Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

Comments of The VON Coalition

September 8, 2006

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I. Introduction

The VON Coalition submits these reply comments and urges the Commission – consistent with an overwhelming chorus of support in this proceeding – to take prompt action to adopt comprehensive numbers-based universal service reform.[1] In addition, the Commission should issue an order clarifying several key issues arising from its proposed revenue-based contribution methodology for interconnected VoIP, including: (1) the continued vitality of the Commission's federal preemption of state regulation of VoIP services; (2) the elimination of the traffic survey preapproval requirement for interconnected VoIP providers; (3) the reduction of the safe harbor percentage to a level consistent with competitor's bundled local/long distance services provided over other platforms such as wireline or cable; and (4) the exclusion of non-interconnected VoIP services from the USF contribution base, even if such non-interconnected services are bundled with interconnected services.

1 The Commission might also consider adopting a connections-based methodology for high capacity lines, and over the longer-term, moving toward a connections methodology for all lines as services migrate away from the use of traditional telephone numbers.

II. The FCC Must Adopt USF Policies that Promote Economic Growth and Global Competitiveness.

At the dawn of the analog world, this nation made a commitment to universal service based on two fundamental principles: (1) enabling affordable, modern, and robust communications for every American, regardless of location, can empower consumers and bring our country closer together;, and (2) the power and value of a network increases with the number of connections to it. The Universal Service Fund (USF) has helped our nation accomplish these principles and at the time, ensured that America was able to maintain its global competitiveness.

At the dawn of the digital age, we need a similarly far-sighted vision that can help us become a digital nation, improve America's global competitiveness, make communications more affordable, bring us closer together, and empower users in new ways. It means pursuing these same two foundational pillars: (1) empowering consumers by ensuring that Americans, regardless of location, have access to the most affordable, efficient, and effective communications tools; and (2) geometrically increasing the power and value of both the public switched network (PSTN) and broadband networks by increasing the connections between the PSTN and broadband. To help accelerate the transition to a nationwide broadband network, policymakers should adopt policies that create incentives, rather than disincentives, for bridging these analog and the digital networks and thus increase the value of both networks. This means adopting policies that embrace Internet protocol (IP) as a transformative technology and working to dramatically speed the

uptake of services such as VoIP nationwide, rather than placing burdens on technology that could delay the critical benefits needed to move this country in a digital direction.

III. The Universal Service Fund Cannot Sustain A Delay in Comprehensive Contribution Reform

Over the past five years,[2] the Commission has been compiling a record to support comprehensive universal service reform. The impetus for this rulemaking was and continues to be the dramatic changes in the communications marketplace and the resulting precarious nature of the contribution methodology and thus, the federal universal service fund. Despite the compilation of a compelling record supporting a move towards a numbers-based contribution system, rather than adopt broad based reform, the Commission continues to make small, incremental changes around the edges – but not move towards a comprehensive system that meets the mandates of Section 254.[3] Most importantly, these piecemeal changes do not reflect the rapid transformation of the communications industry towards a

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[2] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (*2001 Notice*).

[3] 47 U.S.C. §254.

converged world based on IP services and facilities.[4] No longer are we living in a world where rural and low-income consumers have no choice other than to conduct their voice conversations strictly through the local wireline incumbent. Instead, the very consumers whom the universal service system is designed to support and protect could choose to utilize low cost, robust VoIP services over any available broadband connection, whether in their home, workplace, or community center. However, rather than adopt a universal service regime that recognizes the value of the content, applications, and services that ride over the broadband networks and the important role broadband enabled voice communications can and should play in connecting these constituents, the Commission has adopted an haphazard revenue-based regime that instead makes broadband-based voice communications less affordable thereby reducing the value proposition for consumers. Continuing this illogical and discriminatory regime any longer than absolutely necessary is does a disservice to the American public and continues to damage the long term sustainability of the Federal universal service fund.

Although the Commission asked various questions regarding "necessary" tweaks to refine the revenue-based methodology, including the recently adopted VoIP and wireless safe harbors, the majority of commenters overwhelmingly supported the need for immediate adoption of a comprehensive numbers-based

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[4] *See 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) (*VoIP Contribution Order*).

reform scheme.[5] Rather than spending precious time modifying the revenue-based methodology, the VON Coalition agrees with the majority commenters that "the Commission cannot allow this proceeding to divert it from the task of fundamental reform."[6] Most commenters agree that the Commission should move swiftly to adopt a long-term, sufficient, predictable and non-discriminatory contribution methodology based on working telephone numbers.[7] As stated by BellSouth, "by completely reforming the method for assessing universal service contributions on all providers at the same time, the Commission would eliminate the need to revisit the interim solutions on a piecemeal basis."[8]

In addition, while the VON Coalition agrees with the premise of NTCA's comments that in order to ensure the sustainability of the fund, the Commission must keep pace with how the communications market is changing, we caution the Commission to carefully assess whether a given contribution methodology taxes consumers multiple times. For instance, under NTCA's proposal to continue assessing interconnected VoIP services pursuant to the interim safe harbor of 64.9

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5 AT&T, Inc. Comments at 3-5; BellSouth Corp. Comments at 3-5; IDT Telecom, Inc. Comments at 13-20; Verizon Comments at 4-5; NCTA Comments at 5-6; Time Warner, Inc. Comments at 3-6; Cincinnati Bell Wireless LLC Comments at 7-8; Cingular Wireless LLC Comments at -2-3; CTIA–The Wireless Association® Comments at 2-8; United States Telecom Association Comments at 3-4; Iowa Utilities Board Comments at 2-4; Office of Advocacy, U.S. Small Business Administration, on the Notice Proposed Rulemaking and Initial Regulatory Flexibility Analysis Comments at 9-10; The VON Coalition Comments at 5-7; Vonage America, Inc. Comments at 6-8.

6 *Id.*

7 *Id.*

8 Bell South Comments at 2.

percent as well as adding an assessment on the underlying broadband transmission facilities, a consumer would have to pay a universal service fee not only for the connection, but for the voice application that he or she utilizes over that connection as well. Such a double assessment would not only cause additional harm to broadband adoption rates, but would create incentives for consumers to move off the PSTN entirely, further driving contributions away from the fund.

Finally, as the VON Coalition and the U.S. Small Business Administration (SBA) stated, any delay in the implementation deadline for a reformed contributions system inordinately harms small business providers and small business consumers. If the Commission were to immediately adopt a numbers-based methodology, but take a full year for implementation (as argued by BellSouth and others as being necessary to change out back office and billing systems), VoIP providers would continue to suffer competitive harm under the interim methodology and broadband voice consumers continue to be hit the hardest. Thus, the Commission should move quickly to implement comprehensive reform, and minimize the impact of change on all contributors as well as the consumers that ultimately pay. To minimize the impact on both small and large businesses, the Commission could phase in the deadline for compliance with comprehensive contribution reform. Under such a phased in approach, an entity filing for the first time on or after the August 1, 2006 filing deadline would be permitted to begin filing and contributing on the basis of a working telephone number scheme immediately. Entities that have been filing and contributing prior to the August 1,

2006 deadline could be permitted up to a year to make administrative changes necessary to comply with the new regime. As articulated by the SBA, interconnected VoIP providers have not objected to contributing to the universal service fund. Instead, the most significant concern is the economic impact of implementing this revenue based-methodology.[9] The multitude of small businesses that make up the pool of Interconnected VoIP providers and their customers could benefit from a phased in approach to reform. A working telephone numbers based system would ease administrative costs and create a predictable factor that all business could plan for.[10] As recommended by Bell South, other types of providers could have the option of taking up to a year to make the transition.

IV. Prior to Comprehensive Reform, The Commission Must Make Critical Changes to The Interim Funding Scheme to Ensure That It Comports With Section 254(d).

A. The Commission Must Maintain the Safe Harbor As an Administrative Convenience But Reduce It To An Accurate and Non-Discriminatory Level.

As detailed in the VON Coalition's comments, the rules applying USF to interconnected VoIP providers -- including the abbreviated implementation period, the discriminatory pre-approval process for VoIP traffic studies, the difficulties in identifying accurately endpoints of nomadic VoIP traffic, and the threat of losing the interstate jurisdictional ruling -- all underscore the necessity of maintaining an accurate and non-discriminatory safe-harbor during the interim period prior to the

9 SBA Comments at 8.

10 *Id.*

adoption of comprehensive reform. The record in this proceeding is clear: the Commission should promptly eliminate the outdated revenue-based contribution methodology and quickly adopt a contribution requirement based upon working telephone numbers. However, despite the un-refuted need for reform, the Commission's adoption of interim fixes does not obviate the requirement that it adhere to the principles of Section 254(d).[11]

Given the delay in moving towards a rational, comprehensive contribution methodology caused by adoption of this interim regime, the VON Coalition recognizes that for administrative efficiency purposes, a safe harbor is necessary for a short, interim period.[12] Nebraska Rural Independent Companies argue that the Commission should eventually eliminate the safe harbor for VoIP.[13] There is nothing in the record to support such a proposal, and the safe harbor should only be eliminated after the Commission has adopted and implemented broader contribution reform such as the adoption of a telephone numbers contribution mechanism.

However, maintaining the interim rate requiring interconnected VoIP providers to contribute based on a 64.9 percent "safe harbor" that was established without accurate record evidence or reliable traffic studies is arbitrary, inaccurate,

11 47 U.S.C.§254(d).

12 *See* IDT Comments at 11; see generally Cincinnati Bell Wireless Comments at 3-5 (arguing that small wireless carriers need to rely on a safe harbor for administrative efficiency).

13 Nebraska Rural Independent Companies Comments at 8.

and discriminatory. The record does not reflect any data to support the high 64.9% rate, nor did the Commission's order provide any public interest basis for shifting the contribution burden from broadband transmission services (which in the context of the *Wireline Broadband Order* the Commission found to be providing telecommunications) to the significantly smaller and less robust voice application and services market (based on a vague and abstruse analysis of the definition of "telecommunications").[14] The record does not reflect any evidence supporting a safe harbor for a VoIP that is *more than double* the increased safe harbor for wireless providers; this is discriminatory and not consistent with Section 254(d).[15] Without adequate data and justification, this large disparity violates the requirement that all providers contribute equitably to Universal Service and punishes consumers of Interconnected VoIP services by imposing a significantly higher contribution requirement than on any other technology.

More importantly, the record is devoid of any data that suggests a 64.9 percent safe harbor relates at all to the usage patterns of interconnected VoIP traffic. In fact, the Commission itself has previously held that it is unable to tell what portion of VoIP traffic is intrastate or interstate.[16] There is also no reason to

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[14] *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, VoIP Contribution Order*, fn. 206.

[15] 47 U.S.C. §254(d).

[16] *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶ 2 (2004) (*Vonage Order*).

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.

The VON Coalition reiterates that the record overwhelming supports a flexible, working telephone number contribution methodology as meeting the mandates of Section 254. However, prior to completion of such reform, it is critical that the Commission reduce the excessive the safe harbor so that it does not impose competitive disadvantages on interconnected VoIP providers and discriminatory costs on VoIP consumers. There is no evidence on the record supporting the Commission's assumption that interconnected VoIP traffic is predominantly long distance or international. In fact, as pointed out by Time Warner Inc., such a finding is in direct conflict with the Commission findings that interconnected VoIP service increasingly is being utilized by consumers as a replacement for traditional landline phone service.[17]

Finally, commenters such as Alexia Consulting and Embarq, who argue that one way to keep the fund stable is to subject interconnected VoIP providers to a contribution rate that is arbitrarily and discriminatorily high simply fail to understand the rapidly changing communications market, as well as consumer behavior. VoIP consumers should not be unfairly punished for their choice of

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17 Time Warner Inc. Comments at 14.

technology simply because they have already made the switch to the future. A safe harbor set at 64.9 percent or up to 100 percent as suggested by Alexia fails to accurately reflect the interstate percentage of interconnected VoIP traffic. Instead, any safe harbor that does not treat interconnected VoIP similar to wireline or wireless bundled local/long distance calling plans might violate the non-discriminatory provisions of Section 254. Should the Commission find some compelling reason to maintain the revenue based system for any length of time, the 12.8 percent[18] or 37[19] percent safe harbors as cited by the American Cable Association,[20] or the 22.6[21] percent safe harbor cited by the National Cable and Telecommunications Association are more accurate and meet the goals of equity, non-discrimination, and predictability, while at the same time facilitating the availability of advanced communications capabilities nationwide.

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18 ACA Comments at 5. 12.8% is the most recent reported percentage of wireline interstate and international minutes. *See* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (August 2003) ("*Trends in Telephone Report*") at Table 10.1 (most recent reported percentage of interstate Dial Equipment Minutes ("DEM") is 12.8% in 2001). *See also In the Matter of Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* 13 FCC Rcd. 21,252 (1998) at ¶ 13 (setting the wireless safe harbor at 15% based on 1995 DEM).

19 Reflecting the wireless safe harbor.

20 ACA Comments at 5-6.

21 NCTA Comments at 3, n3. As explained by NCTA, in its most recent Universal Service Monitoring Report, the Commission reported that in 2004, roughly 25 percent of revenue was jurisdictionally interstate and international for fixed local service providers. See Universal Service Monitoring Report, CC Docket No. 98-202, Table 1.9 at 1-32 (2005). The figure for different categories of fixed local service providers ranged from 22.6 percent for the Regional Bell Operating Companies up to almost 36 percent for competitive LECs, and a safe harbor in that range would be more accurate than the 64.9 percent safe harbor adopted by the Commission.

B. The Commission Must Eliminate the Pre-Approval Process for VoIP Traffic Studies

The Commission must immediately eliminate the discriminatory aspects of the traffic study process by eliminating case-by-case pre-approval. The interim rules are discriminatory and put interconnected VoIP providers at a significant competitive disadvantage because of the arbitrarily high safe harbor as well as the pre-approval requirement for traffic studies. Those rules therefore are neither "equitable and nondiscriminatory" nor competitively neutral.[22] To eliminate this competitive disadvantage and end the discriminatory treatment of VoIP providers and VoIP consumers, in addition to lowering the safe harbor to a level that is more reflective of actual traffic patterns, the Commission must eliminate the requirement that VoIP providers seek Commission approval of traffic studies prior to calculating USF contribution requirements. ITI, NCTA, Time Warner, and SBA all agreed with VON that pre-approval is discriminatory and should be eliminated.[23]

Requiring VoIP providers to obtain pre-approval of traffic studies where no other type of provider is required to do the same, unjustly and unreasonably discriminates against VoIP providers and consumers. In addition to the fact that the pre-approval process is discriminatory and unduly burdens VoIP providers and users, the VON Coalition is concerned that interconnected VoIP providers are being inappropriately punished without a record of demonstrated problems. In the *Order,*

22 47 U.S.C. § 254(d); Order at ¶ 5 n.14 (universal service rules should be "competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies").

23 NCTA Comments at 3-5; Time Warner Inc. Comments at 7-11; SBA Comments at 7.

the Commission supported its decision to impose pre-approval requirements on VoIP providers based on allegations that wireless traffic studies may be inaccurate. Oddly, while the *Order* required wireless providers to submit and maintain their traffic studies, the Commission apparently jumped to the conclusion that VoIP providers must be burdened with paying the highest rate in the industry while awaiting Commission approval (and undergoing public scrutiny by competitors) until such approval is received.

The VON Coalition also supports the proposal made by Time Warner, Inc. that should the Commission determine that a pre-approval process is not discriminatory and therefore maintain such a requirement, the Commission should enable interconnected VoIP providers to receive a credit for any over-contributions made while waiting for approval. As described by Time Warner, in such cases, the VoIP provider should be allowed to adjust its future contributions based on any over-payment in previous quarters.[24] This true-up mechanism is essential in this instance to accommodate any delays in approval that may be beyond the control of the VoIP provider.[25]

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24 Time Warner Inc. Comments at 11.

25 The FCC should not permit competitors to use the pre-approval process as a means to delay the use of traffic studies by Interconnected VoIP providers. Moreover, the Commission should be cautious about requiring providers to reveal confidential and proprietary information regarding customer calling patterns. The recent experience of 8x8, Inc. is indicative of the types of roadblocks that parties can erect to increase the costs of Interconnected VoIP providers. Recently, 8x8, Inc. requested expedited approval of its traffic study proposal pursuant to the Commission's rules. *8x8, Inc. Request for Expedited Approval of Traffic Study*, WC Docket No. 06-122 (filed July 18, 2006). The National Telecommunications Cooperative Association ("NTCA") promptly responded with a filing urging the Commission to deny 8x8's request and require it instead to file an unredacted version of its traffic study proposal for public comment.

Pre-approval is especially harmful to the small VoIP providers that are least likely to have the resources to seek and obtain pre-approval of a traffic study. At the very least, VoIP providers should be subject to the same traffic study requirements as any other provider. Even better, the Commission can remedy each of these issues by moving swiftly and expeditiously on broad-based Universal Service contribution reform using a numbers-based approach.

V. The Commission Should Stay the Course and Continue Its Commitment to Exclusive Federal Jurisdiction for VoIP.

The *Vonage Order* is a bedrock jurisdictional precedent that is essential to "increase investment and innovation in [VoIP services] to the benefit of American consumers."[26] Consistent with that Order, the VON Coalition and the many commenters in this proceeding support the Commission's declaration that the nascent VoIP industry should be subject to rules – if at all – at the federal level.[27] The VON Coalition appreciates the Commission's recent representations to the Eight Circuit that nothing in the *VoIP Contribution Order* in this proceeding undermines the holding in the *Vonage Order*.[28] In this context, the Commission should reaffirm its commitment to exclusive federal jurisdiction for VoIP and

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Letter from Daniel Mitchell, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (July 25, 2006).

[26] *Vonage Order* at ¶ 2.

[27] *See e.g.,* ITIC Comments at 7-10; IDT Comments at 6.

[28] Letter from Nandan M. Joshi, Federal Communications Commission counsel, to Michael E. Gans, Clerk, U.S. Court of Appeals for the 8th Cir., *Minnesota Pub. Util. Comm'n et al. v. FCC*, No. 05-1069 et al. at 1 (Jul. 11, 2006).

remove even the possibility that interconnected VoIP services could be subject to 50 or more potentially conflicting jurisdictions. Specifically, the Commission should not allow its safe harbor rules or its *VoIP E911 Order* to surreptitiously undermine its established holding that VoIP services are subject to exclusive federal jurisdiction.

A small minority of commenters supports subjecting Internet communications services to state jurisdiction and multiple layers of regulatory uncertainty.[29] It will not be surprising to the Commission that this "conveniently situational" position is built upon two self-serving goals: (1) ensuring that these carriers continue to receive both federal and state subsidies; and (2) saddling their competitors with regulatory costs and uncertainty. Instead of focusing upon producer welfare programs, the Commission should instead focus upon whether *consumers* are better served by retaining exclusive federal jurisdiction over VoIP and resist calls to use the *VoIP E911 Order* or safe harbor rules to artificially increase the costs of VoIP services.

The Commission should continue to resist calls to use the Commission's *VoIP E911 Order* to establish state jurisdiction over VoIP services. As the Commission correctly explained to the Eighth Circuit,

Nothing in the *VoIP E911 Order* indicates that the "Registered Location" information that Vonage collects to provide 911 service can be readily used to

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[29] *See generally*, NTCA Comments at 9.

determine the geographic end points of non-911 communications. Moreover, the Commission noted in the [*Vonage Order*] that, even if Vonage could ascertain the physical location of its customers, the other end of a DigitalVoice communication would still remain "difficult or impossible to pinpoint."[30] The [Minnesota Public Utilities Commission] does not contest that finding, and the *VoIP E911 Order* does not address that issue.[31]

In addition, even if the E911 registered location information were a reliable indicator of end user locations which it is not - particularly for nomadic, software-defined services - this fact still would not alleviate many of the other jurisdictional concerns raised by the *Vonage Order*. The VON Coalition understands the impulse to adopt simplifying assumptions about the ways in which VoIP services operate,[32] but this does not change the fact that many VoIP services offer a range of different features that are continually updated to respond to the myriad ways in which consumers use VoIP services. Many VoIP services include the ability to receive calls in multiple locations, allow the service to be reconfigured in real time, provide various forwarding options etc. In short, advocates of misreading the *VoIP E911* Order have pointed to nothing that casts doubt on the Commission's

30 See *Vonage Order* at ¶25.

31 FCC MPUC Brief at 54.

32 Embarq Comments at 5-6.

conclusion in the *Vonage Order* that "the geographic location of the end user at any particular time is only one clue to a jurisdictional finding."[33]

The record is clear that the very nature of IP technology counsels against opening the door to state regulation for applications such as VoIP.[34] All parties agree that VoIP technology enables communications between individuals residing in the same state,[35] but this fact is not dispositive when determining the appropriate jurisdiction for VoIP. As the Commission and commenting parties have explained, numerous factors, including routing of packets, mobility of users, concurrent access to applications residing on servers in other jurisdictions, and multi-participant communications involving more than two distinct end points make a requirement that providers determine the appropriate jurisdiction for each communications session unworkable.[36] Future applications employing VoIP will continue this trend, offering additional features and services that will make geographic distinctions even more irrelevant.[37]

Instead, Embarq attempts to shoehorn Internet services into legacy jurisdictional categories through various opaque regulatory standard setting bodies

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33 *Id.*

34 ITIC Comments at 7-10; VON Coalition Comments at 12-15.

35 Indeed, as discussed above, analysis of the Commission's assumptions regarding the percentage use of interconnected VoIP as a replacement for interstate wireline toll service should compel a reduction in the VoIP safe harbor percentage. See Section III.B, infra.

36 *See Vonage Order* at ¶¶ 23, 25; ITIC Comments at 9; VON Coalition Comments at 13-14.

37 ITIC Comments at 9.

and amendments to the Commission's existing safe harbor rules. Embarq avers that an ATIS standard setting group has established that "a JIP should be populated with an NPA-NXX that is assigned in the LERG to the originating switch or MSC."[38] Apart from the fact that a sentence with this many acronyms is one that only a regulated carrier could comply with -- much less understand – it appears to leave many VoIP questions unanswered. Standards such as these fail to recognize that many VoIP sessions do not include any NPA-NXX information or otherwise employ a SS7 network such that a Jurisdictional Information Parameter (JIP) could be inserted in a given session. Instead, those parties are defending a jurisdictional system that is driven by regulatory artifact, instead of a more current recognition of technology and the ways in which consumers use VoIP services.

The Small Business Administration has explained that VoIP providers and are not equipped to distinguish telecommunications revenue from revenue derived from other features provided to customers,[39] let alone distinguish between interstate and intrastate revenue. Because VoIP providers have "no service-driven reason to know users' locations,"[40] imposing these costs purely for regulatory reasons is simply bad policy—even assuming that VoIP providers could comply in the first place. In the context of providers who offer free or very low cost PSTN calling, traffic study requirements that sneak state jurisdiction over Internet

38 Embarq Comments at 8.

39 SBA Comments at 5.

40 *Vonage Order* at ¶ 25.

services into the rules risk creating a situation where the only costs a consumer experiences are fees and costs created by regulation – and not by the underlying cost of the service provided. This is an absurd result and one that is avoided by continuing the FCC's policy of exclusive federal jurisdiction over VoIP services.

The Commission should also recognize that agreeing with parties who endorse state jurisdiction over VoIP will complicate the Commission's efforts to establish a numbers-based contribution methodology. One of the primary benefits of a numbers-based contribution methodology is that it avoids outmoded intrastate/interstate and telecommunications/information service distinctions. Notwithstanding this benefit, these opposing parties blithely assert that all providers face regulatory compliance cost, so the Commission should be unconcerned about saddling Internet providers with additional compliance burdens that are based on a broken revenues-based contribution methodology and intrastate/interstate split.[41] Instead the Commission should recognize that continuing its established policy of exclusive federal jurisdiction minimizes compliance costs, maximizes investment and supports the Commission's laudable drive toward a numbers-based contribution methodology.

Finally, the Commission can rightly place its assertion of exclusive federal jurisdiction over VoIP in a broader context. As more and more services migrate to IP platforms, the appropriate trend is toward unification and simplification of regulatory approaches. This is true of IP-based video services and wireless services

[41] Embarq Comments at 9, n.23.

– and it is equally true of VoIP services that use the open Internet to route and transmit calls. The Commission should resist reversing this trend for VoIP services. The VON Coalition strongly supports the Commission's efforts to update the universal service contribution rules to ones that are more sustainable. Reaffirming the Commission's commitment to exclusive federal jurisdiction supports this goal. Conceding state jurisdiction over VoIP does not.

VI. The Commission Can Help Enable New Consumer Benefits By Bringing Additional Definitional Clarity.

Several parties, including the VON Coalition, Information Technology Industry Council (ITIC), Multi-Link Telecom, and the American Cable Association (ACA), recognized the importance and urged the Commission to clarify critical definitional issues relating to the scope of the USF mandate and interconnected VoIP providers.[42] As an initial matter, many parties -- including USTA, the cable industry (NCTA and ACA), CTIA, the high tech industry (ITIC), educational institutions, the VoIP industry (Vonage and the VON Coalition) and this Commission -- have recognized that the nature of the Internet, and its lack of clear geographic boundaries, counsels against the use of any regulatory methodology that relies upon traditional geographic definitions for assessing Universal Service.[43]

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42 ITIC Comments at 10-12; VON Coalition Comments at 8-11; Multi-Link Telecom Comments at 3-4 (seeking carve-out for one-way VoIP services); ACA Comments at 5 (urging the Commission to distinguish interconnected VoIP from peer-to-peer services).

43 USTA Comments at 2; NCTA Comments at 4; ACA Comments at 2; CTIA Comments at 4; ITIC Comments at 8-9; Vonage Comments at 4; VON Coalition Comments at 6, 12-13; *see Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. at 27952, 24955 (2002).

Thus, the current USF methodology, which relies upon interstate and international telecommunications revenues, is ill-suited for next generation IP-based services which do not follow geographic boundaries.

A key benefit of IP-enabled communications is the decoupling of the communications service from geographic boundaries. As the Commission has recognized, "new networks based on the Internet Protocol are, both technically and administratively, different from the PSTN."[44] These networks "challenge[] the key assumptions on which communications networks, and regulation of those networks, are predicated: Packets routed across a global network with multiple access points defy jurisdictional boundaries."[45] In this technical environment, the question of whether traffic is intra or interstate is generally irrelevant. Therefore, the Commission must move away from antiquated regulatory regimes and must not impose regulations based on artificial geographic boundaries or definitions.

Secondly, multiple parties have urged the Commission to rectify critical ambiguities in the *VoIP USF Order* arising from the scope of the universal service obligation, specifically: (1) that a USF fee should not be assessed on the revenues of non-interconnected VoIP services, when offered with an interconnected VoIP service;[46] and (2) the definition of interconnected VoIP services should not be

44 *IP-Enabled Services NPRM* at ¶ 4.

45 *Id.*

46 ACA also urged the Commission to distinguish between interconnected VoIP services and peer-to-peer services. See ACA Comments at 5.

expanded beyond those voice services that can both place and receive calls from the PSTN.[47] These parties recognize that such non-interconnected VoIP services are, as a fundamental matter, not substitutes for traditional telephone services, and hence, USF obligations should not apply to these services.[48] Otherwise, the Commission runs the risk of imposing unnecessary and burdensome regulations on services that have no connection to or use of the PSTN, hindering innovation, and creating a disincentive for the development of new services that utilize broadband for the purpose of subsidizing the legacy, narrowband network.[49]

The Commission should expressly limit the scope of the current USF contribution mandate for interconnected VoIP services only to voice services marketed as a traditional phone substitute and that offer users the ability to make and receive calls from the PSTN. The interim *USF VoIP Order* could be improved if the Commission acknowledges that, at least in certain instances -- as the Commission previously stated in the pulver.com order -- VoIP service can be an offering just like web surfing which rides on top of a broadband network.[50] In such cases, end users that are "using" telecommunications to facilitate their

47 ITIC Comments at 10-12; VON Coalition Comments at 8-11; ACA Comments at 5-6.

48 ITIC Comments at 10; VON Coalition Comments at 10; ACA Comments at 6 (recognizing that cable-based VoIP and Internet-based VoIP services that do not interconnect to the PSTN are different services and should be treated differently by the Commission).

49 Media Link Telecom Comments at 4-5 (urging the Commission to carve-out from USF providers offering one-way communications such as enhanced communications service and paging service).

50 *In re Petition for Declaratory Ruling That pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3304, ¶¶ 9-13 (2004).

communications; these VoIP companies in no way "provide" interstate telecommunications to those end users, and, thus, are not subject to USF. The Commission hints at this issue in the Order, and should take the next step now to improve its interim Universal Service obligations by further limiting the voice offerings and providers that are subject to the Commission's USF policies.

VII. CONCLUSION

The Commission, the telecommunications industry, and the VoIP industry have – for several years – advocated and supported reform of the contribution methodology for the USF so that a rational, sustainable contribution methodology can replace the existing faltering, revenue-based methodology. The Commission must begin to recognize what many other developed countries have – that although driving deployment of broadband infrastructure is critically important, it is the services and applications that ride over this infrastructure that will drive broadband adoption. If this interim measure is left in place long-term, it could stifle broadband adoption rates and impede the development and delivery of the very applications that are driving demand for broadband.

Respectfully submitted,

THE VON COALITION

/s/

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