, we seek comment on whether a numbers-based system should include an exemption similar to the limited international revenues exemption under the current revenues-based system for providers that are primarily international in nature,⁵⁵³ and if so, how such an exemption should be crafted.

(Continued from previous page)

a more advanced or effective state. See Office of Engineering and Tech. *Pioneer's Preference Program*, FCC, available at <http://transition.fcc.gov/oet/faqs/pioneerfaqs.html> (last updated Jan. 13, 2000).

⁵⁴⁷ AT&T Nov. 26, 2008 Comments at 50; Verizon Nov. 26, 2008 Comments at 32-33 (supporting the argument that a numbers methodology avoids the need to distinguish between types of revenues, or between telecommunications and information services).

⁵⁴⁸ See *supra* Section IV.B.

⁵⁴⁹ See *supra* Section V.A.1.

⁵⁵⁰ See *supra* Section II.A.

⁵⁵¹ 2002 *First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3784, para. 71; 2002 *Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24985, para. 70; see, e.g., USTelecom Nov. 26, 2008 Comments.

⁵⁵² *TOPUC*, 183 F.3d at 446-48. But see State Members of Joint Board CAF Comments at 121-24 (both the Commission and states should be able to assess interstate and intrastate telecommunications revenues; *TOPUC* was wrongly decided).

⁵⁵³ Under the LIRE, a contributor need not contribute on its projected collected international end-user telecommunications revenues if that contributor's projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenue. 47 C.F.R. § 54.706(c).

7. Implementation

332. Implementing a numbers-based system would require revised data collection and reporting requirements. In this section, we seek comment on how the Commission would transition to a numbers-based system. We also ask whether adopting a numbers-based system would increase compliance burdens if states that administer their own universal service programs continue to employ revenues-based assessments.

333. *Reporting of Numbers.* We seek comment on how to implement reporting requirements under a numbers-based contributions system. Under the existing revenue-based contribution methodology, contributors report to USAC their historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on the FCC Form 499-Q and their gross-billed and actual collected end-user interstate and international revenues annually on the FCC Form 499-A.⁵⁵⁴ USAC then bills contributors for their universal service contribution obligations on a monthly basis based on the contributors' quarterly projected collected revenue.⁵⁵⁵ Contributors report actual revenues on the FCC Form 499-A, which USAC uses to perform true-ups to the quarterly projected revenue data.⁵⁵⁶

334. We seek comment on how a numbers-based system should be implemented and the transition process, should we adopt such a system. In particular, we seek comment on the specific changes necessary to enable USAC to collect contributions under a numbers-based system. How would contributors report the assessable numbers (and potentially speed or capacity under a numbers-connection hybrid system) under a numbers-based assessment methodology? Should we continue to use a FCC Form 499 (with changes), leverage the existing NRUF reporting requirements, or develop a completely new data collection?⁵⁵⁷ What would be the administrative impact of a new reporting system on providers and on USAC as the administrator of the Fund? If the Commission were to adopt a numbers-based methodology, should contributors be required to report assessable numbers on a monthly basis, quarterly basis or some other period? Currently, under the revenues-based system, revenues are reported quarterly (with annual true-up reporting). Should we retain the same quarterly and annual true up reporting periods for a numbers-based system? Would a monthly reporting requirement create a burden that is not outweighed by the simplification posed by a numbers-based system? Should the information be reported as actual numbers, forecasted numbers, or historical numbers? Would historical reporting unnecessarily complicate the numbers reporting system? Is there any information that would be particularly difficult to report on a monthly basis? Would a more frequent reporting period be less likely to require adjustments to the contributions requirements? Would longer or shorter reporting intervals advantage or disadvantage some types of providers more than others?

335. *Costs Associated with Implementing a Numbers System.* We seek comment on what out-of-pocket costs contributors would incur to implement a new numbers-based contribution methodology, both in the short term to transition to a new system and on an annual basis once a new system is in place. Commenters should explain the categories of costs that would be incurred. To the extent possible, commenters should quantify these costs and indicate how they compare to the costs of complying with the existing revenues-based system. Would contributors be able to use their current billing and operating systems to report numbers for universal service contributions? If not, what would be the incremental costs associated with modifying billing systems and internal controls and processes to collect and track

⁵⁵⁴ See 47 C.F.R. §§ 54.706(b), 54.709, 54.711.

⁵⁵⁵ See 47 C.F.R. §§ 54.702(b), 54.709(a).

⁵⁵⁶ See 47 C.F.R. § 54.709.

⁵⁵⁷ The NRUF reports are due on or before February 1 and on or before August 1 of each year. See 47 C.F.R. § 52.15(f)(6).

numbers for purposes of reporting and contributing to the Fund? Would contributors have to implement entirely new systems to track the type of data needed to report assessable numbers? Are there cost savings that could be realized by moving away from the current revenues-based system, which requires contributors to report revenues quarterly (projected) and annually (actual) for USF purposes, and potential efficiencies based on other existing number reporting requirements for other regulatory requirements? Would those costs vary depending on the definition of assessable numbers? We also seek comment on whether the cost of updating billing and internal systems for this narrow regulatory purpose would outweigh any benefit achieved. Would increased operational costs of moving to a numbers system negatively impact certain carriers as compared to other carriers? Commenters should provide data on any such increased costs.

336. We also seek comment and data on other costs associated with a numbers-based system, and in particular ask providers if there are any costs that are not discussed above. Would the cost of moving to a new numbers system be relatively greater for certain classes of customers or certain industry segments? To what extent would this analysis change depending on how “assessable numbers” is defined and assessed? Do the additional costs associated with implementation and the reporting requirements outlined below outweigh the benefits of moving to a numbers-based methodology?

337. *Auditing.* We seek comment on how to define an “Assessable Number” to make it easier to audit to ensure that contributors are reporting accurately, and that the system operates in an equitable and nondiscriminatory manner, maintains stability in the contribution base, and minimizes market distortions and gamesmanship. We seek comment on whether we should allow carriers to self-certify which numbers are assessable numbers for contributions purposes. We also seek comment on whether we should modify the current recordkeeping requirements to further improve the auditing process for both contributors and auditors. Should we adopt additional rules or provide further guidance regarding the types of records and supporting documentation that should be maintained? Proponents of a numbers-based system should provide specific details about how contributors would report their data and how auditors could verify the accuracy of assessable numbers reported.

338. *Effect on Other Programs.* We ask parties to provide comment on the impact of moving to a numbers-based approach on the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.⁵⁵⁸ The revenue information currently reported on an annual basis in FCC Form 499-A is also used to calculate assessments for these programs.⁵⁵⁹ We ask parties to provide comment on the best approach for ensuring proper funding of these programs were we to move to a numbers-based methodology.⁵⁶⁰ Should contributors continue reporting gross billed end-user revenues for purposes of these programs, and if so, should they continue to report on an annual basis? Should we simplify the Form 499 for purposes of revenue reporting in that instance? Are there alternative ways to calculate contributions for these programs?

339. *Transition.* A numbers-based methodology would constitute a change from the current revenue-based system and would likely require a transition period, especially if reporting entities need to implement new billing and accounting systems and a process for recording number counts in a manner that is auditable. In the *2008 Comprehensive Reform FNPRM*, the Commission proposed a 12-month transition period, that including six months where contributors reported their numbers on a monthly basis in addition to their revenues.⁵⁶¹ In the past, commenters have supported a 12-month transition period.⁵⁶²

⁵⁵⁸ *2001 Contribution Methodology Notice*, 16 FCC Rcd at 9909, para. 38.

⁵⁵⁹ See *supra* n.454.

⁵⁶⁰ *Id.*

⁵⁶¹ See *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6563, App. A, para. 154, at 6694, App. B, para. 102, & at 6761-6762, App. C, para. 149.

We seek to refresh the record on whether a 12-month period would give contributors sufficient time to adjust their record-keeping and reporting systems so that they may comply with modified reporting procedures. Could such a transition be implemented within a given calendar year, and if so, should it be tied in some fashion to the current quarterly filing of Form 499-Q? We seek comment on what steps would need to be taken to transition between the current revenues-based system and a numbers-based system and how much time would be needed to ensure that the new process is applied in an equitable manner. Commenters should indicate whether the other changes discussed in this Notice would require less or more time to implement.

340. If we were to adopt a numbers-based methodology, the Commission and USAC would likely need to go through multiple reporting cycles to determine whether information is being reported consistently and to determine whether carriers understand what information they are being asked to report. In addition, contributors and USAC would need time to update their billing and tracking systems to accommodate the new methodology. Is a 12-month transition period sufficient to ensure that all affected parties would have adequate time to address any implementation issues that arise? How much time would be necessary for contributors, including new contributors, to adjust their record-keeping and reporting systems in order to comply with new reporting procedures? Are there considerations that would favor a longer or shorter transition period? Would there be a benefit in adopting different transitional periods for residential and business markets?

341. We also seek comment on requiring dual reporting during all or some of the transition time – where reporting entities would continue to report and pay under the current revenues-based system, while they also begin reporting under the new system. Would having providers report under both systems for a specified amount of time during the transition provide the opportunity for both providers and USAC to address unforeseen implementation issues that are likely to arise under the new reporting system? Should new filers begin reporting sooner since USAC does not have any historical data on their revenues and services?

VI. IMPROVING THE ADMINISTRATION OF THE CONTRIBUTION SYSTEM

342. Consistent with our overall proposed goals for contributions reform, in this section, we seek comment on potential rule changes that could be implemented to provide greater transparency and clarity regarding contribution obligations, reduce costs associated with administering the contribution system, and improve the operation and administration of the contributions system. For each issue discussed below, we seek comment on whether and how the potential rule change could or should be implemented on an accelerated timetable, in advance of other reforms under consideration in this proceeding, as well as the potential reduction in compliance costs associated with adopting each proposal.

343. We request clear and specific comments on the type and magnitude of likely benefits and costs of each of the rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how data were calculated and identification all underlying assumptions.

A. Updating the Telecommunications Reporting Worksheet

344. Each year, the Wireline Competition Bureau, on delegated authority, releases updated instructions for the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q).⁵⁶³ These

(Continued from previous page)

⁵⁶² See AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 3 (proposing a 12-month transition to the new mechanism taking effect).

⁵⁶³ See 47 C.F.R. § 54.711(c). The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to modify the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) as “necessary to (continued...) ”

Worksheets are submitted by contributors to USAC, which uses the information contained therein to calculate each individual contributor's contribution requirements. In this section, we seek comment on whether we should modify the process by which these forms are revised by soliciting public comment from interested parties prior to adopting revisions to the Telecommunications Reporting Worksheet and instructions. We also seek comment on whether to adopt a rule specifying that the worksheets and instructions constitute binding agency requirements.

345. *Background.* Historically, the Bureau has released annual revisions to the Telecommunications Reporting Worksheets and accompanying instructions within one to two months prior to the April 1 deadline for the annual submission of the Form 499-A.⁵⁶⁴ In so doing, the Bureau updates the worksheets and makes non-substantive changes to the accompanying instructions to reflect new Commission rules or requirements enunciated in orders and provide guidance on issues of rule interpretation.⁵⁶⁵ We understand that parties typically refer to the worksheet instructions for assistance in complying with our revenue reporting and USF contribution requirements. Moreover, as reflected in USAC audit reports, USAC considers the worksheet instructions, as well as Commission orders, as the Commission's public announcement of how our rules should be interpreted. The Commission has not, however, adopted those instructions pursuant to the rulemaking provisions of the Administrative Procedure Act.⁵⁶⁶ Therefore, questions have been raised about whether the instructions have the force of binding rules, or whether they constitute non-binding agency guidance.⁵⁶⁷ Other parties have argued that the Commission should provide a more transparent process for modifying the Form 499 instruction changes.⁵⁶⁸

346. *Discussion.* We propose to adopt a formalized annual process for the Bureau to update and adopt the Telecommunications Reporting Worksheets and their accompanying instructions. We propose to amend section 54.711 to include the following proposed rule:

Telecommunications Reporting Worksheet Revisions. The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition

(Continued from previous page)

the sound and efficient administration of the universal service support mechanisms.” See *id.* We note that the Commission has an analogous process for the E-rate Eligible Service List. See 47 C.F.R. § 54.522.

⁵⁶⁴ For example, for the Form 499-A due on April 1, 2012, the Bureau released the revised form and instructions on March 5, 2012.

⁵⁶⁵ See, e.g., *Wireline Competition Bureau Releases 2012 Annual Telecommunications Reporting Worksheet (FCC Form 499-A) and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, DA 12-337 (Wireline Comp. Bur., rel. Mar. 5, 2012) (2012 FCC Form 499 Public Notice); *Wireline Competition Bureau Releases 2011 Annual Telecommunications Reporting Worksheet (FCC Form 499-A) and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, 26 FCC Rcd 2272 (Wireline Comp. Bur. 2011); *Wireline Competition Bureau Announces Release of the Revised 2010 FCC Forms 499-A and 499-Q and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, 25 FCC Rcd 1778 (Wireline Comp. Bur. 2010).

⁵⁶⁶ 5 U.S.C. § 553.

⁵⁶⁷ See, e.g., *Global Crossing Order*, 24 FCC Rcd at 10828, paras. 13-14 (“Although the Commission has not dictated how a carrier may meet the reasonable expectation standard, it has provided *guidance* in the FCC Form 499-A instructions”; “USAC relied upon the *guidance* in the Commission’s 2005 FCC Form 499-A”) (emphasis added); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order on Reconsideration, 26 FCC Rcd 6169, 6171 (Wireline Comp. Bur. 2011) (same).

⁵⁶⁸ See, e.g., USTelecom Mar. 28, 2012 *Ex Parte* Letter at 6; BT Americas June 8, 2009 Comments at 12.

*Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.*⁵⁶⁹

Adopting such a rule would respond to requests in the record asking that parties be given prior notice of any proposed revisions to the worksheet instructions, and an opportunity to comment on such revisions.⁵⁷⁰ If the Bureau were to put instructions out for public comment before they are adopted, at what point in the calendar year should the Bureau place the proposed form and instructions on public notice, and when should it be required to issue the revised form and instructions? Would this proposed rule change support our proposed reform goals of fairness and simplifying compliance and administration? Parties are encouraged to provide information and data addressing how such a rule would simplify compliance and administration.

347. The Bureau currently releases instructions a year after revenues are reported – *e.g.*, the Bureau released instructions for 2011 revenues in 2012.⁵⁷¹ We ask whether the Bureau should instead release the form and related instructions during or prior to the relevant reporting period. In particular, we seek comment on whether releasing the form after the calendar year is over makes it more difficult for contributors to track the information that must be reported for the prior year in a manner consistent with the prescribed format. If so, commenters should provide specific examples of such burden, and quantify such examples with data.

348. Should the Commission specify that contributors are required to comply with the Form 499 instructions adopted pursuant to such a process? Should the Bureau have delegated authority to make changes to the Form and related instructions to the extent that they constitute binding requirements, and if so, what should be the scope of its authority?

349. Finally, some of the reforms proposed in this Notice could, if adopted, require extensive revision of the Telecommunications Reporting Worksheet. Even if we do not adopt an annual process for publicizing the updated form, should we require the Bureau to set out for comment the proposed revisions to the Telecommunications Reporting Worksheets and accompanying instructions before implementation of any significant changes resulting from the reforms identified in this Notice? What is the most efficient way to seek public input on how to implement these changes in a straightforward and readable manner so that all reporting entities can know their obligations and comply with our rules?

B. Revising the Frequency of Adjustments to the Contribution Factor

350. In this section, we seek comment on revising the frequency with which certain adjustments are made to the contribution factor.

351. *Background.* Each quarter, USAC projects the expected expenses of the Fund, accounting for any “prior period adjustments.” More precisely, USAC calculates the difference between projected and actual revenue requirements (*i.e.*, demand for funding from the four distribution programs plus associated administrative expenses) in a given quarter and carries forward the difference to the next quarterly demand filing.⁵⁷² This adjustment for the immediately preceding quarter affects the contribution factor in the subsequent quarter; prior period adjustments that result in a reduction to the contribution base for the prior periods increase the contribution factor for the following quarter (referred to below as

⁵⁶⁹ See Appendix A, 47 C.F.R. § 54.711(d).

⁵⁷⁰ See, *e.g.*, USTelecom Mar. 28 2012 *Ex Parte* Letter at 6; Comments of AT&T Inc., WC Docket No. 06-122, at 4 (filed June 8, 2009); BT Americas June 8, 2009 Comments at 12.

⁵⁷¹ 2012 FCC Form 499 Public Notice.

⁵⁷² 47 C.F.R. § 54.709(b).

increased demand adjustments). Conversely, prior period adjustments that result in an increase to the contribution base for prior periods decrease the contribution factor for the following quarter (referred to below as decreased demand adjustments).⁵⁷³ As a result, the Commission currently adjusts the contribution factor each quarter if USAC collects insufficient funds, or if USAC collects funds in excess of actual expenses in the prior quarter under the current system.⁵⁷⁴

352. Over the last seven quarters, the contribution factor has been revised both up (for increased demand adjustments) and down (for decreased demand adjustments) to reflect prior period adjustments to the contribution base. In this period, there was an aggregate of approximately \$405.13 million in increased demand adjustments to the contribution factor, and an aggregate of \$206.65 million in decreased demand adjustments. This, in turn, contributed to a fluctuation in the contribution factor from a low of 13 percent in one quarter to a high of over 17 percent in another quarter.⁵⁷⁵ We note, however, that prior period adjustments are not the only source for fluctuations in the contribution factor from one quarter to the next. Fluctuations in the contribution factor from quarter to quarter are also caused by increased and decreased program demand.

353. *Discussion.* If the Commission continues a revenues-based system or alternative system that will use a contribution factor, we seek comment on modifying the frequency of changes to the contribution factor. Presently, the contribution factor is revised on a quarterly basis. We seek comment on revising the contribution factor less frequently, such as annually. USTelecom has argued that the Commission should take decisive steps to address volatility in the contribution factor, including considering an annual contribution factor, which is used for Interstate TRS and other Commission programs, and other “process changes to enhance program stability.”⁵⁷⁶ Such a change could provide greater predictability to contributors, particularly those that enter into term contracts with their customers.

354. Historically, the Commission utilized quarterly adjustments in the contribution factor to ensure there would be sufficient funding to meet any changes in demand from each of the four distribution programs. We seek comment on whether we should revise our rules, for example, to use reserves, to the extent necessary, to meet any quarterly fluctuation in demand. Would such a method better serve our proposed reform goals of increasing efficiency, fairness, and sustainability of the Fund? If we were to adopt a rule requiring annual adjustments to the contribution factor, should we wait to implement such a rule until 2013, when the Commission expects to have the information needed to be in the position to determine an appropriate budget for the Lifeline program?⁵⁷⁷

355. Would adjusting the contribution factor on an annual basis advance our proposed reform goals of increasing administrative efficiency, fairness and sustainability? For example, does the fluctuation in the contribution factor create revenue reporting difficulties for stakeholders? Does it cause difficulties in marketing services to consumers? Does the fluctuation from one quarter to the next in the

⁵⁷³ Quarterly adjustments to the contribution factor are announced by public notices. *See, e.g., Proposed Second Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 12-396 (rel. Mar. 13, 2012); *Proposed First Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 11-2020 (rel. Dec. 14, 2011).

⁵⁷⁴ 47 C.F.R. § 54.709(c).

⁵⁷⁵ The total of all prior period adjustments to universal service demand between 2009Q1 and 2012Q2 is a net decrease in demand of \$48.97 million.

⁵⁷⁶ USTelecom Mar. 28, 2012 *Ex Parte* Letter at 7. *See* 47 C.F.R. § 64.604 (providing that contributors’ contribution to the TRS fund shall be the product of all subject revenues for the prior calendar and an annual contribution factor).

⁵⁷⁷ *See Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at para. 359.

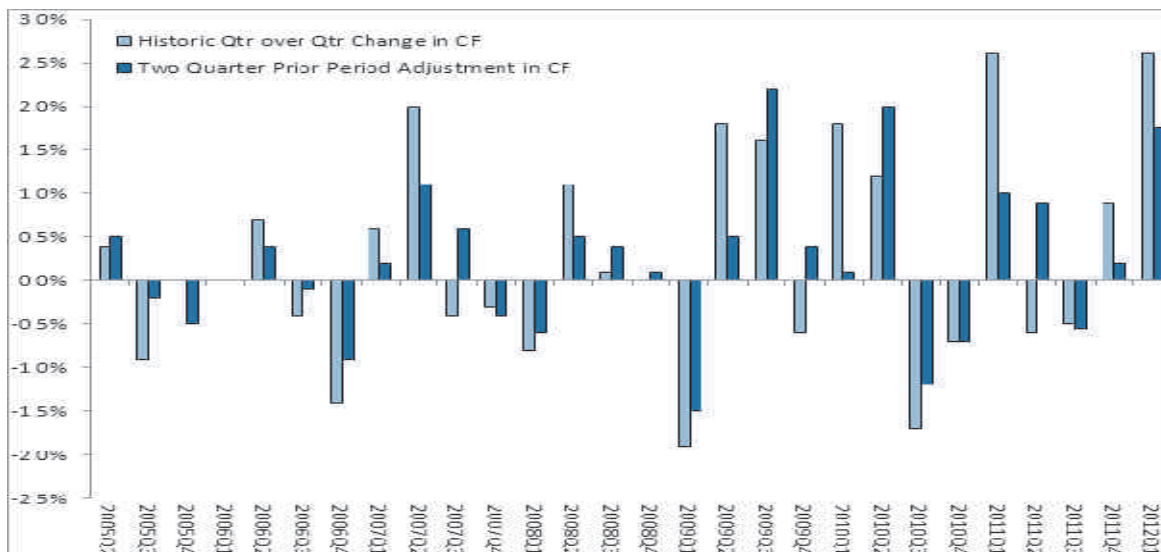
contribution factor make it difficult for contributors to anticipate their likely contribution obligations for the year, or for end-user customers to forecast the total cost of their communications packages, including any universal service pass through charges? To the extent there are reasons to adjust the factor more often than annually, would it be an improvement to the current system to make such adjustments every six months?

356. Another option to reduce fluctuations in the contribution factor caused by prior period adjustments is to extend the period of time during which such prior period adjustments are taken into account for subsequent adjustments to the contribution factor. For example, we could require that prior period adjustments be leveled out over a period of two subsequent quarters under a rule that provides as follows:

If the contributions received by the Administrator in a quarter exceed or are inadequate to meet the actual expenses for that quarter, the Administrator shall adjust its projected expenses for the following two quarters to account for the excess or inadequate payments (and any associated costs) unless instructed to do otherwise by the Commission. The contribution factor for the following two quarters will take into consideration the projected costs of the support mechanism for those two quarters, and the excess or insufficient contributions carried over from the previous quarter.

357. We seek comment on whether accounting for prior-period adjustments over a longer period, such as two quarters rather than one, could reduce the amount and severity of the fluctuation in the contribution factor from one period to the next.⁵⁷⁸ For illustrative purposes, Chart 8 below contrasts the quarter-to-quarter change in the contribution factor under our existing rule (“Historical Change in CF”) to the quarter-to-quarter change in the contribution factor that would have occurred if prior period adjustments had occurred over two quarters (“Two Quarter Prior Period Adjustment in CF”):

Chart 8



358. By providing USAC with more than one quarter to account for these adjustments, the increases and decreases may help to offset each other, and thereby reduce the period to period fluctuations

⁵⁷⁸ Chart 8 presents staff analysis of the quarterly contribution factors, as further described in Appendix D.

in the contribution factor. For example, the quarterly contribution factor increased or decreased by more than one percentage point eleven times since 2005. We estimate that there would have been only seven such fluctuations during this period if instead USAC had been able to account for prior-period adjustments over two quarters. Looking at it another way, the average quarter-to-quarter fluctuation of the contribution factor was 0.99 percent; whereas, the average fluctuation for the adjusted factor under this proposal would have been 0.67 percent. Appendix D illustrates these estimations. We seek comment on this analysis.

359. We seek comment on the merits and technical aspects of a rule change to address quarter to quarter fluctuations in the contribution factor. What would be the benefits of modifying our rules as discussed above, and would such a change have any negative or positive impact on administration of the Fund? What are the potential unintended consequences of extending the period of time during which prior period adjustments are taken into account? Would authorizing USAC to make prior period adjustments over an even longer period be appropriate, and if so, over how many quarters? If we were to move to an alternative to the current revenue-based system, should we similarly direct USAC to account for any fluctuations in demand over a period of time longer than one quarter in order to minimize quarterly variation in the contribution obligation associated with the assessable unit of measure?

C. Pay-and-Dispute Policy

360. In this section we propose to adopt either as Commission policy or a codified rule the current USAC practice commonly referred to as the “pay-and-dispute” policy. This policy requires contributors that wish to challenge a USAC invoice to keep their accounts current while disputing the amounts billed in order to avoid late fees, interest, and penalties.⁵⁷⁹ We seek comment on whether adopting “pay-and-dispute” as a policy or rule supports our proposed reform goals, including ensuring predictability and sustainability of the Fund, simplifying compliance and administration, and fairness.

361. *Background.* It is a contributor’s responsibility to report accurate data in a timely manner and correct any forms filed with USAC.⁵⁸⁰ Under the current revenues-based system, each quarter, USAC calculates each contributor’s contribution obligation based on the projected revenues reported on a contributor’s quarterly Telecommunications Reporting Worksheets.⁵⁸¹ USAC adjusts these contribution obligations if the contributor has filed a Worksheet that requires a true-up. USAC then issues invoices each month billing the contributor for its calculated contribution obligation. Our rules require contributors to pay the amount billed by the due date to avoid late fees, interest, and penalties.⁵⁸²

362. The Commission’s rules do not create an exception when a contributor has filed a revision to, or appeal of, its contribution assessment. In other words, nothing in our rules specifically exempts a contributor from paying the amount shown on the invoice if a contributor disagrees with

⁵⁷⁹ See USAC, Understanding Invoices, available at <http://www.usac.org/cont/invoices/default.aspx> (last visited Apr. 16, 2012).

⁵⁸⁰ See 47 C.F.R. §§ 54.711, 54.713.

⁵⁸¹ See 47 C.F.R. § 54.709(a). If a contributor fails to file the quarterly worksheet by its due date, USAC is required to bill that contributor “based on whatever relevant data the Administrator has available, including, but not limited to, the number of lines subscribed to the contributor and data from previous years, taking into consideration any estimated changes in such data.” 47 C.F.R. § 54.709(d).

⁵⁸² See 47 C.F.R. § 54.713(a) (“A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed.”), (b) (“If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor’s applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, the payment is delinquent.”).

USAC's assessment of its universal service contribution obligation and has filed an appeal with USAC or the Commission.⁵⁸³ USAC, in its role as the Administrator of the USF, has formalized this as the pay-and-dispute policy.⁵⁸⁴ If a contributor does not pay the disputed amount, USAC cannot waive any late fees, interest charges, or penalties unless the disputed charges are later found to be a result of a USAC error, or USAC is directed to do so by the Commission.⁵⁸⁵

363. *Discussion.* We propose to amend section 54.713 of our rules to adopt a pay-and-dispute rule as follows:

*If a universal service fund contributor fails to make full payment of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, on or before the date due, the payment is delinquent. Late fees, interest charges, and penalties for failure to remit any payment by the date due shall apply regardless of whether the obligation to pay that amount is appealed or otherwise disputed unless the Administrator or the Commission (pursuant to section 54.719) finds the disputed charges are the result of clear error by the Administrator.*⁵⁸⁶

364. Although the Bureau has consistently upheld USAC's implementation of the pay-and-dispute requirement, contributors continue to challenge USAC's use of the pay-and-dispute requirement in specific instances by withholding payment pending resolution of a disputed charge.⁵⁸⁷ Adopting as a Commission policy or rule or, at a minimum, affirming the pay-and-dispute requirement could lessen administrative burdens for both USAC and Commission staff, while also putting all contributors on notice of the procedures for appealing contested invoices. We seek comment on this analysis.

365. We seek comment on whether adopting the pay-and-dispute requirement serves our proposed reform goals. We specifically seek other proposals that create the proper incentive for contributors to pay their invoices in a timely manner.

366. In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996 (DCIA).⁵⁸⁸ The Commission's DCIA rules require that entities or

⁵⁸³ See USAC, Program Integrity: Appeals, available at <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited Apr. 16, 2012).

⁵⁸⁴ *Id.* See, e.g., *Universal Service Contribution Methodology; Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 1115, 1120, para. 9 (Wireline Comp. Bur. 2010), *application for review pending (Level 3 Order)* (noting that contributor could have avoided incurring late fees, interest charges, and penalties by paying the full invoiced amount in compliance with the pay-and-dispute policy); *Federal State Joint Board on Universal Service et al.*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096, 10097-98, para. 5 (Wireline Comp. Bur. 2008) (granting waiver of the FCC Form 499-Q revision deadline due in part to contributor's compliance with the pay-and-dispute policy); *Universal Service Contribution Methodology; Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, WC Docket No. 06-122, Order, 23 FCC Rcd 17903 (Wireline Comp. Bur. 2008), *petition for reconsideration pending* (dismissing requests as moot because petitioners' contributions had been corrected in the true-up process).

⁵⁸⁵ See USAC, Program Integrity: Appeals, <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited Apr. 16, 2012).

⁵⁸⁶ See Appendix A, 47 C.F.R. §54.713(b).

⁵⁸⁷ See, e.g., *Level 3 Order*, 25 FCC Rcd at 1121, para. 9.

⁵⁸⁸ See 47 C.F.R. Part 1, Subpart O. Congress enacted the DCIA to strengthen federal debt collection procedures. Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

individuals doing business with the Commission pay their debts in a timely manner. The rules also explain how entities or individuals are notified of debts owed to the Commission, and how the Commission will collect those debts. We seek comment on whether adopting USAC's pay-and-dispute requirement is consistent with the Commission's DCIA rules. We also seek comment on any other changes to our rules that would ensure better compliance with our rules and the Debt Collection Improvement Act.

D. Oversight and Accountability

367. One proposed goal for reform is to increase administrative efficiency, which should reduce the costs of compliance associated with USF contributions. At the same time, we must ensure accountability for all contributors. In this section, we seek comment on various issues relating to oversight and accountability for the contributions system.

368. No system is fair when some telecommunications providers play by the rules and others do not. To ensure that data actually reported closely approaches our best estimate of industry-wide assessable services, should we establish a performance goal of reducing the number of contributors that do not satisfy their contributions obligations? If so, what information should we rely upon to track that goal?

369. USAC employs several practices to identify entities that should register and contribute to the Fund. For example, during contributor audits, USAC obtains a list of resellers from the auditee and identifies companies that have not registered. USAC contacts these companies to determine why they are not registered or contributing to the Fund. USAC also contacts companies that it independently identifies from industry news sources and whistleblowers. We seek comment on additional steps that could be taken to identify those telecommunications providers that are not meeting their contribution requirements. What measures could the Commission direct USAC to take to ensure industry-wide compliance with our contribution rules?

370. We seek comment on the extent to which potential rule changes that could simplify the contribution system discussed in this Notice could help ensure that contribution assessments are made and collected in accordance with Commission rules and requirements. Further, we seek comment on how we could measure the benefits of simplification in the contribution system. What information would we need, and what would be an appropriate performance goal?

371. *USAC Audits.* Audits have been, and will continue to be, an important part of our efforts to ensure compliance with universal service contribution requirements. USAC initiates a certain number of audits each year drawing from a random, representative sample of contributors. We seek comment on processes and procedures that USAC could implement to make the contributor audit process more efficient. We seek public comment on how to most efficiently use our administrative resources to ensure that contributions are made in accordance with the Commission's rules and requirements, while minimizing compliance burden on companies subject to audit.

372. In the *Lifeline Link Up Reform and Modernization Order* and the *USF/ICC Transformation Order and FNPRM*, the Commission directed USAC to provide an updated audit plan to the Commission's Office of the Managing Director (OMD) and the Wireline Competition Bureau, in light of the reforms made in the orders.⁵⁸⁹ The Commission directed OMD and the Bureau to work with USAC to ensure that there is consistency in the compliance standards. We seek comment on whether we should require USAC to produce a similar audit plan for OMD and the Bureau for USF contribution purposes.

⁵⁸⁹ See *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at para. 286; *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17866, para. 628.

How many audits should USAC initiate (at a minimum) each year? How should USAC ensure that audits encompass a representative sample of the industry?

373. *Timely and Efficient Reporting.* Efficient operation of the contribution system depends on reporting entities timely filing their quarterly and annual Telecommunications Reporting Worksheets. We seek comment on whether we should adopt as a performance goal that a specified percentage of reporting entities file their Worksheets on time. The target threshold could be established by the Bureau and periodically revisited. Timely filing is especially important for the quarterly Worksheet given the fact that USAC must compile the results of those Worksheets for the Commission within thirty days. We seek comment on what additional outreach and training USAC may need to do to encourage more reporting entities to file their Worksheets on time and electronically. We also seek comment on any revisions to our rules that would create the proper incentives for timely filing. We seek comment on this analysis and the time frame in which we should implement and monitor our progress towards meeting such a goal, if adopted.

374. *Prompt Payment and Collection of Contribution Obligations.* The Commission has already taken several measures under the DCIA to ensure prompt collection of contribution obligations.⁵⁹⁰ We seek comment on adopting several performance goals related to that task. First, we seek comment on adopting a performance goal of decreasing the aggregate number and dollar amount of delinquent contributions payments. Second, we seek comment on adopting performance goals of reducing the percentage of contributors that are delinquent in payments, the percentage of contributors delinquent more than 30 days, and the percentage of contributors delinquent more than 90 days. We seek comment on these performance goals and also on the specific targets that USAC and the Commission should strive to reach. We seek comment on what additional outreach and training USAC may need to do to encourage more contributors to pay their debts on time, and whether any revisions to our rules would encourage timely payment. We seek comment on what allowances we can and should make in consideration of any economic conditions impacting the industry.

375. We seek comment on whether these measures would assist the Commission with monitoring either the costs of compliance for contributors or the contributions burden on consumers and businesses, especially when coupled with other proposals in this Notice. We seek specific comment on whether any particular reforms identified in this Notice would help or hinder oversight over the contribution system. We also invite parties to suggest additional or alternative goals and measures for assessing the performance of the contribution system.

E. Paper-Filing Fees

376. The Commission has implemented several initiatives to encourage and facilitate electronic filing of forms.⁵⁹¹ In this section, we propose to adopt a filing fee for contributors that choose to submit the Telecommunications Reporting Worksheets by paper rather than electronically.

⁵⁹⁰ See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 *et al.*, Report and Order, 22 FCC Rcd 16372, 16377–82, paras. 11–18 (2007) (2007 *Comprehensive Review Order*).

⁵⁹¹ See, e.g., Cable Operations and Licensing System (COALS) Website, available at <http://fjallfoss.fcc.gov/coins7/> (last visited Apr. 16, 2012) (permitting electronic filing of Cable Operator and Multichannel Video Programming Distributor forms with the FCC); Electronic Comment Filing System (ECFS) Home Page, available at <http://apps.fcc.gov/ecfs/> (last visited Apr. 16, 2012) (permitting electronic access to rulemakings and docketed proceedings); International Bureau Electronic Filing System (MyIBFS), available at <http://licensing.fcc.gov/myibfs/> (last visited Apr. 16, 2012) (allowing electronic filing of applications and forms, including space station, earth station and cable landing licenses).

377. *Background.* The majority of reporting entities presently file their annual and quarterly worksheets electronically.⁵⁹² Electronic filings substantially reduce administrative costs allowing for computerized processing instead of additional labor costs for manual data entry.⁵⁹³

378. *Discussion.* In order to increase efficiency in program administrative, we propose to amend section 54.711 to require that reporting entities file the Telecommunications Reporting Worksheet electronically:

*Electronic Filings. Reporting entities must file the Telecommunications Reporting Worksheet electronically. The Administrator shall assess a \$25 fee on reporting entities for filing paper copies of the quarterly Telecommunications Reporting Worksheet. The Administrator shall assess a \$50 fee on reporting entities for filing paper copies of the annual Telecommunications Reporting Worksheet. The Administrator shall not assess a paper-filing fee on reporting entities that electronically file their Telecommunications Reporting Worksheet, but such entities must also submit either a paper or electronic certification attesting to the accuracy of the information reported therein under penalty of perjury.*⁵⁹⁴

379. Based on information provided by USAC, the proposed paper-filing fees would be set at a level so as to compensate the Fund for the additional costs incurred by USAC to manually process these paper filings and encourage more reporting entities to file electronically.⁵⁹⁵ We seek comment on this analysis.

380. We seek comment on the merits and technical aspects of a rule change assessing a paper filing fee. What is the potential impact on contributors and the Fund if we adopt a paper filing fee? We seek specific comment on setting the appropriate size of a paper filing fee so that reporting entities would have an appropriate incentive to file electronically and in a timely manner. We seek comment on any other changes to our rules that would ensure better compliance with our rules and the Debt Collection Improvement Act. The above proposed rule requires electronic filers to submit either a paper or electronic certification attesting the accuracy of the electronic filing. We seek comment on what procedures we should adopt to facilitate the certification to be done electronically, per the E-Sign Act.⁵⁹⁶ In addition, we seek comment on what modifications, if any, USAC should make to its electronic filing system to ensure that it is accessible to persons with disabilities.⁵⁹⁷ In lieu of imposing a filing fee, is there a different approach that would incent contributors to file electronically?

⁵⁹² According to USAC, approximately 76% of reporting entities filed their 2011 annual Telecommunications Reporting Worksheet electronically and 77% filed the November 2010 quarterly Worksheet electronically.

⁵⁹³ See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16626, para. 52 (1999) (*Telecommunications Reporting Worksheet Consolidation Order*).

⁵⁹⁴ See Appendix A, 47 C.F.R. § 54.711(e).

⁵⁹⁵ USAC has estimated that the incremental costs of processing a paper (versus an electronic) FCC Form 499-Q are approximately \$15 per form, and the incremental costs for the FCC Form 499-A are approximately \$35 per form. These amounts were calculate assuming a per hour rate of the employees multiplied by the amount of time needed to process a hardcopy form, excluding management oversight and overhead.

⁵⁹⁶ See 15 U.S.C. §§ 7001-7006, especially at § 7001(b)(2).

⁵⁹⁷ See 29 U.S.C. § 794D. In 1998, Congress amended the Rehabilitation Act of 1978 to require Federal agencies to make their electronic and information technology accessible to people with disabilities. *Id.*

F. Filer Registration and Deregistration

381. *Background.* Under our current requirements, within thirty days of the commencement of providing services, telecommunications carriers and interconnected VoIP service providers must register with the Commission and designate agents for service of process in the District of Columbia.⁵⁹⁸ USAC routinely conducts outreach to newly-registered providers to inform them of their reporting and contribution requirements. USAC typically sends regular notifications to all registered contributors alerting them of contribution filing deadlines, and providing other useful information including notification of any missed filing deadlines. One of the purposes of registration is that it allows the Commission to better monitor registered providers for compliance with our rules and regulations. In addition, a filer registration requirement provides transparency to the public, making available important information including the relevant regulatory contact information.⁵⁹⁹ In order to facilitate the registration requirement, and the public's access to registration information, the Commission maintains a Form 499 Filer Database with the registration information it collects from all Form 499 reporting entities.⁶⁰⁰ In addition, the Commission requires wholesale carriers to confirm the registration status of potential carrier customers before commencing service with such resellers.⁶⁰¹

382. Currently, the Commission's Form 499 Filer Database does not always include information from telecommunications providers that are not common carriers, because certain of these providers are not subject to the Commission's registration requirement.⁶⁰² These providers, however, file Form 499-A (and complete the registration information contained therein) on the normal Form 499-A filing schedule. There are also non-common carrier telecommunications providers that may be unaware of their obligations to file the Telecommunications Reporting Worksheet. Furthermore, our current rules require common carriers to check the registration status of their carrier customers, but do not put such an obligation on non-common carrier telecommunications providers that offer telecommunications for resale.⁶⁰³ This difference may create disparate burdens for common carriers versus telecommunications providers that are not common carriers.

383. *Discussion.* We seek comment on tightening our registration requirements so that all telecommunications providers with FCC Form 499-A reporting obligations (whether they are common carriers or not) have the obligation to register within thirty days of commencing service. We propose to amend section 54.706 to include the following proposed rule:

⁵⁹⁸ See 47 C.F.R. § 1.47(h); 47 C.F.R. § 64.1195(a); *2006 Contribution Methodology Order*, 21 FCC Rcd at 7549 n.205.

⁵⁹⁹ See 47 C.F.R. § 64.1195(b).

⁶⁰⁰ See 47 C.F.R. § 64.1195(h); see also FCC Form 499 Filer Database, available at <http://apps.fcc.gov/cgb/form499/499a.cfm?CFID=178928&CFTOKEN=89260093&jsessionid=phZFPvyR1XSLz65gpBxVypXc1cg5G3hQltQL7KqHGRWjCNfW54s0!-690065246!1331832945195> (last visited Apr. 16, 2012).

⁶⁰¹ See 47 C.F.R. § 64.1195(h). Although this requirement was adopted in the context of combating slamming violations, the application of the rule has never been confined to that context. See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16027, paras. 65-66 (2000) (*Slamming Order*).

⁶⁰² See 47 C.F.R. § 1.47(h); 47 C.F.R. § 64.604(c)(4); *Contributions to the Telecommunications Relay Service Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14542, para. 21 (2011) (adopting rule requiring non-interconnected VoIP providers with interstate end-user revenues to register prior to commencing services.)

⁶⁰³ See 47 C.F.R. § 64.1195(h)

*(f) Registration Requirements. Every common carrier subject to the Communications Act of 1934, as amended, and every entity required to submit a Telecommunications Reporting Worksheet shall register with the Commission in accordance with the provisions of 47 C.F.R. § 64.1195(a)-(c) and the Instructions to the Telecommunications Reporting Worksheet within thirty days of the commencement of provision of service.*⁶⁰⁴

384. *Deregistration Requirements.* We also propose to require registered entities that no longer meet the requirements to register to file a deregistration with the Commission. A deregistration requirement could ensure that the Commission's Form 499 Filer Database is current and complete. Currently, if a contributor has previously filed a Form 499-A or Form 499-Q, but has not notified USAC that it no longer provides telecommunications services, USAC estimates the provider's quarterly revenues and sends an invoice to that provider for its estimated contributions.⁶⁰⁵ This may create confusion and generate late fees for providers that no longer provide service. A formal deregistration requirement could streamline USAC's and the Commission's processes by eliminating unnecessary invoices and removing entities that no longer provide service from the Commission's database. We propose to amend section 54.706 to include the following proposed rule:

*(g) Deregistration Requirements. If a registrant stops providing interstate and international telecommunications to others, it shall deregister with the Commission within thirty days of its last provision of telecommunications. To deregister, a registrant must comply with the Instructions to the Telecommunications Reporting Worksheet.*⁶⁰⁶

Would adoption of such a rule simplify the process of billing contributors, and thereby lessen USAC's administrative costs? Would adoption of such a rule further other proposed reform goals?

385. *Wholesale-Reseller Confirmation Requirements.* As discussed above in this Notice, we seek comment on adopting a value-added revenue system to address recurring USF contribution issues that arise in instances where wholesale carriers provide services to other carriers.⁶⁰⁷ To the extent that we do not adopt a value-added system, however, we seek comment on requiring all registrants that provide telecommunications to other carriers to check the registration status of their customers.⁶⁰⁸ We seek comment on whether imposing such an obligation could "deter [registrants] from providing service to resellers that have not registered with the Commission, which will, in turn, make it more difficult for 'bad actor' resellers to stay in business."⁶⁰⁹ We propose to amend section 54.706 to include the following proposed rule:

Customer Confirmation Requirements. A telecommunications carrier or provider providing telecommunications to other carriers or providers shall have an affirmative duty to ascertain whether a customer that is required to register

⁶⁰⁴ See Appendix A, 47 C.F.R. § 54.706(f).

⁶⁰⁵ See 47 C.F.R. § 54.709(d).

⁶⁰⁶ See Appendix A, 47 C.F.R. § 54.706(g).

⁶⁰⁷ See *supra* Section V.A.4(a).

⁶⁰⁸ *Id.*

⁶⁰⁹ *Slamming Order*, 15 FCC Rcd at 16027, para. 66.

*has in fact registered with the Commission prior to offering service to that customer.*⁶¹⁰

386. Would adoption of each of the above proposed rules increase the likelihood that all potential contributors register with the Commission and comply with universal service contribution reporting obligations? What are the costs and benefits of imposing such an obligation on FCC registrants, and how would that vary if the Commission adopts other rule changes discussed in this Notice? For instance, if the Commission were to require contributions from wholesalers, would that lessen the potential policy rationale for ensuring the reseller is registered with the Commission?

VII. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTIONS FROM END USERS

387. In this section, we seek comment on issues relating to recovery of universal service contributions from customers. We request clear and specific comments on the type and magnitude of likely benefits and costs of each of the rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and identification of all underlying assumptions.

388. The statutory framework established by Congress in the Act governs the recovery of universal service contributions by telecommunications service providers.⁶¹¹ Although a contributor may generally recover its universal service contributions from its customers, the Commission has placed two restrictions on doing so. First, a “federal universal service line-item charge” may not “exceed the interstate telecommunications portion of that customer’s bill times the relevant contribution factor.”⁶¹² Second, eligible telecommunications carriers (ETCs) that are incumbent LECs may not pass through a federal universal service line-item charge to their Lifeline subscribers except to recover “contribution costs associated with the provision of interstate telecommunications services that are not supported by the Commission’s universal service mechanisms.”⁶¹³ In practice, this means that incumbent ETCs historically have not been permitted to pass through to Lifeline subscribers the contribution costs associated with the subscriber line charge (which is deemed 100 percent interstate), but they may pass through contribution costs associated with other interstate services, such as long distance calling. There is no comparable restriction for competitive ETCs that serve Lifeline subscribers.

A. Pass-Through of USF Contributions as Separate Line Item Charge

389. In this section, we seek comment on ways to improve transparency relating to the amount of universal service contribution charges that are being passed through by the carriers to their customers.

390. *Providing Clarity in Customer Bills.* Under today’s system, the contribution factor is typically applied to only a fraction of the total end user revenues derived from a customer. Currently, section 54.712(a) only addresses line items on customer bills and does not address situations in which there is no billing relationship. Moreover, our rules do not require contributors to indicate how the universal service charge on a customer’s bill is calculated. In many instances, customer bills include a line item for USF, but do not indicate the USF contribution factor used to determine such line item, or the portion of the bill to which the contribution factor was applied. We seek comment on whether we should

⁶¹⁰ See Appendix A, 47 C.F.R. § 54.706(h).

⁶¹¹ 47 U.S.C. §§ 201, 202.

⁶¹² 47 C.F.R. § 54.712(a).

⁶¹³ See 47 C.F.R. §§ 69.131, 69.158; *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4822, para. 10 (2003) (*2003 Interim Contribution Methodology Recon Order*).

limit the flexibility currently afforded contributors in the recovery of universal service obligations or adopt measures to provide greater transparency regarding such recovery to enable consumers to make informed choices regarding their service. For example, we could adopt a rule that contributors must identify on the consumer bill the portion of the bill (whether based on revenues or another unit) that is subject to assessment. This could enable end users to determine whether they are being properly charged a USF pass-through charge. What modifications, if any, would we need to make to section 54.712 of the existing rules, which prohibits a carrier from charging more than the interstate portion of the bill times the relevant contribution factor.

391. Publication of a separate line item has the potential benefit of informing the end user of the extent to which his or her payments are contributing to the preservation and advancement of universal service. Preventing such publication would obscure, from the consumer's standpoint, the nature of the contribution burden that each end user bears. We seek comment on the value of making the burden of the universal service contribution plain, and whether this can be obtained without distorting the pricing strategies of individual providers. For example, would it be possible to require that the advertised price include the universal service contribution, while allowing the continued publication of the universal service contribution as a line item in end-users' bills? What additional rules should the Commission adopt to provide clarity to customers regarding USF pass-through charges? How should these rules be enforced? What benefits to consumers and/or cost burden to providers would such rules result in?

392. *Advertising USF Charges.* In addition, should we also mandate that carriers disclose at the time of initial service subscription the amount of the quoted rate or other assessable units that would be subject to assessment? Are there alternative approaches the Commission should take to ensure greater disclosure of such charges to customers in a way that advances price comparison and evaluation?⁶¹⁴

393. *Mass Market Customers vs. Business Customers.* If we were to adopt either of these rules, should the rule apply broadly to all customers, or be limited to mass market customers, who typically have less leverage than businesses, institutions and governmental entities that purchase communications services? If we were to adopt such a distinction, how should we define "mass market" for these purposes?⁶¹⁵

394. *Eliminating Line Items.* An alternative approach to the rules described above would be to limit carrier flexibility to recover their universal service contributions from end users through a line-item or "surcharge" on end-user bills.⁶¹⁶ Under such an approach, while contributors would retain the flexibility to include the cost of contributing to the universal service fund in determining their overall rate structure, they would not be permitted to represent any line item on end-user customer bills as a federal universal service charge.⁶¹⁷ For instance, section 54.712 of the Commission's rules, which currently

⁶¹⁴ See, e.g., *Consumer Information and Disclosure et al.*, CG Docket No. 09-158 *et al.*, Notice of Inquiry, 24 FCC Rcd 11380, 11389- 92, 11395 paras. 25-34, 45 (2009) (seeking comment on information needed by consumers to make purchasing decisions); *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket Nos. 98-170, 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6476-77, paras. 55-56 (2005) (seeking comment on disclosures at the point of sale and tentatively concluding that "carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale").

⁶¹⁵ See *supra* n.192.

⁶¹⁶ See 47 C.F.R. § 54.712(a).

⁶¹⁷ We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users' lines. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, para. 22 (1993).

specifies that line items may not exceed the assessable portion of the bill times the contribution factor, could be replaced with the following rule:

Federal universal service contribution costs may not be recovered by contributors as a separate line-item charge on a customer's bill.

395. We seek comment on the relative advantages of any of these potential changes over our current rules regarding the recovery of universal service contributions. In particular, we invite commenters to address whether such rules would benefit consumers by requiring contributors to quote prices for their services that are subject to USF obligations. What cost/burdens would this impose on service providers, and how can such cost/burdens be mitigated? We additionally ask commenters to address whether such rules would result in bills that are simpler and easier to understand. We particularly seek comment from consumer groups on the benefits or disadvantages of such a rule. We also seek comment on whether a rule limiting the pass through of USF charges would unnecessarily reduce carriers' pricing flexibility, resulting in fewer options for consumers.

396. We seek comment on our authority to impose these constraints on contributors' recovery of universal service contributions from their customers. We seek comment on whether sections 4(i), 201, 202, and 254 of the Act, or other statutory provisions, provide sufficient authority to adopt these proposals.⁶¹⁸ Could the Commission adopt such requirements pursuant to its authority to regulate common carrier billing practices under section 201(b) of the Act?⁶¹⁹ Because sections 201 and 202 of the Act only apply to "common carriers" or "telecommunications carriers," could the Commission make these rules applicable to the broader category of "telecommunications providers" under its authority to regulate universal service contribution obligations pursuant to section 254(d) of the Act?

397. We also ask commenters to address whether any of these rules would raise First Amendment or other constitutional concerns, and, if so, how we should address those concerns. Would such rules be consistent with the Commission's other policies and regulations, including the Commission's goals of promoting competition, deregulation, innovation, and universal service?

B. Segregation of USF Pass-Through Charges

398. When a telecommunications provider files bankruptcy, the funds collected by the provider from end-user customers to recover universal service contribution costs are often claimed as part of the bankruptcy estate for the benefit of all the carrier's creditors, rather than for the benefit of the Fund. From 2001 through 2011, the USF was unable to collect, due to provider bankruptcies, \$80 million of the \$90.7 million in funds that such providers had collected as universal service line items. The Fund collected the remaining \$10.7 million through participation in the providers' bankruptcy cases, but only after significant delays and the expenditure of attorneys' fees.

399. We seek comment on whether we should take steps to ensure contributions are made by contributors that become insolvent. Should we adopt a rule specifying that telecommunications providers that impose line items on their customers for federal universal service contributions are acting on behalf of the Fund? Would such a codified rule strengthen the position of USAC and the Commission in bankruptcy proceedings?

⁶¹⁸ See 47 U.S.C. §§ 154(i), 201, 202, 254.

⁶¹⁹ Section 201(b) of the Act requires that all charges, practices, classifications, and regulations "for and in connection with" interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement. See 47 U.S.C. §§ 201(b), 202(a).

400. One potential solution to this problem would be to amend section 54.712 of our rules to require contributors that recover their contribution obligation from end-users to segregate those end-user payments in dedicated trust accounts for the sole benefit of the USF. We seek comment on whether the Commission should adopt such a requirement, and the particulars of its implementation. Should we, for instance, require the account to be interest-bearing? Should we require that USAC have access to or be a co-signatory on each account? In the event of late payment, should we permit contributors to use the trust funds to pay interest, penalties and/or costs assessed against the contributor under our rules for late payment? How would such a requirement best be enforced? We also seek comment on alternative means of ensuring payment of contribution amounts to the Fund in cases of insolvency and financial distress, and their advantages and disadvantages.

C. Limiting Pass-Through of USF Charges to Lifeline Subscribers

401. An increasing number of non-incumbent carriers are serving low-income individuals as eligible telecommunications carriers -- and in doing so bundling long-distance calling, voicemail, text messaging, and other unsupported services into the package purchased by those customers. Indeed, in 2011, more than 69 percent of Lifeline support was provided to competitive ETCs serving low-income consumers.⁶²⁰ Many Lifeline service providers offer a Lifeline offering that provides the consumer with a set number of minutes per month, which can be used for both intrastate and interstate calls in the continental U.S.

402. As noted above, historically incumbent ETCs have not been allowed to pass through universal service contribution obligations associated with the subscriber line charge although they are free to recover any USF contributions associated with interstate (*i.e.*, long-distance) calling.⁶²¹ Nothing in our rules prevents non-incumbent ETCs from passing universal service contribution assessments through to their Lifeline subscribers, regardless of how they structure their Lifeline offering. We understand that some competitive ETCs have sought informal staff guidance regarding to what extent, if any, they may pass a universal service line-item charge through to their Lifeline subscribers.

403. Recently, the Commission adopted a number of significant changes to the Lifeline program to modernize the program in light of current marketplace conditions. It revised the definition of Lifeline to be “voice telephony service,” and it replaced the former system – which linked Lifeline support amounts to the subscriber line charge – to a uniform \$9.25 per month flat rate of support for all providers.⁶²²

404. *Discussion.* We seek comment on rule changes to provide a more level playing field among incumbent ETCs and competitive ETCs regarding their recovery of universal service pass-through charges.⁶²³ In particular, we propose to extend the current rules that apply only to incumbent carriers by

⁶²⁰ See 2011 USAC Annual Report at 44 (reporting that more than 69% of low-income support was distributed to competitive ETCs in 2011). In the recent *Lifeline Reform Order*, the Commission noted that prepaid wireless ETCs account for more than 40 percent of all Lifeline support. *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11, at para. 23.

⁶²¹ See *supra* para. 388.

⁶²² See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 77; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at para. 58.

⁶²³ Competitive ETCs includes Lifeline-only ETCs. ETCs typically are designated and eligible to receive both high-cost and low-income universal service support. Lifeline-only ETCs, however, are carriers authorized to receive support only for the provision of the Lifeline supported services to eligible low-income consumers. These carriers are not eligible to receive high-cost universal service support. See *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at n.647.

amending section 54.712 to prohibit competitive ETCs from recovering USF charges for Lifeline offerings from Lifeline subscribers as follows:

*Lifeline Subscribers. Eligible telecommunications carriers covered by §69.131 and §69.158 are subject to the limitations on universal service end user charges set forth therein. All other eligible telecommunications carriers shall not recover federal universal service contribution costs from Lifeline services to Lifeline subscribers. This limitation does not apply to services to Lifeline subscribers that are not supported by Lifeline, such as per-minute or other additional charges beyond the service for which the customer receives Lifeline support.*⁶²⁴

Such a rule could offer an easily administrable bright-line rule: ETCs would be free to pass along contribution costs through a line-item (or prepaid charge in the case of prepaid cards or services) only if the Lifeline subscriber chooses to purchase additional services beyond the basic Lifeline service. We seek comment on this analysis.

405. The Commission has previously recognized that prohibiting recovery of universal service contributions for the supported Lifeline service from Lifeline subscribers “helps to increase subscribership by reducing qualifying low-income consumers’ monthly basic local service charges” and helps fulfill the statutory goal of making telecommunications services available to low-income consumers.⁶²⁵ As such, would it be appropriate to bar competitive ETCs from passing through universal service contribution costs associated with their basic Lifeline offering, comparable to the restriction that exists today for incumbent carriers?

406. We recognize that this proposed rule would prevent a competitive ETC from fully recovering its contribution costs attributable to a given Lifeline subscriber, to the extent it has a contribution obligation associated with its provision of service to such a customer.⁶²⁶ Would such a rule result in competitive ETCs reducing the number of minutes provided in a Lifeline offering? We note that competitive ETCs are not required to allocate their costs and tariff their basic local exchange service (as incumbent LECs generally must), and there may be no reliable way to determine whether a competitive ETC is effectively recovering the contribution costs associated with the eligible Lifeline service included in the package. How would the Commission treat Lifeline service offerings by competitive ETCs?

407. We seek to develop the record on carrier practices today regarding recovery of USF contribution costs for Lifeline offerings from Lifeline subscribers. For example, we seek comment and data on the extent to which ETCs that offer prepaid services supported by the Lifeline program effectively recover from their Lifeline subscribers the cost of their universal service contributions associated with that Lifeline plan. Do they recover those costs by adjusting the number of minutes provided for the established Lifeline rate? Do competitive ETCs providers that have monthly billing arrangements with Lifeline subscribers pass through USF contribution costs for Lifeline offerings?

⁶²⁴ See Appendix A, 47 C.F.R. § 54.712(b).

⁶²⁵ 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24982, para. 62.

⁶²⁶ Under a revenues-based system, a competitive ETC may have a contribution obligation associated with the Lifeline service, for instance to the extent the Lifeline subscriber uses an all-distance Lifeline offering to make interstate calls. If the Commission were to adopt a connections- or a number-based contribution methodology, whether the provider would have a contribution obligation would depend on whether the Commission chose to exempt connections provided to Lifeline subscribers or numbers associated with Lifeline service offerings from any contribution obligation.

408. We seek comment on the potential impact of a rule prohibiting recovery of contribution costs for Lifeline offerings on Lifeline service providers and their Lifeline subscribers. Given the Commission's steps in the last decade to increase telephone penetration on Tribal lands via the low-income program,⁶²⁷ we are particularly interested in comment from Tribal governments and Tribally-owned and operated Lifeline service providers on the impact of such a rule on Tribal lands and their Lifeline subscribers. Commenters that oppose such a rule should provide specific alternative rules and explain how their proposals would support the goals of universal service.

409. As the Commission has previously noted, if an ETC offers additional unsupported services to a Lifeline subscriber, it historically has been permitted to recover its contribution costs attributed to those service offerings from the customer through line-item charges.⁶²⁸ We seek comment on whether we need to update our rules applicable to both incumbent and competitive ETCs in light of the emergence of Lifeline offerings that may permit the Lifeline subscriber to make calls across state lines as well as within the state. For instance, should we adopt a rule that expressly prohibits all ETCs from recovering any contribution costs associated with a Lifeline offering that provides all-distance calling from their Lifeline subscriber?

410. Finally, we also seek comment on the impact on low-income subscribers generally, *i.e.*, those subscribers that would be eligible for Lifeline, even if they do not participate in the program, of the different contribution methodologies discussed in Section V above. What is the average amount of USF pass-through charge imposed and collected today for low-income consumers?

VIII. PROCEDURAL MATTERS

A. Filing Requirements

411. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶²⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through

⁶²⁷ See, e.g., *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

⁶²⁸ 2003 *Interim Contribution Methodology Recon Order*, 18 FCC Rcd at 4822, para. 10 (recognizing that "ETCs have always been free to recover" the USF contribution costs of long-distance and other unsupported services from these customers).

⁶²⁹ 47 C.F.R. §§ 1.1200 *et seq.*

the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

412. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁶³⁰ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁶³¹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

413. *Further Information:* For further information, contact Vickie S. Robinson, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400 (voice), 202-418-0484 (tty).

B. Initial Regulatory Flexibility Analysis

414. As required by the Regulatory Flexibility Act of 1980, as amended,⁶³² the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth as Appendix E. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice.

⁶³⁰ 47 C.F.R. §§ 1.415, 1.419.

⁶³¹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

⁶³² 5 U.S.C. § 603.

C. Paperwork Reduction Act Analysis

415. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

IX. ORDERING CLAUSES

416. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and sections 1.1 and 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this Further Notice of Proposed Rulemaking IS ADOPTED.

417. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

418. IT IS FURTHER ORDERED, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 C.F.R. §§ 1.4(b)(1), 1.103(a), that this Further Notice of Proposed Rulemaking SHALL BE EFFECTIVE on the date of publication of a summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Part 54, Subpart H, as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

1. The authority citation for Part 54 continues to read as follows:

47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.706 by adding paragraphs (f), (g), and (h) to read as follows:

§ 54.706 Contributions.

(a) * * *

(b) * * *

(c) * * *

(d) * *

(e) * * *

(f) *Registration Requirements.* Every common carrier subject to the Communications Act of 1934, as amended, and every entity required to submit a Telecommunications Reporting Worksheet shall register with the Commission in accordance with the provisions of 47 C.F.R. § 64.1195(a)-(c) and the Instructions to the Telecommunications Reporting Worksheet within thirty days of the commencement of provision of service.

(g) *Deregistration Requirements.* If a registrant stops providing interstate and international telecommunications to others, it shall deregister with the Commission within thirty days of its last provision of telecommunications. To deregister, a registrant must comply with the Instructions to the Telecommunications Reporting Worksheet.

(h) *Customer Confirmation Requirements.* A telecommunications carrier or provider providing telecommunications to other carriers or providers shall have an affirmative duty to ascertain whether a customer that is required to register has in fact registered with the Commission prior to offering service to that customer.

3. Amend § 54.711 by adding paragraphs (d) and (e) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) * * *

(b) * * *

- (c) * * *
- (d) *Telecommunications Reporting Worksheet Revisions.* The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.
- (e) *Electronic Filings.* Reporting entities must file the Telecommunications Reporting Worksheet electronically. The Administrator shall assess a \$25 fee on reporting entities for filing paper copies of the quarterly Telecommunications Reporting Worksheet. The Administrator shall assess a \$50 fee on reporting entities for filing paper copies of the annual Telecommunications Reporting Worksheet. The Administrator shall not assess a paper-filing fee on reporting entities that electronically file their Telecommunications Reporting Worksheet, but such entities must also submit either a paper or electronic certification attesting to the accuracy of the information reported therein under penalty of perjury.

4. Amend § 54.712 by adding paragraph (b) to read as follows:

§ 54.712 Contributor recovery of universal service costs from end users.

- (a) * * *
- (b) *Lifeline Subscribers.* Eligible telecommunications carriers covered by §69.131 and §69.158 are subject to the limitations on universal service end user charges set forth therein. All other eligible telecommunications carriers shall not recover federal universal service contribution costs from Lifeline services to Lifeline subscribers. This limitation does not apply to services to Lifeline subscribers that are not supported by Lifeline, such as per-minute or other additional charges beyond the service for which the customer receives Lifeline support.

5. Amend § 54.713 by revising paragraph (b) to read as follows:

§ 54.713 Contributor's failure to report or to contribute.

- (a) * * *
- (b) If a universal service fund contributor fails to make full payment of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, on or before the date due, the payment is delinquent. Late fees, interest charges, and penalties for failure to remit any payment by the date due shall apply regardless of whether the obligation to pay that amount is appealed or otherwise disputed unless the Administrator or the Commission (pursuant to section 54.719) finds the disputed charges are the result of clear error by the Administrator. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest at the rate equal to the U.S. prime rate (in effect on the date of the delinquency) plus 3.5 percent, as well as administrative charges of collection and/or penalties and charges permitted by the applicable law (e.g., 31 U.S.C. 3717 and implementing regulations).
- (c) * * *
- (d) * * *

(e) * * *

APPENDIX B

Summary Analysis of Wireless and Interconnected VoIP Traffic Studies

Percentage of Interstate/International Revenues
Wireless Traffic Studies

Percentages	Number of Studies on File
30%	2
20-29.9%	100
10-19.9%	65
0.1-9%	40
0%	9

Percentage of Interstate/International Revenues
Interconnected VoIP Traffic Studies

Percentages	Number of Studies on File
50%-59.9%	16
40%-49.9%	12
30%-39.9%	25
20%-29.9%	43
10%-19.9%	59
0.1-9.9%	40
0%	47

Source: Traffic Studies on file as of January 19, 2012, Universal Service Administrative Company.

APPENDIX C

Summary of 2011 FCC Form 499-A Filings

Table 1
Interstate/International Revenue as a Percent of All Revenue
2004-2011

<i>Line</i>	<i>Year</i>	2004	2005	2006	2007	2008	2009	2010	2011
403	Federal or State USF Surcharges	91.4%	88.8%	89.6%	88.1%	88.5%	88.2%	89.6%	90.7%
Fixed Local Services									
404.1	Local portion of flat rate fixed monthly service	2.5%	6.0%	6.1%	1.2%	0.8%	1.6%	2.2%	1.0%
404.2	Toll portion of flat rate fixed local monthly service	--	--	--	36.7%	48.2%	46.7%	54.7%	54.3%
404.3	Fixed local service without interstate toll included	1.1%	0.7%	0.3%	0.1%	0.1%	0.2%	0.4%	0.3%
404.4	Interconnected VoIP offered with broadband	--	--	--	16.8%	11.4%	7.4%	13.4%	17.0%
404.5	Interconnected VoIP offered independent of broadband	--	--	--	47.1%	45.1%	35.4%	32.5%	33.5%
405	Subscriber line charge	97.1%	97.6%	97.4%	97.6%	97.7%	97.7%	97.3%	98.3%
406	Local private line and special access	57.9%	61.5%	65.0%	60.2%	47.6%	51.2%	45.5%	44.5%
407	Payphone	7.4%	3.3%	6.2%	3.1%	4.0%	4.9%	4.9%	3.4%
408	Other local telecom service	3.9%	5.5%	3.8%	5.4%	6.5%	6.8%	5.6%	4.5%
Subtotal Fixed Local Services		21.9%	23.9%	24.7%	24.3%	22.7%	23.1%	22.9%	23.3%

Appendix C, Table 1 – continued

Line	Year	2004	2005	2006	2007	2008	2009	2010	2011
Mobile Services									
409	Mobile monthly and activation charges	21.0%	21.4%	21.1%	22.2%	23.1%	23.4%	23.6%	23.3%
410	Mobile message charges including roaming and air time for toll	22.8%	22.7%	22.4%	23.1%	23.0%	22.9%	23.6%	21.8%
Subtotal Mobile Services		21.7%	21.7%	21.3%	22.3%	23.1%	23.3%	23.6%	23.1%
Toll Services									
411	Prepaid calling cards	88.1%	89.4%	94.3%	90.0%	90.2%	91.2%	90.4%	91.5%
412	International calls	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
413	Operator and toll calls	60.1%	56.0%	50.6%	41.2%	41.8%	40.6%	42.2%	42.8%
414.1	Long distance (all itemized toll on wireline and wireless, other than VoIP)	61.8%	59.8%	61.6%	62.0%	66.9%	67.3%	66.5%	66.8%
414.2	Interconnected VoIP long distance	--	--	--	70.8%	63.7%	64.6%	60.0%	62.3%
415	Long distance private line	82.7%	81.7%	81.5%	80.1%	80.9%	80.0%	73.3%	76.1%
416	Satellite	91.1%	93.8%	92.2%	90.8%	92.7%	96.2%	96.3%	95.0%
417	All other long distance	74.2%	74.2%	79.2%	62.7%	75.8%	70.7%	85.9%	89.7%
Subtotal Toll Services		68.1%	66.9%	68.8%	67.2%	71.6%	71.8%	70.7%	71.7%
Grand Total		35.5%	34.7%	34.6%	33.4%	33.7%	33.7%	33.5%	33.7%

Source: FCC Form 499-A End User Revenue Analysis as of January 19, 2012, Universal Service Administrative Company. Revenue information for 2011 is preliminary and may be adjusted.

Appendix C (continued)

Table 2
Interstate/International Revenue
2004-2011
(in billions)

<i>Line</i>	<i>Year</i>	2004	2005	2006	2007	2008	2009	2010	2011
403	Federal or State USF Surcharges	\$5.9	\$5.8	\$5.8	\$6.5	\$7.0	\$7.2	\$7.0	\$7.9
Fixed Local Services									
404.1	Local portion of flat rate fixed monthly service	\$0.4	\$1.2	\$1.2	\$0.2	\$0.1	\$0.1	\$0.1	\$0.1
404.2	Toll portion of flat rate fixed local monthly service	--	--	--	\$0.9	\$1.8	\$1.8	\$2.0	\$1.8
404.3	Fixed local service without interstate toll included	\$0.5	\$0.3	\$0.3	\$0.1	\$0.0	\$0.1	\$0.1	\$0.1
404.4	Interconnected VoIP offered with broadband	--	--	--	\$0.1	\$0.3	\$0.4	\$0.5	\$0.7
404.5	Interconnected VoIP offered independent of broadband	--	--	--	\$0.4	\$0.9	\$0.9	\$1.1	\$1.5
405	Subscriber line charge	\$11.9	\$11.4	\$11.4	\$10.6	\$9.9	\$9.1	\$8.1	\$7.3
406	Local private line and special access	\$5.6	\$6.9	\$6.9	\$6.6	\$4.2	\$4.8	\$3.7	\$3.6
407	Payphone	\$0.1	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
408	Other local telecom service	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.1	\$0.0	\$0.0
Subtotal Fixed Local Services		\$18.5	\$19.9	\$19.9	\$18.9	\$17.3	\$17.2	\$15.8	\$15.1

Appendix C, Table 2 continued

Line	Year	2004	2005	2006	2007	2008	2009	2010	2011
Mobile Services									
409	Mobile monthly and activation charges	\$10.9	\$15.6	\$15.6	\$20.4	\$22.3	\$22.8	\$22.8	\$22.0
410	Mobile message charges including roaming and air time for toll	\$7.1	\$4.1	\$4.1	\$3.6	\$3.7	\$4.0	\$3.2	\$2.7
Subtotal Mobile Services		\$17.9	\$19.7	\$19.7	\$23.9	\$26.0	\$26.9	\$26.0	\$24.6
Toll Services									
411	Prepaid calling cards	\$3.0	\$3.4	\$3.4	\$1.9	\$2.5	\$2.5	\$2.0	\$1.8
412	International calls	\$0.6	\$0.6	\$0.6	\$0.7	\$0.8	\$0.8	\$0.7	\$0.5
413	Operator and toll calls	\$1.7	\$1.3	\$1.3	\$0.8	\$0.6	\$0.5	\$0.4	\$0.4
414.1	Long distance (all itemized toll on wireline and wireless, other than VoIP)	\$24.3	\$21.0	\$21.0	\$17.5	\$17.6	\$16.1	\$13.5	\$12.1
414.2	Interconnected VoIP long distance	\$0.0	\$0.0	\$0.0	\$0.3	\$0.6	\$0.9	\$1.0	\$1.2
415	Long distance private line	\$9.5	\$8.6	\$8.6	\$7.4	\$7.1	\$6.8	\$6.4	\$6.7
416	Satellite	\$0.3	\$0.3	\$0.3	\$0.3	\$0.4	\$0.4	\$0.4	\$0.4
417	All other long distance	\$0.8	\$0.6	\$0.6	\$0.8	\$0.6	\$1.2	\$1.8	\$1.6
Subtotal Toll Services		\$40.2	\$35.9	\$35.9	\$29.6	\$30.1	\$29.1	\$26.4	\$24.6
Grand Total		\$82.6	\$81.3	\$81.3	\$79.0	\$80.5	\$80.4	\$75.2	\$72.2

Source: FCC Form 499-A End User Revenue Analysis as of January 19, 2012, Universal Service Administrative Company

APPENDIX D

Data Analysis for Prior Period Adjustments

For illustrative purposes, the table below contrasts the effect that prior period adjustments (“PPAs”) has on the contribution factor under our existing rule (“Historical CF”) compared to the effect that would have occurred if prior period adjustments had occurred over two quarters (“Two Quarter CF”).

All data is from the Public Notices the Commission releases each quarter announcing the quarterly contribution factor.¹ All dollar figures are reported in millions. The demand excludes the effects of prior period adjustments. The Two Quarter PPA is a simple average of the Historical PPA for that quarter and the Historical PPA of the previous quarter. The column “No-PPA CF” represents what the contribution factor would have been if there had been no PPAs at all.

Quarter	Contribution Base	Demand	Historical PPA	Two Quarter PPA	Historical CF	Two Quarter CF	No-PPA CF
2005Q1	\$18,351.88	41,753.22	\$4.31	4(45.37)	10.7%	10.4%	10.7%
2005Q2	418,331.56	41,754.33	\$52.17	428.24	11.1%	10.9%	10.7%
2005Q3	418,370.22	41,784.91	\$(106.25)	4(27.04)	10.2%	10.7%	10.9%
2005Q4	417,869.74	41,748.15	\$(115.23)	4(110.74)	10.2%	10.2%	11.0%
2006Q1	418,450.88	41,798.63	\$(109.42)	4(112.32)	10.2%	10.2%	11.0%
2006Q2	418,317.96	41,807.18	\$(33.37)	4(71.40)	10.9%	10.6%	11.1%
2006Q3	418,773.68	41,780.05	\$(17.51)	4(25.44)	10.5%	10.5%	10.6%
2006Q4	419,362.70	41,777.42	\$(189.79)	4(103.65)	9.1%	9.6%	10.3%
2007Q1	418,549.12	41,833.08	\$(211.29)	4(200.54)	9.7%	9.8%	11.1%
2007Q2	418,013.57	41,843.83	\$12.50	4(99.39)	11.7%	10.9%	11.6%
2007Q3	418,566.48	41,886.09	4(18.65)	4(3.07)	11.3%	11.5%	11.5%
2007Q4	418,949.19	41,887.42	4(30.83)	4(24.74)	11.0%	11.1%	11.2%
2008Q1	419,193.84	41,892.96	4(147.40)	4(89.12)	10.2%	10.5%	11.1%
2008Q2	418,977.95	41,949.17	4(41.72)	4(94.56)	11.3%	11.0%	11.6%
2008Q3	419,039.35	41,984.23	4(65.97)	4(53.85)	11.4%	11.4%	11.8%
2008Q4	419,011.92	42,018.11	4(98.29)	4(82.13)	11.4%	11.5%	12.0%
2009Q1	418,871.05	41,872.54	4(262.34)	4(180.32)	9.5%	10.0%	11.2%
2009Q2	418,714.72	41,895.69	4(12.75)	4(137.55)	11.3%	10.5%	11.4%
2009Q3	418,032.83	41,991.58	437.37	412.31	12.9%	12.7%	12.6%
2009Q4	417,164.44	42,019.39	4(158.64)	4(60.64)	12.3%	13.1%	13.5%
2010Q1	417,254.24	42,037.21	469.33	4(44.66)	14.1%	13.2%	13.6%
2010Q2	416,637.88	42,100.79	479.58	474.46	15.3%	15.2%	14.6%
2010Q3	417,575.57	42,112.43	4(32.61)	423.49	13.6%	14.0%	13.8%
2010Q4	417,441.38	42,100.70	4(131.78)	4(82.20)	12.9%	13.3%	13.9%
2011Q1	416,674.39	42,051.02	4161.46	414.84	15.5%	14.3%	14.2%
2011Q2	416,403.46	42,070.42	427.22	494.34	14.9%	15.4%	14.6%

¹ See Federal Communications Commission, Contribution Factor & Quarterly Filings—Universal Service Fund, available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support> (last visited Apr. 16, 2012).

APPENDIX E

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, we seek public comment on approaches to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered. We seek comment on ways to reform the USF contribution system in an effort to promote efficiency, fairness, and sustainability. We seek comment in four key areas regarding the contributions system: (1) who should contribute to the Fund; (2) how contributions should be assessed; (3) how the administration of the contribution system can be improved; and (4) recovery of universal service contributions from consumers.

3. First, we seek comment on who should contribute to the Fund. Specifically, we seek comment on how we could exercise our permissive authority to define what services or providers should be subject to contribution obligations, either by: (1) clarifying or modifying on a service-by-service basis whether particular services or providers are required to contribute to the Fund;⁴ or (2) adopting a more general rule that would specify which interstate telecommunications providers must contribute without enumerating the specific services subject to assessment.⁵

4. Second, we seek comment on how contributions should be assessed. In particular, what methodology we should use to determine the relative contribution obligation among those providers who are required to contribute. In particular, we seek to refresh the record and update proposals to assess based on revenues,⁶ connections,⁷ numbers,⁸ or a hybrid approach.⁹ For each alternative, we ask parties to address the current and projected impact on the relative contribution burden for consumers and businesses in light of marketplace trends.

¹ See 5 U.S.C. § 603. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). See 5 U.S.C. §§ 601–612.

² 5 U.S.C. § 603(a).

³ See *id.*

⁴ See *supra* Section IV.B (Determining Contribution Obligations on a Case-by-Case Basis with Respect to Specific Services), paras. 36 – 73.

⁵ See *supra* Section IV.C (Determining Contribution Obligations Through a Broader Definitional Approach), paras. 74 – 94.

⁶ See *supra* Section V.A (Reforming the Current Revenues-Based System), paras. 98 – 218.

⁷ See *supra* Section V.B (Assessing Contributions Based on Connections), paras. 219 – 283.

⁸ See *supra* Section V.C (Assessing Contributions Based on Numbers), paras. 284 – 341.

⁹ See *supra* Section V.C.5 (Use of a Hybrid System with a Numbers-Component), paras. 322 – 324.

5. Third, we seek comment on how to improve the administration of the contribution system. We seek comment on potential rule changes that could be implemented to provide greater transparency and clarity regarding contribution obligations, reduce costs of administering the program, and improve the operation and administration of the program. Specifically, we seek comment on potential rule changes in six areas that should improve administration: (1) updating the Telecommunications Reporting Worksheet and its instructions;¹⁰ (2) revising the frequency of adjustments to the contribution factor;¹¹ (3) codifying the pay-and-dispute policy;¹² (4) improving oversight and accountability;¹³ (5) mandating electronic filing of the Telecommunications Reporting Worksheet with a fee for paper filer;¹⁴ and (6) implementing a filer registration and deregistration requirement for all parties required to file the Telecommunications Reporting Worksheet.¹⁵

6. Finally, we seek comment on whether the Commission could promote fairness and transparency by modifying the methods by which providers recover the costs of universal contributions from consumers. Specifically, we seek comment on the following questions: (1) whether to limit the flexibility of contributors to pass through contribution costs as a separately stated line item on customer bills;¹⁶ (2) whether to implement measures to ensure contributions are made by contributors that become insolvent;¹⁷ and (3) whether to prohibit competitive carriers from recovering universal service contributions for Lifeline offerings from Lifeline subscribers.¹⁸

B. Legal Basis

7. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended,¹⁹ and section 706 of the Telecommunications Act of 1996, as amended.²⁰

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²² In addition, the term “small business” has the

¹⁰ See *supra* Section VI.A (Updating the Telecommunications Reporting Worksheet), paras. 344 – 349.

¹¹ See *supra* Section VI.B (Revising the Frequency of Adjustments to the Contribution Factor), paras. 350 – 359.

¹² See *supra* Section VI.C (Pay-and-Dispute Policy), paras. 360 – 366.

¹³ See *supra* Section VI.D (Oversight and Accountability), paras. 367 – 375.

¹⁴ See *supra* Section VI.E (Paper-Filing Fees), paras. 376 – 380.

¹⁵ See *supra*, Section VI.F (Filer Registration and Deregistration), paras. 381 – 386.

¹⁶ See *supra* Section VII.A (Pass-Through of USF Contributions as Separate Line Item Charge), paras. 389 – 397.

¹⁷ See *supra* Section VII.B (Segregation of USF Pass-Through Charges), paras. 398 – 400.

¹⁸ See *supra* section VII.C (Limiting Pass-Through of USF Charges to Lifeline Subscribers), paras. 401 – 410.

¹⁹ 47 U.S.C. §§ 151, 152, 154(i)–(j), 201, 202, 218-220, 254, 257, 303(r), 503, 1302.

²⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706(b), 110 Stat. 153 (codified at 47 U.S.C. § 157 note).

²¹ See 5 U.S.C. § 603(b)(3).

²² See 5 U.S.C. § 601(6).

same meaning as the term “small-business concern” under the Small Business Act.²³ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁴ Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.²⁵

1. Wireline Carriers and Service Providers

9. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁶ According to Census Bureau data for 2007, there were a total of 3,188 firms in this category, that operated for the entire year.²⁷ Of this total, 3,144 firms employed 999 or fewer employees, and 44 firms employed 1000 employees or more.²⁸ Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to the Notice.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.³⁰ Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.³¹ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

11. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² According to Commission data, 1,307 carriers reported that they were incumbent local

²³ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁴ See 15 U.S.C. § 632.

²⁵ See SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://www.sba.gov/advo/stats/sbfaq.pdf>.

²⁶ 13 C.F.R. § 121.201, NAICS code 517110.

²⁷ U.S. Census Bureau, 2007 Economic Census Report, Subject Series: Information, Sector 51, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS,” at NAICS Code 174, available at http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-ds_name=EC0751SSSZ2&-_lang=en (2007 Economic Census Report Employment Size of Firms).

²⁸ See *id.*

²⁹ 13 C.F.R. § 121.201, NAICS code 517110.

³⁰ See Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010), available at <http://www.fcc.gov/reports/trends-telephony-service-2010> (Trends in Telephone Service).

³¹ See *id.*

³² See 13 C.F.R. § 121.201, NAICS code 517110.

exchange service providers.³³ Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.³⁴ Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³⁵ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³⁶ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.³⁸ Of these carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.³⁹ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴⁰ In addition, 72 carriers have reported that they are Other Local Service Providers.⁴¹ Of these 72 carriers, an estimated 70 have 1,500 or fewer employees and two have more than 1,500 employees.⁴² Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴³ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of

³³ See Trends in Telephone Service at Table 5.3.

³⁴ See *id.*

³⁵ 5 U.S.C. § 601(3).

³⁶ See Letter from Jere W. Glover, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

³⁷ See 13 C.F.R. § 121.201, NAICS code 517110.

³⁸ See Trends in Telephone Service at Table 5.3.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

⁴³ See 13 C.F.R. § 121.201, NAICS code 517110.

interexchange services.⁴⁴ Of these companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

15. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The closest applicable size standard under SBA rules is for Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁶ According to Commission data, 193 providers have reported that they are engaged in the provision of prepaid calling cards.⁴⁷ Of these providers, an estimated 193, or all such providers, have 1,500 or fewer employees and none have more than 1,500 employees.⁴⁸ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

16. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁹ According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵⁰ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵¹ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

17. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵² According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵³ Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.⁵⁴ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Notice.

18. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁵ According to Commission data,⁵⁶ 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently,

⁴⁴ See Trends in Telephone Service at Table 5.3.

⁴⁵ See *id.*

⁴⁶ See 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁷ See Trends in Telephone Service at Table 5.3.

⁴⁸ See *id.*

⁴⁹ See 13 C.F.R. § 121.201, NAICS code 517911.

⁵⁰ See Trends in Telephone Service at Table 5.3.

⁵¹ See *id.*

⁵² See 13 C.F.R. § 121.201, NAICS code 517911.

⁵³ See Trends in Telephone Service at Table 5.3.

⁵⁴ See *id.*

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁶ See Trends in Telephone Service at Table 5.3.

the Commission estimates that the majority of payphone service providers are small entities that may be affected by rules adopted pursuant to the Notice.

19. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁷ According to Commission data,⁵⁸ 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Notice.

20. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁹ According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁶⁰ Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.⁶¹ Consequently, the Commission estimates that the majority of Other Toll Carriers are small entities that may be affected by the rules adopted pursuant to the Notice.

21. *800 and 800-Like Service Subscribers*.⁶² Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll-free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶³ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁶⁴ According to this data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.⁶⁵ We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll-free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

⁵⁷ See 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁸ See Trends in Telephone Service at Table 5.3.

⁵⁹ See 13 C.F.R. § 121.201, NAICS code 517110.

⁶⁰ See Trends in Telephone Service at Table 5.3.

⁶¹ See *id.*

⁶² We include all toll-free number subscribers in this category, including those for 888 numbers.

⁶³ See 13 C.F.R. § 121.201, NAICS code 517911.

⁶⁴ See Trends in Telephone Service at Tables 18.7-18.10.

⁶⁵ See *id.*

2. Wireless Telecommunications Service Providers

22. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.⁶⁶ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁶⁷ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁶⁸ For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.⁶⁹ Of this total, 1,368 firms employed 999 or fewer employees and 15 employed 1000 employees or more.⁷⁰ Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁷¹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁷² Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small entities that may be affected by the rules adopted pursuant to the Notice.

23. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷³ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁴ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁷⁵ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷⁶ In 1999, the Commission re-

⁶⁶ See 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁷ U.S. Census Bureau, 2002 NAICS Definitions, “517211 – Paging,” available at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 – Cellular and Other Wireless Telecommunications,” available at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁶⁸ 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁶⁹ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

⁷⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

⁷¹ See Trends in Telephone Service at Table 5.3.

⁷² See *id.*

⁷³ See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

⁷⁴ See *id.*; see also 47 C.F.R. § 24.720(b)(2).

⁷⁵ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

⁷⁶ See FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications* (continued...)

auctioned 347 C, E, and F Block licenses.⁷⁷ There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.⁷⁸ Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.⁷⁹ Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.⁸⁰ Of the 14 winning bidders, six were designated entities.⁸¹ In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.⁸²

24. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁸³ This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.⁸⁴ Four winning bidders that identified themselves as very small businesses won 17 licenses.⁸⁵ Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won two licenses.

25. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues

(Continued from previous page)

Services (PCS) Licensees, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

⁷⁷ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (Wireless Tel. Bur. 1999).

⁷⁸ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (Wireless Tel. Bur. 2001).

⁷⁹ See *Broadband PCS Spectrum Auction Closes, Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (Wireless Tel. Bur. 2005).

⁸⁰ See *Auction of Broadband PCS Spectrum Licenses Closes Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (Wireless Tel. Bur. 2007).

⁸¹ *Id.*

⁸² See *Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 78*, Public Notice, 23 FCC Rcd 7496 (Wireless Tel. Bur. 2008).

⁸³ *Id.* Auction 78 also included an auction of Broadband PCS licenses.

⁸⁴ *Id.* at 7521–22.

⁸⁵ See *Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78*, , Public Notice, 23 FCC Rcd 12749 (Wireless Tel. Bur. 2008).

for the prior three calendar years of \$40 million or less.⁸⁶ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁸⁷ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁸⁸ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁸⁹ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁹⁰ The SBA has approved these small business size standards.⁹¹ A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁹² Three of these claimed status as a small or very small entity and won 311 licenses.

26. *Paging (Private and Common Carrier)*. In the *Paging Third Report and Order*, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹³ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards.⁹⁴ According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.⁹⁵ Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.⁹⁶ Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by rules adopted pursuant to the Notice. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.⁹⁷ Fifty-seven companies claiming small

⁸⁶ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, PP Docket No. 93-253, GEN Docket No. 90-314, ET Docket No. 92-100, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁸⁷ *See Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787*, Public Notice, (rel. Nov. 9, 1994).

⁸⁸ *Amendment of the Commission’s Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, *Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000) (*Narrowband PCS Second Report and Order*).

⁸⁹ *Id.* at 10476, para. 40.

⁹⁰ *Id.*

⁹¹ *See Letter from Aida Alvarez, SBA, to Amy Zoslov, Wireless Telecommunications Bureau, FCC* (dated Dec. 2, 1998) (*1998 Alvarez Letter*).

⁹² *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (Wireless Tel. Bur. 2001).

⁹³ *See Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 100030, 10085-88, paras. 98-107 (1999) (*Paging Third Report and Order*).

⁹⁴ *See 1998 Alvarez Letter*.

⁹⁵ *See Trends in Telephone Service* at Table 5.3.

⁹⁶ *See id.*

⁹⁷ *See 929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (2000).

business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁹⁸ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁹⁹ A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.¹⁰⁰

27. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.¹⁰¹ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Notice.

28. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰² This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁰³ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁰⁴ The SBA has approved these small business size standards.¹⁰⁵ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹⁰⁶ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The

⁹⁸ See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (2002).

⁹⁹ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

¹⁰⁰ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 25 FCC Rcd 18164 (2010).

¹⁰¹ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁰² See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

¹⁰³ See *id.* at 11068–69, para. 291.

¹⁰⁴ See *id.* at 11068–70, paras. 291–95.

¹⁰⁵ See Letter from Aida Alvarez, SBA to D. Phythyon, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998) (*Alvarez to Phythyon 1998 Letter*).

¹⁰⁶ See *Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

second auction included 225 licenses: 216 EA licenses and nine EAG licenses. Fourteen companies claiming small business status won 158 licenses.¹⁰⁷

29. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.¹⁰⁸ The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.¹⁰⁹ The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.¹¹⁰ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.¹¹¹ Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.¹¹² The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.¹¹³ A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.¹¹⁴

30. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.¹¹⁵ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹¹⁶ Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

31. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.¹¹⁷ We assume, for purposes of this analysis, that all of the remaining existing

¹⁰⁷ See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

¹⁰⁸ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹⁰⁹ *Id.*

¹¹⁰ See Letter from Aida Alvarez, SBA, to Thomas Sugrue, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*1999 Alvarez Letter*).

¹¹¹ *FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996*, Public Notice, 11 FCC Rcd 18599 (Wireless Tel. Bur. 1996).

¹¹² *Id.*

¹¹³ See *Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas’*, Public Notice, 11 FCC Rcd 18637 (Wireless Tel. Bur. 1996).

¹¹⁴ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (Wireless Tel. Bur. 2002).

¹¹⁵ See *800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (Wireless Tel. Bur. 2000).

¹¹⁶ See *800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (Wireless Tel. Bur. 2000).

¹¹⁷ See generally 13 C.F.R. § 121.201, NAICS code 517210.

extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

32. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”)).¹¹⁸ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹¹⁹ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹²⁰ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid.¹²¹ In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.¹²² Auction 86 concluded with ten bidders winning 61 licenses.¹²³ Of the ten, two bidders claimed small business status and won four licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

33. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are

¹¹⁸ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹¹⁹ 47 C.F.R. § 21.961(b)(1).

¹²⁰ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

¹²¹ 47 C.F.R. § 27.1218. *See also Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277, 8296 (2009)(*Auction 86 Procedures Public Notice*).

¹²² *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8280.

¹²³ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (Wireless Tel. Bur. 2009).

held by educational institutions. Educational institutions are included in this analysis as small entities.¹²⁴ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹²⁵ The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.¹²⁶ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.¹²⁷ Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to the Notice.

34. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹²⁸ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹²⁹ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹³⁰ Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹³¹ The SBA approved these small size standards.¹³² The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.¹³³ Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.¹³⁴ The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: Five EAG licenses and 476 Cellular Market Area

¹²⁴ The term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)–(6). We do not collect annual revenue data on EBS licensees.

¹²⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517110 – Wired Telecommunications Carriers” (partial definition); available at <http://www.census.gov/eos/naics/2007/def/ND517110,HTM#N517110>.

¹²⁶ U.S. Census Bureau, 2007 Economic Census, Subject Series; Information, Table 5, Employment size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

¹²⁷ See *id.*

¹²⁸ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52–59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52–59 Report and Order*).

¹²⁹ See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087–88, para. 172.

¹³⁰ See *id.*

¹³¹ See *id.* at 1088, para. 173.

¹³² See *1999 Alvarez Letter*.

¹³³ See *Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (Wireless Tel. Bur. 2002).

¹³⁴ *Id.*

licenses.¹³⁵ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹³⁶ In 2005, the Commission completed an auction of five licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.¹³⁷

35. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹³⁸ The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.¹³⁹ An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.¹⁴⁰ Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.¹⁴¹

36. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.¹⁴² In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.¹⁴³ Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).¹⁴⁴

¹³⁵ See *Lower 700 MHz Band Auction Closes*, Public Notice, 18 FCC Rcd 11873 (Wireless Tel. Bur. 2003).

¹³⁶ See *id.*

¹³⁷ *Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60*, Public Notice, 20 FCC Rcd 13424 (Wireless Tel. Bur. 2005).

¹³⁸ *Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, CC Docket No. 94-102, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

¹³⁹ *Id.*

¹⁴⁰ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (Wireless Tel. Bur. 2008) (*700 MHz Band Auction Closes Public Notice*).

¹⁴¹ See *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92, Down Payments and FCC Forms 601 and 602 Due August 11, 2011, Final Payments Due August 25, 2011, Ten-Day Petition to Deny Period*, Public Notice, 26 FCC Rcd 10494 (Wireless Tel. Bur. 2011).

¹⁴² See *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

¹⁴³ See *700 MHz Band Auction Closes Public Notice* at 4572.

¹⁴⁴ *Id.*

37. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁴⁵ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁴⁶ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁴⁷ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.¹⁴⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁴⁹

38. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.¹⁵⁰ Bidding credits for designated entities were not available in Auction 77.¹⁵¹ In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.¹⁵²

39. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹⁵³ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.¹⁵⁴

¹⁴⁵ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*700 MHz Guard Band Order*).

¹⁴⁶ See *id.* at 5343–45, paras. 106–10.

¹⁴⁷ See *id.*

¹⁴⁸ See *700 MHz Guard Band Auction Closes, Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (Wireless Tel. Bur. 2000).

¹⁴⁹ See *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (Wireless Tel. Bur. 2001).

¹⁵⁰ See *Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77*, Public Notice, 23 FCC Rcd 6670 (Wireless Tel. Bur. 2008).

¹⁵¹ *Id.* at 6685.

¹⁵² See *Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77*, Public Notice, 23 FCC Rcd 9501 (Wireless Tel. Bur. 2008).

¹⁵³ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵⁴ See generally 13 C.F.R. § 121.201.

40. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

41. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁵⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).¹⁵⁶ In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹⁵⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by rules proposed in the Notice.

42. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.¹⁵⁸ We will use SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹⁵⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Notice.

43. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁶⁰ Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁶¹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars.¹⁶² In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross

¹⁵⁵ The service is defined in 47 C.F.R. § 22.99.

¹⁵⁶ BETRS is defined in 47 C.F.R. §§ 22.757 and 22.759.

¹⁵⁷ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵⁸ See 47 C.F.R. § 22.99.

¹⁵⁹ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶⁰ See *id.*

¹⁶¹ 2007 Economic Census Report Employment Size of Firms, at NAICS Code 517210.

¹⁶² See generally *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

revenues for the preceding three years not to exceed \$3 million dollars.¹⁶³ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Notice.

44. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁶⁴ private operational-fixed,¹⁶⁵ and broadcast auxiliary radio services.¹⁶⁶ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁶⁷ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by rules adopted pursuant to the Notice. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

45. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁶⁸ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for Cellular and Other Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁶⁹ Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁷⁰ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

46. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous

¹⁶³ See *id.*

¹⁶⁴ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁶⁵ Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

¹⁶⁶ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

¹⁶⁷ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶⁸ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001–1037, NAICS code 517210.

¹⁶⁹ See *id.*

¹⁷⁰ 2007 Economic Census Report Employment Size of Firms, at NAICS Code 517210.

calendar years.¹⁷¹ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁷² The SBA has approved these small business size standards.¹⁷³ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Notice.

47. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁷⁴ The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁷⁵ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁷⁶ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁷⁷ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

48. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁷⁸ In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹⁷⁹ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an

¹⁷¹ See *Amendment of the Commission’s Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661–64, paras. 149–51 (1997).

¹⁷² See *id.*

¹⁷³ See Letter from Aida Alvarez, SBA to Kathleen O’Brien Ham, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Feb. 4, 1998).

¹⁷⁴ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997) (*LMDS Second Report and Order*).

¹⁷⁵ See *id.* at 12689–90, para. 348.

¹⁷⁶ See *id.*

¹⁷⁷ See *1998 Alvarez to Phythyon Letter*.

¹⁷⁸ See *generally Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹⁷⁹ See *generally Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218–219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (*218-219 MHz Report and Order and Memorandum Opinion and Order*).

entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹⁸⁰ These size standards will be used in future auctions of 218–219 MHz spectrum.

49. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹⁸¹ The SBA has approved these definitions.¹⁸² The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

50. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

51. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz).¹⁸³ As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

52. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard of “Cellular and Other Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.¹⁸⁴ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹⁸⁵ and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

53. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for “small business” is an entity that, together with controlling interests and affiliates, has

¹⁸⁰ *See id.*

¹⁸¹ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

¹⁸² *See 1998 Alvarez Letter.*

¹⁸³ The service is defined in section 90.1301 *et seq.* of the Commission’s rules, 47 C.F.R. §1301 *et seq.*

¹⁸⁴ *See* 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸⁵ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

average annual gross revenues for the three preceding years not in excess of \$15 million.¹⁸⁶ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁸⁷ The SBA has approved these small business size standards.¹⁸⁸ These size standards will apply to a future 24 GHz license auction, if held.

3. International Service Providers

54. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.¹⁸⁹ The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.¹⁹⁰ Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.¹⁹¹

55. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹⁹² For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.¹⁹³ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.¹⁹⁴ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Notice.

56. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”¹⁹⁵ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.¹⁹⁶ Of

¹⁸⁶ See *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) (*24 GHz Amendment Order*); see also 47 C.F.R. § 101.538(a)(2).

¹⁸⁷ See *24 GHz Amendment Order*, 15 FCC Rcd at 16967 para. 77; see also 47 C.F.R. § 101.538(a)(1).

¹⁸⁸ See Letter from Gary M. Jackson, SBA to Margaret W. Wiener, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated July 28, 2000).

¹⁸⁹ See 13 C.F.R. § 121.201, NAICS code 517410.

¹⁹⁰ *Id.*

¹⁹¹ See 13 C.F.R. § 121.201, NAICS code 517919.

¹⁹² U.S. Census Bureau, 2007 NAICS Definitions, “517410 – Satellite Telecommunications.”

¹⁹³ See 13 C.F.R. § 121.201, NAICS code 517410.

¹⁹⁴ See *id.* An additional 38 firms had annual receipts of \$25 million or more.

¹⁹⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications,” available at <http://www.census.gov/naics/2007/def/ND517919.HTM>.

¹⁹⁶ See 13 C.F.R. § 121.201, NAICS code 517919.

this total, 2,346 firms had annual receipts of under \$25 million.¹⁹⁷ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

4. Cable and OVS Operators

57. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹⁹⁸ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁹⁹ According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.²⁰⁰ Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1000 employees or more.²⁰¹ Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Notice.

58. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.²⁰² Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard.²⁰³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁰⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁰⁵ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁰⁶ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers. Thus, under this second size standard, most cable systems have 10,000 – 19,999

¹⁹⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

¹⁹⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) available at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁹⁹ See 13 C.F.R. § 121.201, NAICS code 517110.

²⁰⁰ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

²⁰¹ See *id.*

²⁰² See 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

²⁰³ These data are derived from R.R. Bowker, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pgs. A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pgs. D-1805 to D-1857.

²⁰⁴ See 47 C.F.R. § 76.901(c).

²⁰⁵ These data are derived from R.R. Bowker, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pgs. A-8 & C-2 (data current as of Jun. 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pgs. D-1805 - D-1857.

²⁰⁶ See 47 C.F.R. § 76.901(c).

subscribers.²⁰⁷ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice.

59. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²⁰⁸ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁰⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²¹⁰ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²¹¹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

60. *Open Video Services.* The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²¹² The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²¹³ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²¹⁴ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.²¹⁵ Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1000 employees or more.²¹⁶ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, we note that the Commission has certified some OVS

²⁰⁷ WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pg. F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

²⁰⁸ 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn. 1-3.

²⁰⁹ 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Serv. Bur. 2001).

²¹⁰ These data are derived from R.R. Bowker, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pgs. A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pgs. D-1805 - D-1857.

²¹¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules.

²¹² 47 U.S.C. § 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606 para. 135 (2009) (*Thirteenth Annual Cable Competition Report*).

²¹³ *See* 47 U.S.C. § 573.

²¹⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) available at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²¹⁵ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

²¹⁶ *See id.*

operators, with some now providing service.²¹⁷ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²¹⁸ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

5. Internet Service Providers

61. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”²¹⁹ The SBA has developed a small business size standard of 1,500 or fewer employees.²²⁰ According to Census Bureau data from 2007, there were 3,188 firms in this category, total, that operated for the entire year.²²¹ Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.²²² Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to this Notice.

6. Other Internet-Related Entities

62. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).”²²³ The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees.²²⁴ According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.²²⁵ Of this total, 2,682 firms employed 499 or fewer employees, and 23 firms employed 500 employees or

²¹⁷ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

²¹⁸ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²¹⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) available at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²²⁰ 13 C.F.R. § 121.201, NAICS code 517110.

²²¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

²²² See *id.*

²²³ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Employment Size of Firms for the United States: 2007”, NAICS code 517110 (issued Nov. 2010).

²²⁴ See *id.*

²²⁵ U.S. Census Bureau, 2007 NAICS Definitions, “519130 Internet Publishing and Broadcasting and Web Search Portals,” available at <http://www.naics.com/censusfiles/ND519130.HTM>.

more.²²⁶ Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

63. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”²²⁷ The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts.²²⁸ According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.²²⁹ Of these, 7,744 had annual receipts of under \$24,999,999.²³⁰ Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

64. *All Other Information Services.* The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).”²³¹ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts.²³² According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.²³³ Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

7. Other Entities

65. *Responsible Organizations (RespOrgs).* Toll-free numbers are assigned on a first-come, first-served basis by entities referred to as “Responsible Organizations” or “RespOrgs.” These entities, which may or may not be telephone companies, have access to the SMS/800 database, which contains information regarding the status of all toll-free numbers. RespOrgs are certified by the SMS/800 database administrator, which manages toll-free service.²³⁴ Most RespOrgs are telephone carriers or companies. Other companies that apply for RespOrg status are enhanced voice mail providers, VoIP carriers, call tracking and marketing analytics firms, or vanity number firms. Neither the Commission nor the SBA has developed a small business size standard specifically for RespOrgs. There are 404 RespOrgs certified

²²⁶ See 13 C.F.R. § 121.201, NAICS code 519130.

²²⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007”, NAICS code 519130” (issued Nov. 2010).

²²⁸ *Id.*

²²⁹ U.S. Census Bureau, 2007 NAICS Definitions, “518210 Data Processing, Hosting, and Related Services,” available at <http://www.naics.com/2007/def/NDEF518.HTM>.

²³⁰ See 13 C.F.R. § 121.201, NAICS code 518210.

²³¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007”, NAICS code 519130” (issued Nov. 2010).

²³² *Id.*

²³³ U.S. Census Bureau, 2007 NAICS Definitions, “519190 All Other Information Services,” available at <http://www.census.gov/naics/2007/def/ND519190.HTM>.

²³⁴ FCC Fact Sheet, “What is a Toll-Free Number,” available at <http://www.fcc.gov/cgb/consumerfacts/tollfree.html>.

by SMS/800.²³⁵ Consequently, we estimate that there are not more than 404 RespOrgs that are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

66. The transition to a simplified contribution system could affect all telecommunications providers, including small entities, and may include new administrative processes. The Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all telecommunications providers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of such costs or burdens.

67. *Apportioning Revenues from Bundled Services.* Under the current Fund contribution system, revenues from telecommunications offerings are subject to contribution assessment while revenues from information services and consumer-premises equipment (CPE) are excluded from the contribution base. A telecommunications provider must therefore apportion its revenues between telecommunications and non-telecommunications sources for purposes of contribution assessment. Telecommunications providers can currently apportion their bundled revenues pursuant to two safe harbor methods established by the Commission. In addition to the safe harbors, a telecommunications provider could apportion its bundled revenues using any reasonable alternative method. In the Notice, we seek comment on ways to simplify the apportionment of bundled offerings.²³⁶ We seek comment on a bright-line rule that codifies a modified version of the two safe harbors.²³⁷ If adopted, this change would affect how telecommunications providers apportion and report revenues from bundled services.

68. *Contributions for Services with an Interstate Telecommunications Component.* We seek comment on what revenues should be assessed to the extent we choose to exercise our permissive authority over services that provide interstate telecommunications.²³⁸ We seek comment on whether we could and should require contributions on the full retail revenues of an information service that provides interstate telecommunications. We also seek comment on whether to assess only the telecommunications (i.e., the transmission) component and, if so, how we would determine what portion of the integrated service revenues should be associated with the transmission component. We also ask whether we should craft a rule, or safe harbor, that provides for assessment of a certain percentage of retail revenues of information services with a telecommunications (transmission) component. If adopted, this change would affect all providers of services that contain an interstate telecommunications component.

69. *Allocating Revenues Between Inter- and Intrastate Jurisdictions.* We also seek comment on whether the Act compels us to only assess a portion of revenues associated with services that operate interstate, intrastate, or internationally. In the Notice, we seek comment on whether to (1) adopt a rule that requires all providers subject to contributions to report and contribute on all revenues derived from assessable services rather than require providers to allocate revenues between the interstate and intrastate jurisdictions; (2) adopt a bright line rule for how companies should allocate revenues between jurisdictions for broad categories of services; or (3) find that for USF contribution purposes, revenues from such services should be reported as 100 percent interstate. If adopted, this change would affect how telecommunications providers allocate and report mixed jurisdiction revenues.

²³⁵ See SMS/800 website, <http://www.sms800.com> (listing RespOrgs).

²³⁶ See *supra* Section V.A.1 (Apportioning Revenues from Bundled Services), paras. 101 – 113.

²³⁷ *Id.* at para. 106.

²³⁸ See *supra* Section V.A.1 (Apportioning Revenues from Bundled Services), paras. 101 – 113.

70. *Contribution Obligations of Wholesalers and Their Customers.* We seek comment on modifying the existing Fund contribution methodology to assess value-added revenues rather than end-user revenues.²³⁹ Under a value-added approach, each telecommunications provider in a service chain would contribute based on the value it “adds” to the service. Alternatively, we seek comment on whether we should mandate greater specificity in contributor certifications to their wholesalers. If adopted, this change would affect how revenues are reported.

71. *Reporting Prepaid Calling Card Revenues.* In the Notice, we seek comment on adopting a rule to require prepaid calling card providers to report and contribute on all end-user revenues, and who should be deemed the end user for purposes of such a rule.²⁴⁰ We seek comment on rules standardizing the reporting of prepaid calling card revenues. We propose rules requiring all telecommunications providers (as well as telecommunications carriers) to register with the Commission, and rules requiring entities that provide telecommunications to others for resale to check the registration status of their customers.²⁴¹ We believe these rules will provide reporting entities with enhanced certainty regarding their contributions obligations. If adopted, this change would affect telecommunications providers that are wholesalers and resellers of prepaid calling cards.

72. *International Telecommunications Providers.* We seek comment on eliminating the exemption for international-only providers and limited international revenues exemption (LIRE)-qualifying providers.²⁴² We also seek comment on modifying the LIRE exemption by requiring LIRE-qualifying providers to contribute on at least a portion of its revenues. If adopted, this change would affect international-only telecommunications providers and telecommunications providers who may have previously relied on the LIRE exemption.

73. *Reforming the De Minimis Exemption.* The Commission has authority to exempt a carrier or class of carriers from Fund contribution requirements if their contributions would be *de minimis*. Currently, *de minimis* status is determined on a providers’ annual contribution amount. In the Notice, we seek comment on simplifying the exemption by basing it on a provider’s annual assessable revenues. This should simplify the process by which entities may determine if they qualify for the *de minimis* exception. If adopted, this change would affect *de minimis* telecommunications providers.

74. *Assessing Contributions Based on Connections.* In this Notice, we seek comment on whether we should adopt a contribution system based on connections.²⁴³ Under a connections-based system, providers could be assessed based on the number, speed, or capacity of connections to a communications network provided to customers. Providers would contribute a set amount per connection, regardless of the revenues derived from that connection. We seek comment on whether a connections-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters. If adopted, this change would affect all telecommunications providers.

75. *Assessing Contributions Based on Numbers.* We also seek comment on whether we should adopt a contributions system based on numbers.²⁴⁴ Under a numbers-based system, in its simplest form, providers would be assessed based on their count of North American Numbering Plan telephone numbers. There would be a standard monthly assessment per telephone number, such as \$1 per month, with potentially higher and lower tiers for certain categories of numbers based on how these numbers are

²³⁹ See *supra* Section V.A.4 (Contributions Obligations of Wholesalers and Their Customers), paras 143 – 178.

²⁴⁰ See *supra* Section V.A.5 (Reporting Prepaid Calling Card Revenues), paras. 179 – 192.

²⁴¹ *Id.*; see *supra* Section VI.F (Filer Registration and Deregistration), paras. 381 – 386.

²⁴² See *supra* Section V.A.6 (International Telecommunications Providers), paras. 193 – 208.

²⁴³ See *supra* Section V.B (Assessing Contributions Based on Connections), paras. 219 – 283.

²⁴⁴ See *supra* Section V.C (Assessing Contributions Based on Numbers), paras. 284 – 341.

assigned or used. The monthly assessment per number would be calculated by applying a formula based on the USF demand requirement and the relevant count of numbers, however that term is defined. We seek comment on whether a numbers-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters. If adopted, this change would affect all telecommunications providers.

76. *Assessing Contributions Based on a Hybrid Methodology with a Numbers Component.* In this Notice, we also seek comment on whether we should consider a hybrid approach that combines a telephone numbers component with a connections component.²⁴⁵ Under such an approach, providers could be assessed a flat fee for each assessable NANP telephone number and assessed a fee based on the connection for services not associated with a NANP telephone number. We seek comment on whether a hybrid approach would better meet our proposed goals for reforming the contributions methodology. If adopted, this change would affect all telecommunications providers.

77. *Pass-Through of USF Contributions as a Separate Line Item Charge.* In this Notice, we seek comment on ways to improve the transparency for customers relating to the amount of universal service contribution charges that are being passed through by the providers to their customers. We seek comment on whether to: (1) require greater clarity on customer bills regarding how the USF charge was calculated; (2) require providers to disclose at initiation of service the amount of the quoted rate or assessable units would be USF-assessable; and (3) if we were to adopt either of these rules, apply them to all customers, or limit the rules to mass market customers. We seek comment on whether to prohibit contributors from recovering contribution costs as a separate line item on the customer bill. We also seek comment on whether we should take steps to ensure that contributions are made by contributors that become insolvent, specifically by requiring contributors that recover their contribution obligation from end-users to segregate those end-user payments in dedicated trust accounts for the sole benefit of the USF. Finally, we propose to level the playing field between incumbent LECs and competitive LECs by adopting a rule that would prohibit competitive ETCs from recovering USF contribution costs for their Lifeline offerings from Lifeline subscribers. If adopted, this change would affect competitive telecommunications providers that serve Lifeline customers.

78. *Other Reporting Changes.* We propose requiring all telecommunications providers (as well as telecommunications carriers) to register with the Commission, and propose rules requiring registrants that provide telecommunications to others for resale to check the registration status of their customers.²⁴⁶ We also propose that telecommunications providers file electronically their quarterly and annual Telecommunications Reporting Worksheet, with a fee for those that file by paper.²⁴⁷ We believe these rules will provide reporting entities enhanced certainty regarding their contribution obligations.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

79. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁴⁸

²⁴⁵ See *supra* Section V.C.5 (Use of a Hybrid System with a Numbers-Component), paras. 324 – 326.

²⁴⁶ See *supra* Section VI.F (Filer Registration and Deregistration), paras. 381 – 386.

²⁴⁷ See *supra* Section VI.E (Paper-Filing Fees), paras. 376 – 380.

²⁴⁸ 5 U.S.C. § 603(c)(1)–(c)(4).

80. As indicated in the Notice, we seek to reform the contribution system. We believe our proposed rules will provide reporting entities enhanced certainty regarding their contribution obligations, which is especially important for small businesses that may not have the resources of larger business to comply with complex rules.

81. We believe that adopting a simplified and clearly defined apportionment method will provide greater predictability to all telecommunications providers and customers. The Notice seeks comment on a modified version of the two safe harbors available for apportioning revenues from bundled service offerings.²⁴⁹ We believe that providing a bright line rule for providers reduces the administrative burden for small entities.

82. We seek comment on whether we should modify the contribution methodology to assess “value-added” revenues rather than “end user” revenues. Under this approach, each telecommunications provider in a service value chain (including both wholesalers and resellers) would contribute based on the value in the providers adds to the service. We also seek comment on modifying the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into other services that are not telecommunications services. We believe that either of these approaches would simplify the reporting process for all parties, and provide greater certainty. For each approach, we seek comment on ways to streamline the overall reporting requirements for all parties. In addition, these potential rule changes would increase the Commission’s administration and oversight of the contributions system in the wholesaler–reseller context.

83. We believe that our registration and deregistration proposals for all parties required to file the Telecommunications Reporting Worksheet will help ensure that the Commission’s FCC Form 499-A Filer Database is current and complete.²⁵⁰ One of the purposes of registration is that it allows the Commission to better monitor registered providers for compliance with our rules and regulations. In addition, a filer registration requirement provides transparency to the public, making available important information including the relevant regulatory contact information. We recognize that the proposed registration and deregistration process may impose a small one-time burden on parties that were not previously required to register, but we believe the benefit of having a current and complete database may outweigh the burden.

84. We seek comment on modifying the *de minimis* exemption to base the threshold on assessable revenues rather than the amount of contributions. We believe this will simplify the contributions system and reduce the administrative burden for small entities. We also seek comment on whether this proposal might also reduce the reporting obligations and regulatory uncertainty for *de minimis* telecommunications providers that have growing revenues. Specifically, we seek comment on whether to make it optional for a telecommunications provider to file quarterly Telecommunications Reporting Worksheets for a year after which the provider qualifies as *de minimis*.²⁵¹ We believe these changes might simplify the reporting obligations of small entities and reduces their administrative burden.

85. We seek comment on updating the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) and its instructions.²⁵² Specifically, we seek comment on whether we should modify the process by which these forms are revised by soliciting public comment from interested parties prior to adopting revisions to the forms or the instructions. We believe these changes would provide greater clarity to contributors and simplify compliance and the administration of the contributions process.

²⁴⁹ See *supra* para. 67.

²⁵⁰ See *supra* para. 71 and 78.

²⁵¹ See *supra* para. 73.

²⁵² See *supra* Section VI.A (Updating the Telecommunications Reporting Worksheet), paras. 344 – 349.

86. We note that in past contribution reform proceedings some parties have proposed alternative contribution methodologies based on numbers, connections, or a combination of numbers and connections. To the extent that parties believe that alternative systems would better promote our goals for contribution reform, we seek comment on the benefits of such systems relative to our proposed improved revenues system and ask for specific proposals on how such systems could be implemented.²⁵³

87. The Notice seeks comment from all interested parties. The Commission is aware that some of the proposals or approaches under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals or approaches outlined in the Notice. We invite comment on how these proposals or approaches might be made less burdensome for small entities but still in keeping with our goals for contribution reform. We also invite commenters to discuss the benefits of such changes on small entities and to weigh these benefits against the burdens for telecommunications providers that might also be small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

88. None.

²⁵³ See *supra* para. 74 – 76.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan For Our Future, GN Docket No. 09-51

Over the past several months, a unanimous Commission has taken on two major reforms of Universal Service programs. Last November, we adopted a once-in-a-generation overhaul of universal service support for rural areas.

Today, nearly 18 million Americans can't get broadband. Our creation of an efficient, accountable Connect America Fund will accelerate wired and wireless broadband buildout to these unserved rural homes, connecting these Americans to the massive benefits of high-speed Internet.

We also modernized the Lifeline program for the 21st century, eliminating waste and misuse of public funds, imposing fiscal discipline and accountability, while enabling Lifeline to continue playing a vital role in ensuring that the neediest among us are connected to our communications networks.

At the same time, we also eliminated duplicative and unnecessary funding, ended arbitrage schemes, closed loopholes, and instituted competitive bidding. These reforms will keep billions of dollars in consumers' pockets in the coming years.

Universal service reform is part of a broader agency effort to modernize outdated programs, eliminating unnecessary rules and improving efficiency and effectiveness.

Today, we take the next step in our universal service overhaul – contribution reform.

For years, there have been bipartisan calls to fix this outdated system. I am pleased that today we are formally seeking solutions that will improve the efficiency, fairness, and sustainability of the system.

In our USF Reform Order creating the Connect America Fund and our Lifeline Reform Order, we took major strides to address the total amount Americans contribute to universal service and how universal service support should be allocated. With today's item, we propose bringing the same smart government and regulatory reform principles to the system for how contributions are assessed and collected.

The contribution system we have in place is still largely the same as the one the FCC adopted 15 years ago. Not surprisingly, the system is showing its age and suffers from a number of problems.

The current contribution system imposes significant compliance costs and creates inconsistencies. Responding to a contribution audit can cost upwards of half a million dollars, and some contributors can find themselves on the hook for tens of millions of dollars in unpaid contributions.

The current system creates market distortions. Outdated rules and loopholes mean that services that compete directly against each other may face different treatment. For example, providers of business communications services that are required to contribute may find themselves bidding against providers of very similar services that are not contributing.

And due to massive changes in the marketplace, the system has recently begun to suffer from declines in the revenue of services required to contribute. The contribution base has declined by roughly 10% since 2008.

Today we propose three goals for contribution reform: efficiency, fairness, and sustainability. And we underscore that any reforms to the contribution system must safeguard core Commission objectives, including the promotion of broadband innovation, investment, and adoption. Reforms must also account for business realities, including reasonable transition periods for any changes.

I look forward to working with my fellow Commissioners and with all stakeholders in pursuit of these goals. This is a hard task, and those seeking reform should be concrete on how to do so.

Finally, I thank the staff for once again taking on the Universal Service issues with thoughtfulness and care.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan For Our Future, GN Docket No. 09-51

For several years, I have maintained that contribution reform was a vital cornerstone to any comprehensive effort to modernize the Universal Service Fund (USF). Ideally, I would have preferred that the Commission have tackled both distribution reform and contribution reform in one comprehensive proceeding as we were poised to do in 2008. But, the Commission has opted to break our effort into pieces instead. Last fall, we modernized the distribution or spending side of the USF high cost program. Furthermore, in January we overhauled the Lifeline/Link-up program. Equally important, however, is the need to fix the contribution methodology, or the “taxing” side of the ledger. In other words, who is going to pay for all of this and how? Today, we start to collect an array of ideas to answer these questions.

To put the importance of contribution reform into perspective, the contribution factor, a type of tax paid by telephone consumers, has risen each year from approximately 5.5 percent in 1998 to almost 18 percent in the first quarter of this year. This trend is unacceptable because it is unsustainable. Furthermore, the cryptic language on consumers’ phone bills, combined with the skyrocketing “tax” rate, has produced a new form of “bill shock.” We must tame this wild automatic tax increase as soon as possible.

I am delighted that we are finally picking up where the Commission left off in 2008. I recognize that implementing reform will not be easy. Precisely because today’s notice asks such a broad range of questions, all stakeholders will have an opportunity to find something controversial and undesirable, in their view. Controversy, however, should not deter us from lowering the tax rate while broadening the base according to the authority granted to us by Congress. The current pool of contributors is shrinking. It must be expanded, but we must do so only within our statutory authority while keeping in mind the international implications of our actions. Accordingly, I hope that all commenting parties will also tell us what they *like* about any of the proposed ideas as well as offer us their new ideas.

In years past, I supported the concept of broadening the assessments pool to include a phone numbers based system. Market conditions have changed since then, so I will pay particular attention to fact-based arguments for and against a phone numbers based contribution methodology.

In sum, I may not agree with the potential outcome that could result from some approaches that are discussed in this further notice, but I am encouraged that we are moving forward and asking a wide variety of questions. The data and opinions we start gathering today will help the Commission and all stakeholders illuminate a path that leads to a decision we should make no later than this fall.

Many thanks to the Chairman for his leadership as well as to the bureau staff for their diligence on this further notice. I look forward to working with my colleagues and all stakeholders to craft a pragmatic and fair solution that will put consumers first.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan For Our Future, GN Docket No. 09-51

One of the most consistent calls I have heard from many is for this Commission to complete its reform of the Universal Service Fund by addressing the contributions side of the equation. I agree. While the FCC has attempted to keep up with technological changes and has added new services to the contributions list, there is more work to be done to ensure that the system is both equitable and predictable. This is especially important because as we all know it is consumers who ultimately pay for the Fund.

I support the objectives we seek comment on today—namely to improve this system’s administrative efficiency, fairness, and sustainability. Whatever path we ultimately take on reforming contributions, it should reflect our goals for the Fund—to promote the availability and adoption of affordable broadband and voice services for all Americans. I want to thank the staff for putting together a thorough Further Notice, the Chairman for his leadership on this matter, and for Commissioner McDowell who has worked diligently to ensure that we take this matter up for Commission action. I look forward to working with all interested parties to complete this proceeding in a timely fashion.