



August 4, 2006

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**Written *Ex Parte* Presentation**

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

**Appropriate Framework for Broadband Access to the Internet over Wireline  
Facilities  
Universal Service Obligations of Broadband Providers  
CC Docket No. 02-33**

Dear Ms. Dortch:

Last month the Commission issued a Report and Order and Notice of Proposed Rulemaking<sup>1</sup> that adopted interim modifications to the existing approach for assessing contributions to the Universal Service Fund (USF). The Contribution Order raised the interim wireless safe harbor and established contribution obligations for interconnected voice over Internet protocol (VoIP) service providers. These revisions were positive and necessary steps — as far as they go — in securing the near-term viability of the USF as well as improving the equity in contribution obligations among providers of competing services.

But more needs to be done in the near term. Specifically, the Independent Telephone and Telecommunications Alliance (ITTA),<sup>2</sup> the Organization for the Promotion and

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<sup>1</sup> *Universal Service Contribution Methodology*, WC Docket No. 06-122, *et. al.*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (rel. June 27, 2006) (Contribution Order).

<sup>2</sup> ITTA was formed in 1994 to serve as a voice for midsize local exchange companies in Washington. ITTA's 10 member companies are cutting edge providers of a broad range of high quality wireline and wireless voice, data, Internet and video telecommunications services to over 13 million customers in 43 states.

Advancement of Small Telecommunications Companies (OPASTCO),<sup>3</sup> and the Western Telecommunications Alliance (WTA)<sup>4</sup> (collectively, the Associations) *urge the FCC to quickly move to require all broadband Internet access providers over all platforms to contribute to the USF.*<sup>5</sup> This should be done prior to the completion of fundamental reform of the USF contribution methodology. Requiring all broadband Internet access providers to contribute is essential to the short-term stability of the USF, ensuring the Fund's long-term sustainability, and establishing competitive neutrality among competing providers of broadband Internet access services.

With regard to the short-term stability of the USF, beginning August 14, 2006, facilities-based wireline broadband Internet access service providers that choose to provide broadband transmission on a non-common carrier basis will no longer be required to contribute to the USF based on the revenues derived from that transmission service.<sup>6</sup> Although it is hoped that resulting reductions in Fund contributions from these carriers will be offset by increased contributions from wireless carriers and interconnected VoIP providers, there is no assurance this will occur.<sup>7</sup> If the additional contributions from wireless and VoIP providers do not offset the loss from wireline broadband providers, then the Commission will need to increase the contribution factor – an unfortunate result. This could easily be avoided if the Commission would expeditiously require all broadband Internet access providers to contribute to the Fund.

It is quite possible that more fundamental reform of the contribution methodology may not be adopted in the near term, as the Commission has acknowledged that “a consensus approach to reform has not developed.”<sup>8</sup> However, the FCC has already sought comment separately on the issue of requiring broadband Internet access providers to contribute to

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<sup>3</sup> OPASTCO is a national trade association representing over 550 small incumbent local exchange carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

<sup>4</sup> WTA is a trade association that was formed by the merger of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents approximately 250 rural telephone companies operating west of the Mississippi River.

<sup>5</sup> In addition, the Commission should issue an Order clarifying that the broadband services for which the Verizon telephone companies were granted forbearance from Title II by operation of law on March 19, 2006 remain subject to universal service contribution obligations at least to the extent that they were prior to forbearance. In an *ex parte* letter dated February 17, 2006 in WC Docket No. 04-440, Verizon specifically stated that it did not seek forbearance of federal universal service obligations for the services at issue in its petition. Furthermore, if the Commission decides to grant the similar petitions for regulatory relief filed by AT&T, Qwest, and BellSouth in WC Docket No. 06-125, and Embarq in WC Docket No. 06-147, it should explicitly state that these carriers' broadband services also remain subject to universal service contributions.

<sup>6</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *et. al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915-14916, ¶113 (2005) (Wireline Broadband Order). *See also*, Contribution Order, fn. 206.

<sup>7</sup> Commissioner Copps and Commissioner Adelstein, in their separate statements to the Contribution Order, express concern over the lack of certainty as to whether the new contributions from interconnected VoIP providers and wireless carriers will offset the funds lost by wireline broadband's non-participation.

<sup>8</sup> Contribution Order, ¶21.

the USF in CC Docket No. 02-33<sup>9</sup>, making it entirely appropriate to adopt such a requirement in advance of additional reforms. In fact, requiring all broadband Internet access providers to contribute now will be useful in the development of a long-term contribution methodology, as the Commission will need to take these providers into account when developing a methodology that is workable and equitable for all contributors.

From the perspective of the long-term sustainability of the USF, as the marketplace continues to evolve toward services that rely on broadband platforms, the shift away from “traditional” telecommunications services will drain the contribution base, threatening its viability. It must be remembered that without the broadband-capable networks of high-cost carriers serving rural areas, many rural consumers would not even have access to VoIP and other IP-enabled services. By extending universal service assessments to all broadband Internet access providers, it would help to ensure that consumers in rural and high-cost areas continue to have affordable access to advanced services that are comparable to those offered in urban areas.<sup>10</sup>

Moreover, the Commission’s most recent data on broadband subscribership demonstrates that high-speed connections continue to grow by leaps and bounds. Specifically, for all of 2005, high-speed lines grew from 37.9 million to 50.2 million lines, an increase of 33 percent (or 12.3 million lines).<sup>11</sup> Requiring this fast-growing segment of the industry to contribute to the Fund will significantly lower the contribution assessment that every contributing service provider must pass along to their customers, and this amount should continue to decline as long as broadband subscribership continues to grow at a rapid pace. This would be particularly beneficial to low-income and fixed-income consumers that purchase a limited number of communications services.

In addition, ILECs that operate under rate-of-return regulation were not given the option of providing broadband transmission on a regulated non-common carrier basis in the Wireline Broadband Order.<sup>12</sup> This will very shortly create a significant competitive inequity for those small and mid-size rate-of-return carriers facing direct competition from neighboring large price cap ILECs that offer similar broadband transmission services on a private carriage basis. Furthermore, rate-of-return carriers will continue to face a contribution disparity with cable modem providers and providers utilizing other transmission platforms that may offer competing service in their territories. Small and mid-size rural carriers already face significant challenges in making a rational business case for providing advanced services, particularly when they are competing against much larger carriers with vastly greater resources. The Commission should not compound these challenges by forcing only rate-of-return carriers – but no other broadband providers – to either absorb their universal service contribution costs or pass them onto

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<sup>9</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *et. al.*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3048-3056, ¶¶65-83 (2002) (Wireline Broadband NPRM).

<sup>10</sup> 47 U.S.C. §254(b)(2), (3).

<sup>11</sup> *High-Speed Services for Internet Access: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 1 (July 26, 2006).

<sup>12</sup> Wireline Broadband Order, 20 FCC Rcd 14927, ¶138.

their customers. Instead, the Commission should adhere to its own universal service principle of competitive neutrality<sup>13</sup> and require that all broadband Internet access providers over all platforms contribute equitably to universal service.<sup>14</sup>

There is no doubt that the Commission has the legal authority to assess broadband Internet access providers, regardless of their legal classification and regardless of whether or not they are facilities-based. Section 254(d) of the 1996 Act permits the FCC to require any provider of interstate telecommunications to contribute to the USF “if the public interest so requires.” In its 1998 Report to Congress, the FCC recognized that “facilities-based ISPs that provide no stand alone telecommunications services could be required to contribute to universal service under its permissive authority”<sup>15</sup> because the ISP is “...engag[ing] in data transport over those facilities in order to provide an information service.”<sup>16</sup> Furthermore, in the Contribution Order, the Commission determined that it has the permissive authority to require contributions from both facilities-based and non-facilities based interconnected VoIP providers, given the fact that interconnected VoIP providers are “‘providing’ telecommunications regardless of whether they own or operate their own transmission facilities or they obtain transmission from third parties.”<sup>17</sup> Clearly, these same legal justifications apply equally to all providers of broadband Internet access services.

Finally, it should be noted that the Missoula Plan for Intercarrier Compensation Reform includes a statement on reform of the USF contribution methodology<sup>18</sup> that is consistent with a contribution requirement for all broadband Internet access providers. Among other things, the statement says that the base for universal service must be broadened; that it is impossible to sustain a robust USF based on contributions from only a narrow class of carriers and services; and that only a broad-based contribution methodology can achieve the Act’s express command that universal service support be equitable and nondiscriminatory, and shared by all similarly situated providers. More specifically, the Missoula Plan statement says that there should be a uniform contribution rule for all providers of facilities-based, broadband information services, regardless of the specific technology they use. The Missoula Plan has the support of companies that represent a broad cross-section of the telecommunications industry.

There is compelling evidence that the public interest indeed requires the Commission to quickly act to require all broadband Internet access providers over all platforms to contribute to the USF. The Associations are supportive of the Commission’s recent Contribution Order that increased the wireless safe harbor and extended contribution

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<sup>13</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶47(1997).

<sup>14</sup> This is also consistent with Chairman Martin’s desire to “...end[] the regulatory inequities that currently exist between cable and telephone companies in their provision of broadband Internet services.” Wireline Broadband Order, Statement of Chairman Kevin J. Martin, 20 FCC Rcd 14975.

<sup>15</sup> Wireline Broadband NPRM, 17 FCC Rcd 3052, ¶74.

<sup>16</sup> *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11534, ¶69 (1998).

<sup>17</sup> Contribution Order, ¶41.

<sup>18</sup> Missoula Plan, CC Docket No. 01-92, Appendix B, pp. 88-89 (filed July 24, 2006).

obligations to interconnected VoIP providers. Having accomplished this much, the Commission must not relax its efforts towards implementation of reforms to the USF contribution methodology that assure sustainability and competitive equity for the long term.

Sincerely,

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