June 14, 2006

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Federal-State Joint Board on Universal Service, CC Docket No. 96- 45; IP-Enabled Services, WC Docket No. 04-36

Dear Ms. Dortch:

The Voice on the Net (VON) Coalition hereby responds to Verizon's May 23, 2006 *ex parte*, filed in the above-referenced proceedings, addressing the appropriate Universal Service contribution mechanism for Interconnected VoIP services and related items being reported in the press regarding interim Universal Service reform.

The VON Coalition supports the important public policy goal of ensuring the long-term sustainability of the Universal Service Fund. Specifically, we support Chairman Martin's proposal to move away from yesterday's revenue-based contribution system, to a broader connections or working telephone number based mechanism that is competitively and technologically neutral.[1] The VON Coalition is concerned, however, that an interim "solution" that would require Interconnected VoIP service providers to pay into the Universal Service Fund (USF) based on revenues could delay needed reform, would not resolve the funding gap, and would fail to solve the fundamental challenges necessitating comprehensive reform. Specifically, the "interim" proposal:

- does not solve the immediate and significant funding gap posed by the anticipated loss of USF revenues from DSL services
- delays comprehensive reform and the steps necessary to ensure the long-term sustainability of the fund
- violates the mandates of section 254 of the Act
- disproportionately impacts small businesses, those less affluent, minorities, and rural customers
- could harm the very consumers that the Commission seeks to assist through the Universal Service programs; and
- jeopardizes the fund because the legal rationale is flawed and will not withstand judicial scrutiny.

The VON Coalition agrees that applying USF contributions to Interconnected VoIP services is primarily a question of "how" as opposed to "if" or "when." While broadening the USF support base is an important policy goal that, if based on a numbers or connections based methodology,

[1] *See* VON Coalition, Reply Comments, CC Docket No. 96-45 et al (filed Apr. 18, 2003); VON Coalition, Reply Comments, CC Docket No. 96-45 et al (filed May 13, 2002).

will ensure that Interconnected VoIP providers contribute on a technologically neutral, equitable, and non-discriminatory basis consistent with section 254, Verizon's proposal to apply an interim revenue-based contribution mechanism as the Commission considers comprehensive USF reform could stifle innovation and further delay broadband-enabled benefits from reaching rural Americans. To this end, the VON Coalition recommends that, instead of potentially putting the sustainability of the Universal Service Fund in jeopardy by adopting the proposed interim measures, the Commission should move promptly to adopt comprehensive reform measures that ensure the sustainability of the fund, meet the other statutory requirements of section 254, and at the same time, take steps to allow VoIP to dramatically improve broadband adoption rates and rural communications, including making calling more affordable, rural jobs more plentiful, and rural phone competition more robust.

I. Advancing a Sustainable Universal Service Mechanism.

America's Universal Service system has been a cornerstone of our telecommunications policy for over 70 years – enhancing the value of the network and increasing our quality of life in immeasurable ways. Yet for all its past success, Universal Service support today is at a crossroads. The VON Coalition shares the concerns of the Commission, industry stakeholders, and rural consumers that the current funding mechanism is inadequate and does not ensure a sustainable USF. Unfortunately, the reported interim measure to assess Interconnected VoIP provider revenues does very little to correct the real problems with the current contribution methodology. In fact, the Commission's record on USF contribution reform reflects a growing consensus that a revenue-based contribution methodology will not be sufficiently durable to withstand the rapid consumer adoption of wireless services and other advanced technologies.

Indeed, it appears that the most dramatic impact to the USF fund will be the potential loss of $350 million annually when/if the Commission's interim requirement for ILEC DSL contributions expires in July of this year. It is for these reasons that the Commission is faced with the necessary task of engaging in wide-ranging reform to ensure the long-term sustainability of the fund. An attempt to prop up the fund temporarily on the backs of VoIP consumers is fraught with legal and operational difficulties and will not meet the mandates of section 254.

Contributions from Interconnected VoIP providers will not suffice as a replacement for lost DSL contributions. Verizon's May 23, 2006 *ex parte* and the reported interim proposal begs the question whether USF contributions based on Interconnected VoIP revenues are intended to cover previous ILEC DSL contributions, currently scheduled to expire in July. There are several reasons why VoIP revenue-based contributions would do little to offset DSL contributions.

<u>First</u>, the interim proposal creates an immediate and significant Universal Service funding gap. USF assessments on DSL services currently total approximately $350 million per year.[2] There is an enormous difference in the number of subscribers of DSL and VoIP. USF contributions from the 3% (approximately 4.2 million) of all adult Internet users who say they have some sort of VoIP service could not come close to replacing contributions from the 50% (approximately 42 million) of all home broadband connections that are served by DSL. Such a tiny group of VoIP consumers cannot replace the revenues generated by the millions of DSL consumers. The disparity is even greater when subtracting the approximately 2.5 million cable-based VoIP subscribers that already voluntarily pay into the fund at the wireless safe harbor rate: leaving only 1.7 million VoIP subscribers, who currently contribute as end-users of telecommunication

[2] An August 5, 2005 report from Medley Global Advisors estimates that $350 million in payments to the USF from DSL providers would be waived by the Commission's *Wireline Broadband Order*.

services, to make a dent in the shortfall. Even applying the current wireless safe harbor revenue-based contribution methodology would likely raise *less than one twentieth* of what the Commission would lose by letting DSL USF contributions expire.[3] Thus, relying on VoIP to cover the funding gap will only further exacerbate and compound USF funding shortfalls. In addition, new collections from interconnected VoIP consumers would necessarily be delayed by the time needed for VoIP providers to create from scratch new back office and billing systems necessary to make the requisite filings, track and disaggregate traffic, as well as passing through USF contributions to end users.[4]

Second, although the sustainability of the Universal Service Fund is at a crossroads, VoIP adoption is just one small aspect of the real challenges putting pressure on the USF. The current contribution base of interstate, end-user, telecommunications revenues is shrinking due to shifts in consumer use of long-distance communications services, while obligations from the high-cost fund are increasing. LECs continue to see losses in access lines and related revenue due primarily to mobile phone substitution (approximately 18 million consumers have substituted wireless for wireline),[5] and broadband adoption (*e.g.,* dropping millions of second phone lines once used for dial-up Internet access). These reductions in lines have cost the USF billions of dollars. VoIP is but one small challenge to the fund, but the VoIP industry is being asked to bear the burden of these changing market dynamics by paying the highest USF contribution rate.

Third, requiring direct assessment of Interconnected VoIP service providers would result in "double-counting" of revenues that must be rectified. Interconnected VoIP providers currently access the PSTN through the purchase of telecommunications services as end-users from LECs and are charged a pass-through of the USF contribution currently directly assessed on their underlying telecommunications carriers. In order to avoid double contributions for the same service, revenues derived from the provision of service for resale (commonly referred to as carrier's carrier revenues or wholesale revenues) are not subject to USF contributions where the retail provider contributes.[6] Thus, the contributions assessed on interconnected VoIP providers would necessarily be offset by eliminating the contribution that the underlying telecommunications provider currently pays on the same revenues, further exacerbating the funding shortfall.

---

[3] Assuming a 10.9% contribution factor (2Q2006) on 28.5% of retail revenues as proposed in Verizon's ex parte, applied to an estimated 4.2 million interconnected VoIP subscribers (excludes non-interconnected VoIP services like peer-to-peer services). The 4.2 million figure was gathered from the TIA's *2006 Telecommunications Market Review and Forecast* (Telephia, however, indicates a lower number of 3.9 million households as of January 2006), subtracting the estimated 2.5 million cable VoIP subscribers that already contribute to the Universal Service Fund. Contributions would equal about 75 cents per month per subscriber for a $25/month VoIP service. Applied to the estimated 1.7 million non-cable VoIP subscribers who pay indirectly, rather than directly, and the revenue model would raise an estimated $15.4 million/year – or less than one twentieth of the estimated $350 million a year lost from DSL contributions.

[4] As argued by Verizon several years ago when AT&T proposed to change the contribution methodology while the Commission was considering broader reform of the USF contribution mechanism; "the present Universal Service assessment and collection system is already burdensome for carriers. Carriers must provide quarterly reports to the USAC, along with a fifth, annual report." Verizon Comments filed April 12, 2002, CC Docket 96-45. Verizon has also argued that a USF contribution change would take 12 months to implement, while Qwest has suggested 18 months.

[5] In-Stat reports that about 9.4% of U.S. wireless subscribers (18.8 million) already use a wireless phone as their primary phone. By 2009, between 23% and 37% (as many as 74 million) U.S. wireless subscribers are expected to use a wireless phone as their primary phone.

[6] The Commission recognized the "double counting" problem when it declined to count wholesale revenues in the contribution base, reasoning that counting such revenues would competitively disadvantage resellers. *See Federal State Joint Board on Universal Service,* Report and Order, 12 FCC Rcd 8776, 9206-07 ¶¶ 843-47 (1997).

The only way to address the magnitude of the funding shortfall is through immediate and comprehensive Universal Service contribution reform. The interim proposal would create a new funding gap and necessarily delay comprehensive Universal Service reform.

Adoption of the proposed "interim fix" could delay much needed comprehensive Universal Service reform.

Under the interim proposals being discussed, Interconnected VoIP providers would first be required to develop new technology and systems (*e.g.,* to track and disaggregate traffic, to revise billing statements, etc.) to contribute to the USF based on revenues, and then, a short time later, rip out those systems and install new systems based on a telephone number based contribution mechanism (or whatever other contribution mechanism the Commission or Congress adopts as part of comprehensive Universal Service reform.) A single change in USF contribution mechanism, let alone two changes, requires significant time and adjustments. Furthermore, contributions would be necessarily delayed by the 12 to 18 months that ILECs say any transition in contribution methodology would require.[7] Subjecting Interconnected VoIP services to a double transition could needlessly stifle VoIP and broadband growth and unnecessarily delay the comprehensive USF contribution methodology reform since it would not be logical for a new transition to commence before the first is complete.

Adoption of an interim approach would also run afoul of equity and equality mandates of the Act. A revenue-based system would add new administrative challenges that are unique to VoIP services essentially requiring guesswork as to which aspects of a service that converges CPE, voice, and data are interstate, and which aspects of international traffic are subject to USF. For example, for a converged wireless device that both offers a CMRS voice service for some locations and a wi-fi VoIP service for indoor areas where a CMRS signal may not extend, it would be difficult for the carrier to charge two different Universal Service rates for what may be the same service. These converged services benefit consumers and businesses, but significantly hamper efforts to distinguish appropriate revenues for USF calculations. Also, because an increasing number of consumers are benefiting from voice services offered for a fixed monthly rate that do not differentiate between local or long distance calls, applying the current revenue-based assessment methodology to VoIP would be inherently inefficient because it seeks to recover non-traffic sensitive costs on a usage-sensitive basis.

Assessing interconnected VoIP providers at the reported rate of 64.9% violates the basic requirements of section 254. Whereas a working telephone numbers-based or connections based contribution approach ensures that Universal Service support is specific, predictable, and sufficient as required by section 254, an interim measure requiring interconnected VoIP providers to contribute based on a "safe harbor" that was established without accurate accounting and traffic studies is arbitrary, inaccurate, and unpredictable. [8] The record does not reflect any data to support the 64.9% rate, nor has Verizon explained why its suggested shift in contribution burden would be equitable and non-discriminatory as required by the section 254.

Moreover, although the record does not reflect a variation in calling patterns between VoIP consumers and mobile users, the reported VoIP safe harbor is *more than double* the increased safe harbor for wireless providers reportedly being considered by the Commission. Without

---

[7] Verizon estimates that a change in collection methodology takes a year to implement while Qwest suggests it takes 18 months.

[8] See Verizon Comments filed April 12, 2002, CC Docket 96-45.

adequate data and justification, this large disparity violates the requirement that all providers contribute equitably to Universal Service. Even Verizon presumably recognizes that assessing interconnected VoIP providers at a rate that is different from the wireless safe harbor would not be equitable and nondiscriminatory, as required by section 254. [9]

More importantly, the record is devoid of any data that suggests a 65% safe harbor relates at all to the usage patterns of interconnected VoIP traffic. In fact, the Commission itself has previously ruled that it is unable to tell what portion of VoIP traffic is intrastate or interstate.[10] There is also no reason to believe that Interconnected VoIP consumers utilize their service as a substitute for interstate services more than wireless users – both of which generally offer consumers similar flat-rate pricing models that are not affected by the geographic location of the calling and called parties. Even the "Fair Share Plan" for Universal Service developed by the KeepUSF Fair Coalition, representing rural groups and advocates for the continuation of a revenue based contribution mechanism, has not advocated for a 65% revenue safe harbor for VoIP but has instead suggested a safe harbor cap of 12-15% for Interconnected VoIP.[11]

If, however, the Commission is able to justify this inequitable and discriminatory treatment of Interconnected VoIP providers, the VON Coalition agrees with T-Mobile's June 6, 2006 *ex parte* letter regarding the ability of VoIP providers to utilize reliable traffic studies to measure their actual interstate VoIP revenues without pre-approval of their methodologies. As stated by T-Mobile, "[n]ew rules requiring VoIP providers to use the Commission's safe harbor percentage instead of traffic studies or mandating pre-approval of the methodology used for interstate VoIP traffic studies would be particularly unsound given the absence of any record support for a specific VoIP safe harbor threshold."

Finally, the interim measure imposes inordinate burdens on consumers choosing to utilize VoIP technology rather than the more limited, less robust circuit switched technology, which directly contradicts the section 254 mandate that the Commission ensure that consumers in all regions of the Nation have "access to advanced telecommunications and information services."

Adopting an interim, rather than comprehensive proposal, disproportionately harms small businesses.

Applying an interim revenue-based contribution mechanism to Interconnected VoIP providers disproportionately harms small businesses. One of the distinct advantages of VoIP is that almost anyone with a good idea and an Internet connection can now become their own Internet-based

---

[9] Verizon May 23, 2006 *ex parte*. Although the VON Coalition believes that any proxy without supporting traffic studies violates section 254, it agrees with Verizon that, if the Commission were able to legally justify an interim revenue-based contribution methodology, interconnected VoIP services have "strong parallels" to wireless services in the way that consumers utilize the services.

[10] In the *Vonage Order*, the Commission correctly concluded that VoIP providers have "no means of directly or indirectly identifying the geographic location" of the party using their service via an Internet connection." *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶ 23 (2005). Thus, under the Commission's traditional "end-to-end" analysis – which defines calls as interstate or intrastate based on the location of the two parties to the call -- there is simply no way for the service provider to tell whether a particular call is interstate or intrastate. *Id.* ¶¶ 23-32. Moreover, IP technology allows a single call to be directed simultaneously to multiple devices at multiple geographic endpoints – some of which may be intrastate and some of which may be interstate. The Commission itself acknowledged this aspect of IP technology in the *IP-Enabled Services NPRM*, noting that "[p]ackets routed across a global network with multiple access points defy jurisdictional boundaries." *IP-Enabled Services,* Notice of Proposed Rulemaking, 19 FCC Rcd 4863 ¶ 4 (2004). Although for originating calls the Commission's E911 order requires the provider to have a registered address (which may not match the user's LATA boundary), the other endpoint(s), the path they take, and the location of a call terminating on another VoIP network may not be known , including whether they are within the same LATA boundary.

[11] Keep USFFair *ex parte*, WC Docket No.05-195 et al (Aug. 15, 2005)(In addition to a numbers based assessment, the Commission should: "[e]stablish a contribution factor cap to be applied to the revenue-based approach, e.g., somewhere between 12 and 15 percent of revenues derived from interstate telecommunications (including VoIP)."

voice provider. This low barrier to entry is enabling the kind of voice competition envisioned by the 1996 Telecom Act. As a result, VoIP providers are much more likely to be small businesses serving small businesses – the economy's engine for job creation and economic growth. It is reasonable for the Commission to conclude that the majority of the unaffiliated, unregulated VoIP providers affected by the contemplated obligations are "small businesses."[12] Given the number of small VoIP providers that would be impacted by the USF rules being contemplated, the Commission should engage in the careful analysis required by and ensure compliance with the Regulatory Flexibility Act.

Also, importantly, an unreasonably high USF contribution safe harbor would likely discriminate against and disproportionately harm small businesses. Small businesses are much less likely to have the resources needed to obtain traffic studies to help them move out from under an onerous safe harbor, and thus are much more likely to have to rely on the higher safe harbor. The Commission has long expressed a preference for carriers to contribute to Universal Service based on their actual revenues rather than rely upon a safe harbor. The safe harbor has always been a "fall back," and should not be used here, where the effect could be unduly discriminatory.

An interim revenue-based system could disproportionately hurt some of the very people the Commission is trying to help. Applying an onerous safe harbor contribution factor, higher than other services, to interconnected VoIP would be regressive and disproportionately disadvantage poor and minority users. Transferring payments from DSL to interconnected VoIP would have the effect of transferring the Universal Service burden from more affluent users to lower income and minority users who are early adopters of VoIP. For instance, a new study by the American Consumer Institute shows that compared to other communication services, VoIP users are more likely to be less affluent and minorities. The study, for example found that 22% of less affluent households earning $25,000 or less have made a VoIP call from their home – more than double the usage rate of more affluent households in the $50,000 to $74,000 a year income bracket.[13] Because VoIP services can often cut phone costs by 40% to 60%, they are often of the greatest benefit to those with the least income. Likewise, VoIP users are also much more likely to be Hispanic, Asian, or African American than the users of other communications services.[14]

Moreover, imposition of an interim revenue-based system could also disproportionately increase costs for troops calling home. Everyone from the Department of Defense's central command to the troops on the ground in Iraq, Afghanistan, and elsewhere are enjoying widespread use of VoIP to affordably communicate with families, loves ones, and keep America safe. After using VoIP, one Army General recently observed that efforts to connect troops and families using VoIP represent the single greatest boost in morale for the troops in the past 25 years.[15] However

[12] More than 200 companies meet the definition of an "Interconnected VoIP" provider based on the number of companies that filed reports with the Commission for E911 purposes in WC Docket No. 05-196. Various analyst reports estimate that seven of those companies control more than 94% of the market. The remaining 193 or more companies that serve the remaining 6% of the market are likely to be small businesses or small providers which collectively serve less than 200,000 customers.

[13] The American Consumer Institute, Consumer Pulse Survey (Jan. 2006) shows that the lowest income users were most likely to have made a VoIP call form their home: 22% have made a call from their home for those earning less than $25,000 a year; 5% for $25,000 to $49,000; 10% for $50,000 to $74,000; and 12% for those earning above $75,000 per year.

[14] *Id.* The survey showed that 18% of Hispanics, Asians, and other races where likely to have tried VoIP from home, versus only 10% for Caucasians.

[15] *See* http://www.freedomcalls.org/.

when there are significant efforts to provide free VoIP services to every troop serving in Iraq[16], this interim proposal could undermine those efforts. Because VoIP could see substantial and disproportionate cost increases due to the imposition of a revenues-based USF requirement, our troops could see substantial increases in their costs to call home. The U.S. Senate has been so concerned about not increasing troops' costs of calling home that the Chairman of the Commerce Committee recently included the "Call Home Act" as the very first title in his broad telecommunications reform bill. This provision would require the Commission to take actions to reduce the cost of calling home for Armed Forces personnel and evaluate methods of reducing the rates imposed on such calls, including deployment of new technology such as VoIP.

Finally, the interim proposal would harm rural consumers. The VON Coalition believes we are on the verge of vast new Internet-driven voice communications revolution that promises a new wave of benefits and advancements just over the horizon. Technology has advanced to the point that VoIP can help erase the disadvantages of distance that kept rural areas too often in the backwaters of communications choice and economic growth. This communications revolution, driven by new breakthrough Internet voice technologies, can stimulate a new era of rural economic growth and opportunity. Rural Americans have perhaps the most to gain from VoIP and broadband deployment. However, applying the unsustainable revenue-based Universal Service mechanism to Interconnected VoIP in the interim, prior to comprehensive Universal Service reform, could delay comprehensive reform and delay VoIP driven benefits from reaching rural Americans at the same time.

II. A Decision that Mischaracterizes VoIP Services Will Not Withstand Legal Scrutiny

The VON Coalition takes this opportunity to correct various mischaracterizations Verizon makes about interconnected VoIP services in its efforts to justify an interim USF contribution requirement in the absence of a settled regulatory classification for VoIP. Reliance upon Verizon's legal analysis could further jeopardize the Universal Service Fund because the legal rationale presented in the Verizon *ex parte* is flawed and will not withstand judicial scrutiny.

First, Verizon argues that if interconnected VoIP is an information service, that Title II common carrier telecommunications obligations can nonetheless apply to interconnected VoIP services simply because they use telecommunications. By definition, all "information services" provide service "via telecommunications."[17] However, the Commission has previously concluded that "We find generally, however, that Congress intended to maintain a regime in which information service providers are not subject to regulation as common carriers merely because they provide their services 'via telecommunications.'"[18] In fact, since *Computer II*, the Commission has made clear that offerings by non-facilities-based providers combining communications and computing components should always be deemed information services.[19]

Second, Verizon argues that "when a VoIP customer makes a call to, or receives a call from,

---

[16] Ibid.

[17] The 1996 Telecom Act defined "information service" to mean: "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information ***via telecommunications***, and [such term] includes electronic publishing, but does not include any use of any such capability for the management, control or operation of a telecommunications system or the management of a telecommunications service."

[18] *See Federal-State Joint Board on Universal Service,* Report to Congress, CC Docket No. 96-45, FCC 98-67 at 13, 21, 73, (rel Apr. 10, 1998) ("*Report to Congress*").

[19] *See, e.g., Computer II Phase II Recon. Order*, 3 FCC Rcd at 1153 n. 23; *Decreased Regulation of Certain Basic Telecommunications Services*, 2 FCC Rcd 645, 648, ¶ 21 (1987).

the PSTN, the VoIP provider provides a service that includes "telecommunications." However, the FCC has previously rejected such misguided logic. For instance, the FCC has concluded that ISP services connecting to the PSTN to allow a dial-up user to connect to the Internet are appropriately classed as information, rather than a telecommunications service.[20] In addition, a court has specifically found that interconnected VoIP services are appropriately classified as information services.[21]

Third, interconnected VoIP falls outside of the section 254(d) discretionary authority because, although the software and hardware that an interconnected VoIP service provider sells enables individuals to originate voice communications, all of the actions needed to initiate such communications are performed by the software and hardware, regardless of the underlying transmission facilities, except possibly when it is a part of a converged data service. At no time do the software or hardware devices themselves engage in the "transmission" of information, which is the *sine qua non* of telecommunications. As the Commission has previously found, companies that only provide software and hardware installed at customer premises do not fall within the category of telecommunications because they are not transmission providers. Accordingly, such services cannot fall within section 254(d)'s discretionary authority provision.

Verizon also argues that Interconnected VoIP providers should contribute to the fund under section 254(d) on the grounds of the public interest because they are substitutable services that compete directly against other providers of voice services that contribute to the fund. The Commission has previously found, however, that *"[s]ubstitutability in a particular case, however, is not sufficient under the statute to require Universal Service contributions."*[22] The Commission has specifically recognized that VoIP should not be considered to be a real substitute for wireline service on previous occasions.[23] Further, the VON Coalition has explained in detail above how imposing a revenue based USF contribution requirement on Interconnected VoIP, prior to comprehensive Universal Service reform, would be contrary to the public interest.

The Commission should do all it can to expeditiously adopt comprehensive Universal Service reforms, and avoid adopting inequitable, discriminatory, costly, and potentially arbitrary interim mechanisms as "band-aid" fixes. By embracing the full promise and potential of Internet voice

---

[20] *Report to Congress* at 73. The Commission explained that "Internet access providers do not offer a pure transmission path; they combine computer processing, information provision, and other computer-mediated offerings with data transport" and that "if the user can receive nothing more than pure transmission, the service is a telecommunications service," and "if the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service." *Id.* at 59.

[21] *Vonage Holdings Corp. v. The Minnesota Pub. Util. Comm'n.*, 290 F. Supp. 2d 993, 1002, (D. Minn. 2003). The court found, "Vonage's services are closely tied to the provision of telecommunications services as defined by Congress, the courts, and the FCC, but this Court finds that Vonage uses telecommunications services, rather than provides them."

[22] *Report to Congress* at 99.

[23] *See, e.g., Unbundled Access to Network Elements,* Order on Remand, 20 FCC Rcd 2533, 2556-57, ¶ 39, n.118 (2005)(reviewing lack of ubiquity of broadband Internet services and concluding that "[a]lthough we recognize that limited intermodal competition exists due to VoIP offerings, we do not believe that it makes sense at this time to view VoIP as a substitute for wireline telephony."). The D.C. Circuit's recent decision, in which it discussed hybrid information/telecommunications services for purposes of CALEA, does not impact the separate analysis of the applicability of USF to VoIP services. The D.C. Circuit's decision is based upon the unique definition of telecommunications carrier in CALEA and does not prejudice the separate issue of whether VoIP is an information service under the Communications Act. The court noted that broadband Internet access services were hybrid services falling outside the scope of the Communications Act as an information service. The court noted that the "Telecom Act differs significantly from CALEA. Unlike CALEA, the 1996 Act does not contain an analogue to CALEA's SRP: While an entity is covered by CALEA if it provides transmission, switching, or the functional equivalent thereof, an entity is covered by the Telecom Act only if it provides "transmission." *See American Council on Education v. FCC*, No. 05-1404, (DC Cir. June 9, 2006).

technologies, the Commission can increase rural broadband demand and deployment, accelerate completion of the President's goal of universal broadband, and enhance the lives of Americans by ensuring that residential and business consumers can benefit from the lower prices, new services, and competition that VoIP can deliver.

Sincerely,

The VON Coalition

___/s/ Staci L. Pies____
Staci L. Pies
President