

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
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	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the	)	
Americans with Disabilities Act of 1990	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution	)	
Factor and Fund Size	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**REPORT AND ORDER AND NOTICE OF PROPOSED RULEMAKING**

**Adopted: June 21, 2006**

**Released: June 27, 2006**

**Comment Date: 30 days from publication in the Federal Register**

**Reply Comment Date: 60 days from publication in the Federal Register**

By the Commission: Chairman Martin and Commissioner Tate and Commissioner McDowell issuing separate statements; Commissioner Copps and Commissioner Adelstein concurring in part and issuing separate statements.

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## I. INTRODUCTION

1. In this Report and Order (Order) and Notice of Proposed Rulemaking (Notice) we make interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order to provide stability while we continue to examine more fundamental reform. The interim changes we make in this Order are essential for securing the viability of universal service – a fundamental goal of communications policy as expressed in the Communications Act – in the near-term.<sup>1</sup> In 1996, Congress directed the Commission and the states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications services to all Americans in a changing competitive environment.<sup>2</sup> Since then, the Commission has undertaken a number of reforms to

<sup>1</sup> See 47 U.S.C. § 151 (“One of Congress’s primary purposes in establishing the Federal Communications Commission was to “make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide . . . communications service with adequate facilities at reasonable charges.”). The Communications Act of 1934, as amended (Act or Communications Act), is codified at 47 U.S.C. §§ 151, *et seq.*

<sup>2</sup> 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.

fulfill the universal service goals established by Congress, and today we take additional steps to continue to satisfy these goals.<sup>3</sup>

2. In this Order, we take two critical actions to ensure the stability and sufficiency of the Fund.<sup>4</sup> First, we raise the interim wireless safe harbor from its current 28.5 percent level to 37.1 percent. Second, we establish universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service.<sup>5</sup>

3. The interim revisions adopted in this Order respond to changes that have occurred in recent years in the telecommunications market, but retain the essential elements of the current approach to USF contributions.<sup>6</sup> Specifically, while stand-alone interstate long distance revenues have been declining, wireless services and interconnected VoIP services, both of which typically include bundled long distance service, have been growing dramatically. As noted below, from December 2000 to December 2004, the number of wireless subscribers grew from approximately 101 million to approximately 181 million,<sup>7</sup> and wireless providers' revenues grew from approximately \$70 billion to approximately \$122 billion.<sup>8</sup> Similarly, the number of VoIP subscribers has grown from about 150 thousand at the end of 2003 to 4.2 million at the end of 2005.<sup>9</sup> The interim revisions made in this Order respond to these growing pressures on the stability and sustainability of the Fund.<sup>10</sup>

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<sup>3</sup> For example, the Commission has taken steps to remove implicit support from interstate access rates and make that support explicit and portable. See, e.g., *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Sixth Report and Order; *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000), *aff'd in part, rev'd in part, and remanded in part Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

<sup>4</sup> 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) (initiating an examination of the contribution methodology). Section 254 of the 1996 Act requires the Commission, among other things, to ensure that there are specific, predictable, and sufficient support mechanisms to preserve and advance universal service. 47 U.S.C. § 254(b)(5), (d). Today, approximately 93 percent of American households subscribe to telephone service, in part, as a result of the Commission's universal service policies. See Federal Communications Commission, *Telephone Subscribership in the United States*, Table 1 (2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-265356A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-265356A1.pdf).

<sup>5</sup> See 47 C.F.R. § 9.3 (defining interconnected VoIP service).

<sup>6</sup> See 47 U.S.C. § 254(b)(5), (d).

<sup>7</sup> See Federal Communications Commission, *Tenth Annual CMRS Competition Report*, Table 2 (2005), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-05-173A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-173A1.pdf) (2005 CMRS Report).

<sup>8</sup> See Federal Communications Commission, *Telecommunications Industry Revenues*, Table 7 (2002) (2000 Revenues Report); Federal Communications Commission, *Telecommunications Industry Revenues*, Table 7 (2006) (2004 Revenues Report); see also CTIA, *Background on CTIA's Semi-Annual Wireless Industry Survey*, at 4, available at <http://files.ctia.org/pdf/CTIAEndYear2005Survey.pdf> (visited April 10, 2006) (CTIA 2005 Year End Survey).

<sup>9</sup> Telecommunications Industry Association, *TIA's 2006 Telecommunications Market Review and Forecast*, 71 (2006) (TIA 2006 Report).

<sup>10</sup> See 47 U.S.C. § 254(b)(5), (d).

4. Unlike many of the proposals that would move to a non-revenue-based contribution methodology and require significant time to implement, retaining a revenues-based approach on an interim basis enables us to implement the revisions required in this Order (including reporting requirements) for the fourth quarter 2006 universal service contribution requirements, which provides more immediate stability to the Fund. While we retain the revenue-based approach for now, we are committed to examining more fundamental reform in this proceeding. To the extent that further modifications of the existing approach may be necessary before we complete fundamental reform and because the steps we take today are interim measures, we seek comment in the Notice on whether modifications to the interim safe harbors established in the Order may be appropriate.

## II. BACKGROUND

### A. Statutory Provisions

5. The assessment of universal service contributions is governed by the statutory framework established by Congress in the Act.<sup>11</sup> Section 1 of the Act states that the Commission is created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,” and that the agency “shall execute and enforce the provisions of th[e] Act.”<sup>12</sup> Universal service is a key component in communications policy for ensuring that charges are reasonable. Section 254(b) of the 1996 Act instructs the Commission to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans.<sup>13</sup> Section 254(b) also provides that Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient.<sup>14</sup> Section 254(d) of the 1996 Act mandates 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.”<sup>15</sup> Section 254(d) also vests the Commission with the permissive authority to require “[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>16</sup>

### B. The Current Contribution Methodology

6. In 1997, in the *Universal Service First Report and Order*, the Commission determined to assess contributions on end-user telecommunications revenues.<sup>17</sup> The Commission concluded that the

<sup>11</sup> See 47 U.S.C. §§ 151, 201, 202, 254.

<sup>12</sup> 47 U.S.C. § 151.

<sup>13</sup> 47 U.S.C. § 254(b).

<sup>14</sup> 47 U.S.C. § 254(b)(4), (5). The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801-03, paras. 46-51 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

<sup>15</sup> 47 U.S.C. § 254(d).

<sup>16</sup> *Id.*

<sup>17</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9206-07, paras. 843-44; *Federal-State Joint Board on Universal Service, Access Charge Reform*, Sixteenth Order on Reconsideration and Eighth Report and Order in CC Docket No. 96-45 and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1685, para. 15 (1999) (establishing a single contribution for all universal service support mechanisms based on interstate and international revenues).

revenues approach would be: (1) competitively neutral; (2) easy to administer; and (3) explicit.<sup>18</sup> The Commission concluded that a contribution methodology based on end-user telecommunications revenues would be competitively neutral because it would avoid distorting how carriers chose to structure their businesses or the types of services that they provided.<sup>19</sup> The Commission also determined that a revenue-based approach would be easy to administer.<sup>20</sup> Although carriers would need to track their sales to end users, carriers already tracked this information for billing purposes.<sup>21</sup> Moreover, the Commission could use existing revenue data to identify inaccurate end-user-revenue filings.<sup>22</sup> Finally, the Commission found that basing contributions on end-user telecommunications revenues satisfied the statutory requirement that support be explicit because carriers know how much they contribute to the support mechanisms.<sup>23</sup>

7. In the *Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use to compute their USF contributions.<sup>24</sup> The Commission also designated the Universal Service Administrative Company (USAC) as the entity responsible for administering the universal service support mechanisms, including billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.<sup>25</sup> The Commission required contributors to report their end-user telecommunications revenues to USAC on a Telecommunications Reporting Worksheet (Worksheet).<sup>26</sup>

8. The Commission has also implemented various rules and guidelines intended to reduce administrative burdens for certain categories of contributors. For example, the Commission's rules provide that contributors whose annual universal service contribution is expected to be less than \$10,000 are not required to directly contribute to the universal service mechanisms, pursuant to the *de minimis* exemption.<sup>27</sup> The Commission's rules further provide a safe harbor for the reporting of

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<sup>18</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9206, 9211, paras. 843, 854.

<sup>19</sup> *Id.* at 9207, paras. 845-46.

<sup>20</sup> *Id.* at 9208, para. 848.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 9211, para. 854. Carriers calculate their contributions by multiplying their relevant end-user revenues by the universal service contribution factor. *Id.* Therefore, the cost associated with the preservation and advancement of universal service could be identified without ambiguity. *Id.*

<sup>24</sup> *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 (1997) (*Second Order on Reconsideration*).

<sup>25</sup> *Id.* at 18423-24, para. 41; *see also* 47 C.F.R. § 54.701.

<sup>26</sup> *Second Order on Reconsideration*, 12 FCC Rcd at 18475, Appendix B. Contributors are required to file quarterly and annually. 47 C.F.R. § 54.711(a).

<sup>27</sup> *See* 47 C.F.R. § 54.708. Section 254(d) of the 1996 Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms if the "carrier's contribution to the preservation and advancement of universal service would be de minimis." 47 U.S.C. § 254(d). The Commission's rules also provide a limited exception to universal service contribution requirements for entities with interstate end-user telecommunications revenues that constitute less than twelve percent of their combined interstate and international end-user telecommunications revenues. *See* 47 C.F.R. § 54.706(c); *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*

(continued...)

telecommunications revenues when bundling telecommunications services with customer premises equipment or information services.<sup>28</sup>

9. Of particular note, among those requirements minimizing administrative burdens on contributors, the Commission also established an interim safe harbor for mobile wireless telecommunications providers. Wireless telecommunications providers asserted that they could not identify, without substantial difficulty, the amount of their revenues that are interstate as opposed to intrastate.<sup>29</sup> To address this concern, in 1998, the Commission established suggested, or safe harbor, percentages to approximate the percentage of interstate revenue generated by each category of wireless telecommunications provider.<sup>30</sup> The Commission stressed that the safe harbor for each category of carrier was intended as guidance and that a wireless carrier could report a percentage of interstate revenue that was less than the safe harbor, provided it could document the computation method used and retained the supporting information.<sup>31</sup> The Commission initially set the interim safe harbor percentage for cellular, broadband Personal Communications Service (PCS), and digital Specialized Mobile Radio (SMR) providers at 15 percent of total telecommunications revenues, for paging providers at 12 percent of total paging revenues, and analog SMR providers at one percent of total revenues.<sup>32</sup>

10. In 2002, the Commission revisited the interim safe harbor and raised the percentage for cellular, broadband PCS, and digital SMR providers to 28.5 percent.<sup>33</sup> The Commission found that the original interim safe harbor percentage no longer reflected the extent to which mobile wireless consumers used their wireless phones for interstate calls, especially given the increased substitution of wireless for

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*Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3806, para. 125 (2002) (*First Further Notice*).

<sup>28</sup> See *Policy and Rules Concerning Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-54 (2001) (*CPE Bundling Order*).

<sup>29</sup> See *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) (*First Wireless Safe Harbor Order*).

<sup>30</sup> *Id.* at 21257, para. 11.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 21258-60, paras. 13-15. For cellular, broadband PCS, and digital SMR, the 15 percent safe harbor was based on the nationwide average percentage for interstate wireline traffic reported for purposes of dial equipment minutes weighting program; for paging providers, the 12 percent safe harbor, and for analog SMR providers, the one percent safe harbor, was based on reported revenue on the Telecommunications Reporting Worksheet (FCC Form 499-A) for calendar year 1997. *Id.* at 21259-60, paras. 13-15.

<sup>33</sup> *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, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24965, para. 21 (2002) (*Second Wireless Safe Harbor Order*).

traditional wireline service.<sup>34</sup> Because the original safe harbor percentage no longer reflected actual market conditions, the Commission found it necessary to increase the safe harbor to ensure that universal service contributions remained equitable and non-discriminatory, as required by section 254(d) of the 1996 Act.<sup>35</sup> By ensuring that the contribution base more accurately reflected the marketplace, the Commission improved the continued viability of the Fund.<sup>36</sup> Although the Commission retained use of an interim wireless safe harbor, the Commission sought additional comment on the ability of mobile wireless providers to report actual interstate end-user telecommunications revenue and whether the Commission should eliminate the safe harbor.<sup>37</sup>

### C. History of the Current Contribution Methodology Proceeding

11. As part of its efforts to ensure the long-term stability and sufficiency of the universal service support system in an increasingly competitive marketplace, the Commission began a proceeding to revisit the universal service contribution methodology in May 2001.<sup>38</sup> In the *2001 Notice*, the Commission sought comment generally on whether and how to streamline and reform the contribution assessment methodology.<sup>39</sup> Among other things, the Commission sought comment on whether to modify the existing revenue-based methodology, as well as whether to replace that methodology with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge.<sup>40</sup>

12. Seeking to further develop the record regarding various proposals submitted in response to the *2001 Notice*, the Commission released a Further Notice of Proposed Rulemaking and Report and Order in February 2002.<sup>41</sup> Specifically, the Commission sought more focused comment on a proposal to replace the existing revenue-based assessment mechanism with one based on the number or capacity of connections provided to a public network.<sup>42</sup> The *First Further Notice* invited commenters to supplement the record with any new arguments or data on proposals to retain or modify the existing, revenue-based assessment methodology.<sup>43</sup> The Commission also sought additional comment on possible reforms to the

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<sup>34</sup> *Id.* at 24965, para. 21. The Commission based the 28.5 percent safe harbor percentage on traffic studies from CTIA of six wireless carriers. Five unnamed national large wireless carriers reported interstate minutes of use that ranged from 19.6 percent to 28.5 percent. TracFone, a prepaid wireless provider, reported interstate minutes of use of 10 percent. *Id.* at 24967, para. 22.

<sup>35</sup> *Id.* at 24965-66, para. 21; *see* 47 U.S.C. § 254(d).

<sup>36</sup> *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24966, para. 21. The Commission did not find it necessary to adjust the “safe harbor” percentages for paging and analog SMR providers. *Id.* at 24966, para. 23. Wireless carriers may also use the safe harbor percentages to report revenue for purposes of Telecommunications Relay Services, the North American Numbering Plan, and the Local Number Portability programs. *Id.* at 24968, para. 27. The Commission also found it was in the interest of consistency, equity, and fairness to adopt an all-or-nothing rule requiring wireless telecommunications providers who chose to report using the safe harbor do so for all affiliated entities. Under this rule, wireless providers may report revenues at either the legal entity level or on a consolidated basis, but are required to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category. *Id.* at 24967, para. 25.

<sup>37</sup> *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24983-94, para. 68.

<sup>38</sup> *See generally 2001 Notice*, 16 FCC Rcd 9892.

<sup>39</sup> *Id.* at 9894, para. 2.

<sup>40</sup> *Id.*

<sup>41</sup> *See generally First Further Notice*, 17 FCC Rcd 3752.

<sup>42</sup> *Id.* at 3765, para. 31, 3766-89, paras. 34-83.

<sup>43</sup> *Id.* at 3789, para. 84.

manner in which carriers recover contribution costs from their customers.<sup>44</sup> In addition, in the further notice portion of the *Second Wireless Safe Harbor Order*, the Commission sought additional comment on capacity-based proposals that had been developed in the record.<sup>45</sup> The Commission also sought comment on a telephone-number based proposal advanced by AT&T and the Ad Hoc Telecommunications Users Group (Ad Hoc).<sup>46</sup> The Commission subsequently sought comment on a Commission staff study, which estimated potential contribution assessment levels under the then-newly modified revenue-based method and the three connection-based proposals in the further notice portion of the *Second Wireless Safe Harbor Order*.<sup>47</sup>

#### D. Regulation of Interconnected VoIP Services

13. On March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet Protocol (IP)-enabled services – services and applications making use of the IP, including, but not limited to, VoIP services.<sup>48</sup> In the *IP-Enabled Services Notice*, the Commission asked commenters to address, among other things, the universal service contribution obligations of both facilities-based and non-facilities-based providers of IP-enabled services.<sup>49</sup> The Commission sought comment on its authority, including mandatory and permissive authority under section 254(d), to require universal service contributions by IP-enabled service providers.<sup>50</sup> The Commission asked, if certain classes of IP-enabled services are determined to be information services, could or should the Commission require non-facilities-based providers of such services to contribute to universal service pursuant to its permissive authority.<sup>51</sup> Parties were asked to comment on whether non-facilities-based providers “provide” telecommunications.<sup>52</sup> The Commission asked commenters to address how it could exercise its permissive authority over facilities-based and non-facilities-based providers of IP-enabled services in an equitable and nondiscriminatory fashion.<sup>53</sup> The Commission sought comment on how, as a practical

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<sup>44</sup> *Id.* at 3791, para. 89.

<sup>45</sup> *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24983-95, paras. 66-95.

<sup>46</sup> *Id.* at 24995-97, paras. 96-100.

<sup>47</sup> *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Public Notice, 18 FCC Rcd 3006 (2003) (*Staff Study*). Comments and reply comments were filed on March 31 and April 18, 2003, respectively, and were incorporated in the record of *Second Wireless Safe Harbor Order*. *Id.* at 3007.

<sup>48</sup> See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4864, para. 1 n.1 (2004) (*IP-Enabled Services Notice*). Comments were filed by May 28, 2004 and reply comments were filed by July 14, 2004. See *Pleading Cycle Established for Comments in IP-Enabled Services Rulemaking Proceeding*, WC Docket No. 04-36, Public Notice, 19 FCC Rcd 5589 (2004); *Wireline Competition Bureau Extends Reply Comment Deadlines for IP-Enabled Services Rulemaking and SBC’s “IP Platform Services” Forbearance Petition*, WC Docket Nos. 04-29, 04-36, Public Notice, 19 FCC Rcd 10474 (2004); see also Appendix B (List of Commenters).

<sup>49</sup> See *IP-Enabled Services Notice*, 19 FCC Rcd at 4905, para. 63. Given the comprehensive questions the Commission asked in the *IP-Enabled Services Notice*, and the Commission’s well-known use of safe harbors for USF contributions by other types of providers, we reject Vonage’s contention that parties received inadequate notice of the actions we take in this Order. Vonage June 14, 2006 *Ex Parte* Comments at 7.

<sup>50</sup> See *IP-Enabled Services Notice*, 19 FCC Rcd at 4905, para. 63.

<sup>51</sup> *Id.* at 4905, para. 64.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*



matter, providers would identify the portion of their IP-enabled service revenues that constitute assessable telecommunications revenues for universal service purposes.<sup>54</sup>

14. On November 9, 2004, the Commission adopted the *Vonage Order*,<sup>55</sup> in which it preempted an order of the Minnesota Public Utilities Commission (Minnesota Commission) that applied Minnesota's traditional "telephone company" regulations to Vonage's DigitalVoice service<sup>56</sup> – an interconnected VoIP service under the definition subsequently adopted by the Commission.<sup>57</sup> Without classifying Vonage's service as either an "information service" or a "telecommunications service" under the Act, the Commission held that DigitalVoice cannot be separated into interstate and intrastate communications for compliance with Minnesota's requirements without negating valid federal policies and rules.<sup>58</sup> The *Vonage Order* made "clear that this Commission, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having the same capabilities."<sup>59</sup> The Commission further indicated that it intended to "resolve important regulatory matters with respect to IP-enabled services generally, including services such as DigitalVoice, concerning issues such as the Universal Service Fund" in the *IP-Enabled Services* proceeding.<sup>60</sup>

15. Since the *Vonage Order*, the Commission twice has adopted regulations for certain providers of IP-enabled services. On May 19, 2005, the Commission adopted its first Report and Order – the *VoIP 911 Order* – in the *IP-Enabled Services* proceeding.<sup>61</sup> In that order, the Commission defined a particular category of IP-enabled services – "interconnected VoIP services" – as services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN.<sup>62</sup> Declining to determine the statutory classification of interconnected VoIP services at that time, the Commission asserted its ancillary jurisdiction under Title I of the Act to require interconnected VoIP service providers to supply 911 emergency calling capabilities to their customers.<sup>63</sup> On August 5, 2005, the Commission adopted another order in which it determined that providers of interconnected VoIP services, as defined in the *VoIP 911 Order*, are subject to the Communications Assistance for Law Enforcement Act (CALEA).<sup>64</sup> The Commission's decision that CALEA obligations

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<sup>54</sup> *Id.*

<sup>55</sup> See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (*Vonage Order*), petition for review pending, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, No. 05-1122 (8th Cir.).

<sup>56</sup> Vonage's DigitalVoice service assigns its users North American Numbering Plan (NANP) numbers and provides them the ability to place and receive calls to and from the public switched telephone network (PSTN). See *Vonage Order* at 22407-08, paras. 8-9.

<sup>57</sup> See *IP-Enabled Services*, WC Docket No. 04-36; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*) (defining "interconnected VoIP service"), petitions for review pending, *Nuvio Corp. v. FCC*, No. 05-1248 (D.C. Cir.).

<sup>58</sup> See *Vonage Order*, 19 FCC Rcd at 22411-12, para. 14.

<sup>59</sup> *Id.* at 22405, para. 1.

<sup>60</sup> *Vonage Order*, 19 FCC Rcd at 22411, n.46; 22432, para. 44.

<sup>61</sup> See generally *VoIP 911 Order*, 20 FCC Rcd 10245.

<sup>62</sup> *Id.* at 10257-58, para. 24.

<sup>63</sup> *Id.* at 10246, para. 1.

apply to interconnected VoIP services was consistent with the approach taken in the *VoIP 911 Order*, in that the decision rested in part on the fact that interconnected VoIP services allow customers to originate calls to and receive calls from the PSTN.<sup>65</sup>

### III. DISCUSSION

16. In this Order, we adopt interim revisions to the existing approach for assessing contributions for the federal USF that will preserve and advance universal service in the short term, while we continue to explore more fundamental reform. These interim revisions comport with the requirements of section 254, and do so in a manner that responds to recent developments in the communications industry marketplace.<sup>66</sup> First, we raise the interim mobile wireless safe harbor from 28.5 percent to 37.1 percent. Second, we establish universal service contribution obligations for providers of interconnected VoIP service.

#### A. Need for Immediate Interim Measures

17. We conclude that immediate interim measures to revise the existing approach to USF contributions are necessary and in the public interest to preserve and advance universal service.<sup>67</sup> There is widespread agreement that the Fund is currently under significant strain.<sup>68</sup> The size of the Fund has grown significantly, with disbursements rising from approximately \$4.4 billion in 2000 to approximately \$6.5 billion in 2005, and is projected to grow even further in the coming years.<sup>69</sup> Moreover, changing market conditions, including the decline in long distance revenue and the growth of wireless and

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<sup>64</sup> See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd*, *American Council on Education v. FCC*, No. 05-1404 (D.C. Cir. June 9, 2006). Based on the independent language of the CALEA statute, the Commission found in the *CALEA First Report and Order* that providers of these services satisfy CALEA's definition of "telecommunications carrier" because these services replace significant functions of traditional telephone service, including circuit-switched voice service. See *id.* at 15001, 15003-04, 15009-10, paras. 23, 27-31, 42.

<sup>65</sup> *Id.* at 15009-10, para. 42.

<sup>66</sup> See 47 U.S.C. § 254(b), (d).

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., Letter from James S. Blaszak, Counsel for Ad Hoc, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, at 3, filed Mar. 1, 2006 (Ad Hoc Mar. 1, 2006 *Ex Parte* Letter) ("There is a serious, looming USF funding problem."); Letter from Paul Garnett, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 3, filed Jan. 25, 2006 (CTIA Jan. 25, 2006 *Ex Parte* Letter) ("Accelerating consumer demand of IP-enabled, broadband, and other information services" as well as "[i]nformation service provider self-identification" is "plac[ing] the current universal service contribution system at risk – especially going forward."); Letter from Kathleen Grillo, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1, filed Mar. 3, 2006 (Verizon Mar. 3, 2006 *Ex Parte* Letter) ("Declines in long distance revenues, combined with the proliferation of bundled services and IP-based alternatives to traditional long distance, will continue to destabilize the USF funding base."); Letter from Antoinette C. Bush and John M. Beahn, Counsel for Virgin Mobile, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 6, filed Mar. 18, 2005 (Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter) ("The current pool of contributors cannot satisfy the increasing demands placed on the USF.").

<sup>69</sup> See Universal Service Administrative Company, *2000 Annual Report*, at 4, available at <http://www.universalservice.org/about/governance/annual-reports/2000/pg4.asp> (visited April 4, 2006); Federal Communications Commission, *Universal Service Monitoring Report*, at 1-36, Table 1.11 (2005) (*2005 Monitoring Report*); see Universal Service Administrative Company, *2005 Annual Report*, at 47 (2006), available at [http://www.universalservice.org/\\_res/documents/about/pdf/annual-report-2005.pdf](http://www.universalservice.org/_res/documents/about/pdf/annual-report-2005.pdf).

interconnected VoIP services, are eroding the assumptions that form the basis for the current revenue-based system.

18. When the revenue-based system was adopted in 1997, assessable interstate revenues were growing. The total assessable revenue base has recently declined, however, from about \$79.0 billion in 2000 to about \$74.7 billion in 2004,<sup>70</sup> while Fund disbursements grew from approximately \$4.4 billion in 2000 to approximately \$5.7 billion in 2004, and continued to grow to approximately \$6.5 billion in 2005.<sup>71</sup> Declines in the contribution base combined with growth in the size of the Fund increasingly have placed upward pressure on the percentage of assessable revenues that must be contributed to the Fund (the “contribution factor”). The contribution factor grew from 5.9 percent in the first quarter of 2000 to 8.9 percent in the fourth quarter of 2004, and is 10.9 percent for the second quarter of 2006.<sup>72</sup> The pressure caused by a declining revenue base combined with growing disbursement needs jeopardizes the immediate sufficiency and stability of the support mechanisms, demonstrating the need for immediate, interim USF improvements, while we continue to pursue long-term fundamental reform of the contribution methodology.<sup>73</sup>

19. At the same time as the Fund has grown and its contribution base has declined, wireless and interconnected VoIP services have experienced dramatic growth. From 2000 to 2004, annual revenues of wireless service providers grew from approximately \$70 billion to \$122 billion.<sup>74</sup> During this period, the number of wireless subscribers grew from approximately 101 million to 181 million,<sup>75</sup> and continued to grow by more than twenty-five million subscribers in 2005.<sup>76</sup> This compares to negative growth in the number of wireline switched access lines, which declined from approximately 192 million in December 2000 to 177 million in December 2004.<sup>77</sup> Similarly, over the same time frame, interconnected VoIP providers experienced robust growth in subscribership, with the number of subscribers rising from approximately 150 thousand subscribers in 2003 to 1.2 million subscribers in 2004, and to 4.2 million

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<sup>70</sup> See *2000 Revenues Report*, Table 4; *2004 Revenues Report*, Table 4.

<sup>71</sup> See *supra* n.69.

<sup>72</sup> See Proposed First Quarter 2000 Universal Service Contribution Factor, CC Docket 96-45, Public Notice, 15 FCC Rcd 3660 (1999); 2005 Monitoring Report, at 1-34, Table 1; Proposed Second Quarter 2006 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, DA 06-571 (rel. March 13, 2006). We note that, since 2000, the Commission has modified the contribution factor slightly by adding a circularity adjustment to eliminate contributions on charges passed through to end users. See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24971-72, para. 35. This change reduces the contribution base by the amount of universal service pass-through charges theoretically billed during the quarter.

<sup>73</sup> See 47 U.S.C. § 254(b), (d). Because any delay in implementation of the interim requirements we establish today would undermine our goal of preserving the stability and sufficiency of the Fund in the short term, we reject requests for a lengthier implementation schedule. See Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed June 13, 2006) (Qwest June 13, 2006 *Ex Parte* Letter).

<sup>74</sup> See *supra* n.8.

<sup>75</sup> See *supra* n.7.

<sup>76</sup> See Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2005*, at 2, Table 14 (2006) (*2005 Local Competition Report*); *CTIA 2005 Year End Survey* at 2. Although the total number of wireless subscribers differs slightly between the *2005 Local Competition Report* and the *CTIA 2005 Year End Survey* (e.g., 181 million versus 182 million, respectively, for December 2004) due to differences in how the data were compiled, both reports show dramatic increase in the number of wireless subscribers since 2000.

<sup>77</sup> See *2005 Local Competition Report*, Table 1. Wireline switched access lines grew minimally in the first six months of 2005, from 177,827,375 lines to 178,179,552 lines. *Id.*

subscribers at the end of 2005.<sup>78</sup> We, therefore, tailor the interim measures we adopt in this Order to respond to these marketplace developments.<sup>79</sup>

20. We also find that taking the measured interim steps we adopt today will minimize the impact of any changes on consumers, Fund contributors, and USF administration. For example, by retaining the core aspects of the current interstate revenue-based contribution methodology, consumers should expect to see no significant change in their bills as a result of this Order. In particular, the structure of the telephone bills of a typical local exchange company customer should not change as a result of this Order.<sup>80</sup> In addition, we expect that the increase in the interim wireless safe harbor, which wireless carriers may use as one of a few options to account for interstate and international revenues, will have a smaller impact on the amount wireless consumers may be charged via a pass-through line item on their bills than would more fundamental reform, such as changing to a non-revenues-based contribution methodology.<sup>81</sup> Fund contributors, moreover, will continue reporting interstate end-user telecommunications services revenues, and will continue doing so on reporting forms that will remain largely unchanged, thereby minimizing the need for contributors or the Fund administrator to make significant changes to their billing, provisioning, or information collection systems.<sup>82</sup> This contrasts sharply with most of the fundamental reform proposals in the record, which generally claim that transitioning to a new methodology will require at least a year to accomplish.<sup>83</sup> Finally, by continuing to collect based on revenues, the Fund administrator and the Commission should be able to continue to detect inconsistencies in the information filed by contributors, as well as conduct contributor audits as

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<sup>78</sup> See *TIA 2006 Report*, at 71. The *TIA 2006 Report* does not report the number of VoIP subscribers before 2003. Estimates are that VoIP subscribership will grow to 19 million by the end of 2009. These figures are for *residential* VoIP service. *Id.*

<sup>79</sup> See *infra* sections III.B (increasing the interim wireless safe harbor), III.C (applying contribution obligations to providers of interconnected VoIP service).

<sup>80</sup> Although we expect that the changes we adopt may impact most interconnected VoIP providers and their customers, the number of affected customers and providers will be considerably fewer than would be affected if we were to adopt more fundamental reform at this time.

<sup>81</sup> See Letter from Maureen A. Thompson, Executive Director, Keep USF Fair Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1, filed Mar. 27, 2006 (Keep USF Fair *Ex Parte* Letter); Letter from Mitchell Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-337, 99-200, 98-170, filed Aug. 17, 2005 (attaching letter from Mary M. Martin, Chairman, The Seniors Coalition, to Kevin Martin, Chairman, FCC, dated Aug. 2, 2005) (Seniors Coalition *Ex Parte* Letter); Letter from David Certner, Director Federal Affairs, AARP, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, at 2, filed Apr. 28, 2003 (AARP *Ex Parte* Letter).

<sup>82</sup> Although raising the interim wireless safe harbor level may increase the amount wireless service providers are required to contribute, it does not require wireless service providers to implement any major billing or other systems changes.

<sup>83</sup> See, e.g., Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 9, filed Mar. 21, 2006 (Qwest Mar. 21, 2006 *Ex Parte* Letter) (estimating a transition period of 18 months); Letter from Kathleen Grillo, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 3, filed Mar. 28, 2006 (Verizon Mar. 28, 2006 *Ex Parte* Letter) (estimating a transition period of one year). See also, e.g., Letter from Jeanine Poltronieri, Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2, filed Oct. 24, 2005 (BellSouth Oct. 24, 2005 *Ex Parte* Letter) (noting previous one year transition period to implement current revenue-based system was facilitated by prior related-work to the effected systems); Letter from Jeanine Poltronieri, Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 10, filed Mar. 23, 2005 (suggesting a three year transition period to migrate long distance revenues to numbers). BellSouth also recommended that, due to the complexity of a numbers-based method, the Commission adopt a numbers-based method and then issue a further notice examining specific and detailed implementation issues. BellSouth Oct. 24, 2005 *Ex Parte* Letter, Attach. at 1.

necessary. Because of the minimal operational affect the changes adopted herein will have on Fund contributors and Fund administration, the changes can and will be implemented in time for contributions for the fourth quarter of 2006.

21. In making our decision today, we considered the voluminous record in light of the current pressures on the Fund.<sup>84</sup> We decline to adopt, at this time, more fundamental changes to the entire

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<sup>84</sup> Commenters generally supported telephone number-based proposals or hybrid proposals that would combine a telephone numbers-based system with a revenue- or connection-based component. For example, several commenters, including Ad Hoc Telecommunications Users Committee (Ad Hoc), BellSouth, and the Satellite Industry Association (SIA), propose that the Commission switch from a revenue-based approach to a pure numbers-based contribution methodology. *See, e.g.*, Letter from James S. Blaszak, Counsel for Ad Hoc, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, filed Mar. 9, 2006 (Ad Hoc Mar. 9, 2006 *Ex Parte* Letter); Letter from Jeanine Poltronieri, Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, filed Feb. 13, 2006; Letter from Christine Reilly, Counsel for SIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, filed Mar. 16, 2006. Other commenters, such as Verizon and Qwest, support a contribution system based on both numbers (including working telephone numbers associated with interconnected VoIP services) and revenues (for services that do not use telephone numbers, such as special access, private line, other dedicated services, and prepaid calling cards). Verizon Mar. 28, 2006 *Ex Parte* Letter, Attach. at 2; Qwest Mar. 21, 2006 *Ex Parte* Letter, Attach. at 2, 5, 8. Still other commenters, including CTIA, the Intercarrier Compensation Forum (ICF), and USTelecom, support a hybrid mechanism that would assess contributions based on working telephone numbers and connections. *See, e.g.*, Letter from Gary M. Epstein, Counsel for Intercarrier Compensation Forum (ICF), to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 3, filed Nov. 22, 2005 (ICF Nov. 22, 2005 *Ex Parte* Letter); Letter from Paul Garnett, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, filed Jan. 25, 2006 (CTIA Jan. 25, 2006 *Ex Parte* Letter); Letter from Robin E. Tuttle, Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, filed Jan. 11, 2006 (USTelecom Jan. 11, 2006 *Ex Parte* Letter). In general, these commenters advocate assessing contributions based on switched connections, assessing one contribution unit for each working telephone number. For non-switched connections that do not use telephone numbers, these commenters, in general, would charge one or more contribution units, based on capacity levels, which would be reviewed periodically. These commenters, however, disagree about how to set the tiers and which types of services, if any, should be subject to reduced assessments. *Compare* ICF Nov. 22, 2005 *Ex Parte* Letter with CTIA Jan. 25, 2006 *Ex Parte* Letter and USTelecom Jan. 11, 2006 *Ex Parte* Letter.

Finally, other commenters propose that we retain a revenue-based contribution methodology. *See, e.g.*, Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, at 1, filed June 14, 2005 (TracFone June 14, 2005 *Ex Parte* Letter) (suggesting that the contribution base is financially secure); Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter, Attach. at 12 (supporting a revenue-based methodology). These commenters generally suggest that we should broaden the base of contributors by raising or eliminating the wireless safe harbor and by including all voice services, such as VoIP, to safeguard the Fund. *See, e.g.*, Letter David C. Bergmann, Assistant Consumers' Counsel, Chair, NASUCA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, 03-133, at 2, filed Feb. 27, 2006 (NASUCA Feb. 27, 2006 *Ex Parte* Letter); TracFone June 14, 2005 *Ex Parte* Letter at 1; Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter, Attach. at 6 (proposing that the base be broadened to include VoIP but not addressing changes to the wireless safe harbor); Letter from Daniel Mitchell, Vice President, Legal and Industry, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 80-286, MB Docket Nos. 05-255, 05-311, WC Docket No. 04-440, USF Contribution Methodology Attach. at 2, 3, filed Mar. 16, 2006 (NTCA Mar. 16, 2006 *Ex Parte* Letter). *See* Letter from L. Charles Keller, Counsel for Sage Telecom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-45, 01-92, Attach. at 2, filed Aug. 31, 2005 ("providers that compete with USF contributors also should contribute to USF"). *See also* Letter from Stuart Polikoff, Director of Government Relations, OPASTCO, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 02-33, 01-92, at 2, filed Dec. 14, 2005 (advocating "broadest possible base of contributors" including "all facilities-based broadband Internet access providers, over all platforms"). Many colleges and universities, which offer telephone service to students, oppose moving to a numbers- or connections-based methodology because they believe they would likely experience dramatic increases in their contribution obligations under such proposals. *See, e.g.*, Letter from Patricia Todus, President, ACUTA, and Mark Luker, Vice President, EDUCAUSE, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, filed May 31, 2006 (ACUTA represents over 800 institutes of higher

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universal service program or to the contribution methodology. For example, one commenter has suggested that the entire universal service program is “broken” and advocated that a “holistic, coordinated rational reform of all universal support mechanisms” is necessary.<sup>85</sup> It argued that reforming the contribution methodology in isolation, without addressing distribution issues, is ill-advised.<sup>86</sup> Other parties advocate fundamentally reforming the contribution methodology by moving away from a revenue-based approach.<sup>87</sup> The scale of reforming universal service is considerable, and we will continue to work towards stabilizing the Fund, as well as the entire universal service system. We note, however, that a consensus approach to reform has not developed. Thus, while we recognize that there may be merit to fundamental reform of the current USF contribution methodology, we find, at this time, that the discrete interim reforms we make to expand the contribution base will best promote the statutory requirements set forth in section 254 of the 1996 Act in the near-term, while providing the Commission with the opportunity to continue to address the challenges of fundamental reform.<sup>88</sup>

22. Accordingly, with the reforms detailed below, we continue to fulfill the Commission’s obligation to develop a specific, predictable, and sufficient contribution mechanism to preserve and advance universal service.<sup>89</sup>

## B. Wireless Provider Contributions

23. To sustain the sufficiency of the Fund at this time, we raise the current interim safe harbor for mobile wireless providers to a level that better reflects that industry’s interstate revenues in light of the extraordinary growth of wireless services since 2002, the last time the Commission revisited this issue. This action will help ensure that the Fund can obtain sufficient revenues in a way that does not disrupt or

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education in the United States and EDUCAUSE represents over 2,000 colleges, universities, and educational associations); Letter from John C. Meets, Vice President for Administration and Finance, Wesleyan University, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1, filed Mar. 7, 2006 (estimating contribution increase from \$1,182 to \$75,600 per year); Letter from George W. Ellis, Associate Academic Vice President Information Technologies, University of South Florida, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1, filed Feb. 13, 2006 (estimating contribution increase from \$18,000 to over \$180,000). Similarly, certain low income, low volume consumers that make no or very few long distance telephone calls – for example, senior citizens or others with low or fixed incomes – object to non-revenue-based proposals, claiming that they would be charged higher universal service pass-through charges. *See, e.g.*, Keep USF Fair *Ex Parte* Letter at 1; Seniors Coalition *Ex Parte* Letter, Attach; AARP *Ex Parte* Letter at 2.

<sup>85</sup> *See* Letter from Craig J. Brown, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2-3, filed Sept. 15, 2005 (Qwest Sept. 15, 2005 *Ex Parte* Letter). *But see* Qwest Mar. 21, 2006 *Ex Parte* Letter, Attach. at 2-3 (now advocating a revenue-based numbers-based hybrid approach and including contributions from VoIP providers).

<sup>86</sup> Qwest Sept. 15, 2005 *Ex Parte* Letter, Attach. at 2-3.

<sup>87</sup> *See, e.g.*, Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter at 5 (recommending fundamental reform to expand the base of contributors, limit high cost distribution, and eliminate waste, fraud, and abuse); Letter from Gary M. Epstein, Counsel for Intercarrier Compensation Forum (ICF), to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2, filed Oct. 5, 2004 (ICF Oct. 5, 2004 *Ex Parte* Letter) (supporting comprehensive reform). Most commenters assert that for any large scale reform of the USF contribution system, a transition period is needed to modify their tracking and billing systems and to begin reporting numbers and capacity using a modified FCC Form 499A, the Telecommunications Reporting Worksheet. *See e.g.*, ICF Nov. 22, 2005 *Ex Parte* Letter, Attach. at 7. The membership of the ICF is comprised of AT&T, Global Crossing, GCI, Iowa Telecom, Level 3, MCI, SBC, Sprint, and Valor (supports a numbers/connections hybrid), and Verizon (supports a numbers/revenue hybrid). ICF Oct. 5, 2004 *Ex Parte* Letter at 1. *See also supra* n.84.

<sup>88</sup> *See* 47 U.S.C. § 254(b), (d)

<sup>89</sup> *See* 47 U.S.C. § 254(b), (d); *see also First Further Notice*, 17 FCC Rcd 3752.

harm consumers. We raise the wireless safe harbor from 28.5 percent to 37.1 percent.<sup>90</sup> We also take additional steps to safeguard the Fund by requiring mobile wireless providers that use traffic studies (rather than use the safe harbor) to report actual interstate revenues to submit those traffic studies to USAC and to the Commission.

24. The 1996 Act directs the Commission to develop the contribution mechanism in a manner that results in carriers contributing on an equitable and nondiscriminatory basis.<sup>91</sup> As the Commission found when first establishing the interim wireless safe harbor, in determining what is equitable and nondiscriminatory, the Commission looks to ensure that the contribution methodology does not treat similarly situated contributors differently.<sup>92</sup> As noted earlier, we have witnessed an explosion of wireless growth since we first established, and then revised, the interim wireless safe harbor. There were approximately 69 million subscribers in 1998 and approximately 141 million subscribers in 2002, whereas by the end of 2005, there were approximately 208 million subscribers.<sup>93</sup> The record demonstrates that the percentage of interstate mobile wireless traffic has grown as well.<sup>94</sup> By raising the interim wireless safe harbor to reflect more accurately current subscribership and usage levels and other marketplace developments, we ensure that mobile wireless service providers' obligations are on par with carriers offering similar service that must report based on actual interstate end-user telecommunications revenue (*e.g.*, wireline telecommunications providers).

25. We now revise the interim safe harbor to 37.1 percent, the highest percentage of interstate and international usage by a wireless company supported in the record.<sup>95</sup> Specifically, according to a traffic study conducted by TNS Telecoms for TracFone Wireless, the (then) seven large national mobile wireless service providers' interstate minutes of use ranged from 11.9 percent to 37.1 percent.<sup>96</sup> Accordingly, consistent with the Commission's previous rationale for raising the interim wireless safe

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<sup>90</sup> See NASUCA Feb. 27, 2006 *Ex Parte* Letter (noting that the current interim wireless safe harbor likely understates the current level of interstate traffic); NTCMA Mar. 16, 2006 *Ex Parte* Letter (urging the Commission to eliminate or increase the wireless safe harbor); TracFone Jun. 14, 2005 *Ex Parte* Letter (urging the Commission to eliminate or increase the wireless safe harbor).

<sup>91</sup> See 47 U.S.C. § 254(d).

<sup>92</sup> See *First Wireless Safe Harbor Order*, 13 FCC Rcd at 21257, para. 10.

<sup>93</sup> *CTIA 2005 Year End Survey*, at 5.

<sup>94</sup> See *infra* n.96.

<sup>95</sup> See Letter from L. Charles Keller, Counsel to Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, filed Oct. 28, 2002, Attach. at 1 (Verizon Wireless Oct. 28, 2002 *Ex Parte* Letter) ("A safe harbor, updated to reflect current wireless calling activity, furthers the policy objectives of promoting equitable contributions, fund stability and administrative simplicity.").

<sup>96</sup> See TracFone Jun. 14, 2005 *Ex Parte* Letter, Attach. 2 at 13. The survey analyzed call records from the third quarter of 2004 and based on information contained on customer bills, allocated minutes of use to the interstate and intrastate jurisdiction based on the originating numbering plan area (NPA) state and the terminating NPA state. See *id.*, Attach. 2 at 6. Since the survey was conducted, the Commission granted applications from Nextel and Sprint to transfer control of Nextel's licenses and authorizations to Sprint. See *Application of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005).

This range of the percent of interstate minutes-of-use is consistent with a preliminary Commission staff analysis that shows aggregate wireless service providers' interstate minutes-of-use to have grown to approximately 29 percent. The data analyzed by staff did not lend the numbers to individual company analysis.

harbor to the highest level in the record, and based on the record now before us, we set the revised interim wireless safe harbor at 37.1 percent.<sup>97</sup>

26. We disagree with those parties that assert that the Commission should not rely on the TNS Telecoms traffic study because of concerns with sample size and methodology.<sup>98</sup> Notably, no other wireless provider has proposed an alternative safe harbor level or submitted a traffic study that looks at various wireless providers to support a different, updated, interim safe harbor level. Indeed, none of the parties that criticize the TNS Telecoms study have submitted any data or statistical analysis that would show a specific upward bias in the TNS Telecoms study. Other parties, moreover, claim that the existing safe harbor is too low and should be raised; however, these parties also fail to propose a specific safe harbor level.<sup>99</sup> Although the TNS Telecoms study remains the best evidence in the record because wireless providers have not submitted alternative data,<sup>100</sup> we recognize that individual wireless providers have access to a considerably larger amount of company-specific caller data, which may result in an individual provider calculating a more accurate result for the particular company. It is for this reason that we rely on the TNS Telecoms traffic study only to establish the revised interim wireless safe harbor level and that each wireless provider retains the option of reporting its revenues based on a company-specific traffic study or on its actual interstate end-user telecommunications revenues.<sup>101</sup> We also invite these companies to provide evidence in response to the Notice that accompanies this Order. The purpose of the interim wireless safe harbor thus remains to give those providers that either cannot or choose not to determine their actual interstate end-user telecommunications revenues or approximate the revenues based on a traffic study another means of computing the necessary revenue information.

27. We therefore find that setting the interim safe harbor at the high end of the range in the record remains a reasonable approach. For these reasons, mobile wireless providers that choose to use the revised interim safe harbor must report 37.1 percent of their telecommunications revenues as interstate beginning with fourth quarter 2006 projected revenues that they will report on the August 1, 2006 FCC Form 499-Q.

28. Although we set the revised interim wireless safe harbor at 37.1 percent, we believe that we could have set it at a higher level. The record established in these dockets shows that, not only has there been tremendous wireless subscriber growth since the interim safe harbor was first established in 1998, but that there has been considerable growth in the percentage of interstate mobile wireless traffic. Thus, we have increased the safe harbor from 15 percent in 1998, to 28.5 percent in 2002, and to 37.1 percent in the instant Order. To avoid having to again reset the safe harbor in a few years, we could have trended

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<sup>97</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24966, para. 22. The interim safe harbors for paging and analog SMR dispatch will remain at 12 percent and 1 percent, respectively. See Letter from Frederick M. Joyce, Counsel to USA Mobility, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 4, filed June 8, 2006 (“The current ‘safe harbor’ percentage that the FCC has assigned the paging industry is fair and reasonable.”).

<sup>98</sup> See Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2-3, filed June 2, 2006 (Verizon Wireless June 2, 2006, Letter). See also Letter from Cheryl A. Tritt, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2, filed June 8, 2006 (T-Mobile June 8, 2006, Letter); Letter from L. Charles Keller, Counsel to Cingular Wireless LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, at 1, filed June 9, 2006; Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 3, filed June 14, 2006.

<sup>99</sup> E.g., NTCA Mar. 16, 2006 *Ex Parte* Letter.

<sup>100</sup> See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, filed February 23, 2005; Verizon Wireless June 2, 2006, Letter; T-Mobile June 8, 2006, Letter.

<sup>101</sup> See *First Wireless Safe Harbor Order*, 13 FCC Rcd at 21258, para. 12.



the data to several years in the future and established a safe harbor at the higher level that would result. Moreover, although we adopted the interim wireless safe harbor in part because wireless providers historically have claimed it difficult to identify interstate versus intrastate revenues, it is the Commission's policy preference that providers contribute to the Fund based on their actual data rather than on a safe harbor percentage where possible.<sup>102</sup> Were we to establish a higher safe harbor than the one we now establish, we would create additional incentives for wireless providers to report their actual revenues. Nevertheless, after carefully balancing the benefits and burdens of a higher safe harbor, we choose not to establish a higher safe harbor level here because we are not convinced that a higher percentage is necessary at this time.<sup>103</sup>

29. In addition to revising the wireless safe harbor, we take an additional step to address concerns that wireless telephony providers who report actual interstate revenues may not be doing so accurately. Specifically, we require any wireless telephony provider that uses a traffic study to determine its actual interstate revenues for universal service contribution purposes to submit the traffic study to the Commission and to USAC for review. Preliminary review by Commission staff of FCC Form 499-A filings and other reports appears to reveal several discrepancies in the data filed by wireless telephony providers. For example, we are concerned that itemized charges for toll service on wireless telephony customers' bills that should be reported as toll service revenues on FCC Form 499-A are not being properly reported.<sup>104</sup> Toll services are telecommunications services that enable customers to communicate outside of their local exchange calling areas.<sup>105</sup> Many wireless telephony customers subscribe to plans that give them fixed amounts of minutes which can be used either for local or long distance service. Other wireless telephony customers, however, pay by the minute for some or all calls. For long distance service, the charge is often made up of an air time charge that is the same for local and long distance calls, and an additional toll charge that applies only to long distance calls. For some wireless telephony providers, toll service revenues include these additional charges for intrastate, interstate, and international toll calls. Commission staff analysis, however, raises the concern that some filers are not reporting their separately stated toll revenues correctly.

30. We note that wireless telephony providers reported a total of \$1.3 billion of toll revenues on their FCC Forms 499-A for 2004.<sup>106</sup> The U.S. Department of Commerce, Bureau of the Census, however, estimates that wireless telephony providers earned \$7.1 billion in "long-distance" revenues in 2004.<sup>107</sup> Moreover, in 2004, 53 wireless telephony providers reported a total of \$31.7 billion in total end-user telecommunications revenues (which is the sum of revenues from fixed local service, payphone service, mobile service other than toll, and toll service, less the revenues from telecommunications service provided for resale) without reporting a single dollar of toll revenues on their FCC Forms 499-A.<sup>108</sup> These facts suggest that some wireless filers may have failed to properly account for toll revenues on their FCC Forms 499-A.

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<sup>102</sup> See Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1-2, filed June 2, 2006.

<sup>103</sup> We intend to continue to monitor wireless usage patterns, and may revise the interim wireless safe harbor in the future accordingly.

<sup>104</sup> See Federal Communications Commission, Instructions to the Telecommunications Reporting Worksheet, Form 499-A, Section III.C.3, p.20 (2006) (*2006 Instructions for FCC Form 499-A*).

<sup>105</sup> *Id.* at Section III.C.4, p.23.

<sup>106</sup> 2004 Revenues Report, Table 7.

<sup>107</sup> U.S. Census Bureau, *2004 Service Annual Survey: Information Sector Services*, Table 3.3.8 (2005), available at [http://www.census.gov/svsd/www/services/sas/sas\\_data/51/sas51\\_331-3313\\_2004.pdf](http://www.census.gov/svsd/www/services/sas/sas_data/51/sas51_331-3313_2004.pdf).

<sup>108</sup> This information is based on a staff analysis of the FCC Form 499-A filings. Individual filings are not available to the public in order to protect the confidentiality of the filings.

31. In addition, of the \$1.3 billion in toll revenue reported on FCC Forms 499-A in 2004, wireless telephony providers reported that \$24 million was attributable to international toll service. According to the FCC Section 43.61 International Traffic Data Report for 2004, however, nine wireless carriers alone reported \$596 million of international toll service revenues.<sup>109</sup> These figures indicate that some filers may be underreporting international toll revenues on their FCC Forms 499-A.<sup>110</sup>

32. In light of these apparent data discrepancies, we take an additional step to ensure the accuracy of reported revenue data.<sup>111</sup> Currently, a mobile wireless provider that reports actual revenue data must provide, upon request, documentation to support the reporting of actual interstate telecommunications revenues.<sup>112</sup> We note that a mobile wireless provider may use traffic studies as a proxy for calculating its total amount of actual interstate revenues. We are concerned that the use of traffic studies may be, in part, a cause of these data reporting problems.<sup>113</sup> For example, mobile wireless providers have incentives to bias any traffic studies to minimize their amount of interstate and international end-user revenues and thereby minimize their Fund contributions; there are no countervailing market forces to offset these incentives.<sup>114</sup> Consequently, we now require any mobile wireless provider that uses a traffic study to determine its interstate end-user revenues for universal service contribution purposes to submit the study to the Commission and to USAC for review.<sup>115</sup> Any mobile wireless provider using a traffic study shall submit the traffic study no later than the deadline for submitting the FCC Form 499-Q for the same time

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<sup>109</sup> Federal Communications Commission, *2004 International Telecommunications Data*, Tab D (2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-264309A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-264309A1.pdf).

<sup>110</sup> Commission staff has also identified possible discrepancies in reported FCC Form 499-A data that is not restricted to the data submitted by mobile wireless providers. First, staff analysis of FCC Form 499-A filings for 2004 reveals that 306 filers reported a total of \$3.1 billion of local exchange revenues, while reporting less than one percent of those revenues as interstate. See Federal Communications Commission, Instructions to the Telecommunications Reporting Worksheet, Form 499-A, Section II-A, p. 4. (2004); see also *2006 Instructions for FCC Form 499-A*, Section II-A, p. 4. We are concerned that some of these filers may be underreporting the interstate revenues associated with their local exchange service. Second, we note that 436 filers reported a total of \$508 million of local private line service revenues on their FCC Forms 499-A in 2004, but did not report a single dollar of those revenues as interstate or international. We are concerned that some of these filers may have failed to properly report local private line revenues.

<sup>111</sup> See Letter from Paul W. Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 4, filed Feb. 22, 2005 (CTIA Feb. 22, 2005 *Ex Parte* Letter) (stating that the Commission should “minimize opportunities for telecommunications providers to avoid contribution obligations”).

<sup>112</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24966, para. 24.

<sup>113</sup> Cf. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Reply Comments of Montana Independent Telecommunications Systems (MITS), the Montana Telecommunications Association (MTA), Mid-Rivers Telephone Cooperative and Ronan Telephone Company at 25 (filed July 20, 2005).

<sup>114</sup> Letter from Roger C. Sherman, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 04-36, at 1-2, filed June 14, 2006 (supporting “reasonable standards, best practices, or guidelines to ensure that traffic studies accurately reflect interstate usage”).

<sup>115</sup> Traffic studies may rely on statistical sampling to estimate the proportion of minutes that are interstate and international. Such sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample. Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above. Mobile wireless providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request.

period.<sup>116</sup> We also remind wireless carriers that, while they are permitted to continue to report revenues at either the legal entity level or on a consolidated basis, they 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.<sup>117</sup>

33. Accordingly, we take this opportunity to caution universal service contributors (and other entities reporting data to the Commission) that we will not hesitate to use our enforcement authority to investigate and remedy these and other discrepancies in data reported to the Commission.<sup>118</sup> Moreover, we expect filers that have made reporting errors to re-file the relevant FCC forms or reports as soon as possible (regardless of whether the forms are due to the Commission, USAC, or another entity). To the extent that filers determine that they should have made additional contributions to the Fund, we further expect those entities to work with USAC to resolve their contribution obligations.

### C. Interconnected VoIP Services

34. We require providers of “interconnected VoIP services,” as defined by the Commission,<sup>119</sup> to contribute to the federal USF under the existing contribution methodology on an interim basis.<sup>120</sup> As described above, the number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue.<sup>121</sup> At the same time, the USF contribution base has been shrinking, and the contribution factor has risen considerably as a result.<sup>122</sup> We therefore find that extending USF contribution obligations to providers of interconnected VoIP services is necessary at this time in order to respond to these growing pressures on the stability and sustainability of the Fund.<sup>123</sup>

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<sup>116</sup> For example, if a wireless provider uses a traffic study to determine its projected interstate revenues for its February 1, 2007, FCC Form 499-Q submission, the provider must submit the study to the Commission and to USAC no later than February 1, 2007.

Only mobile wireless providers that rely on traffic studies are required to submit those studies to the Commission and to USAC. Wireless providers that otherwise report actual interstate and international end-user revenues are not required to submit their data, but continue to be required to retain the data and to provide it upon request.

<sup>117</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24967, para. 25.

<sup>118</sup> See CTIA Feb. 22, 2005 *Ex Parte* Letter, Attach. at 4 (“The FCC must vigorously enforce its contribution rules.”); Letter from Paul W. Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2, filed June 7, 2006 (“The Commission also retains the option of auditing traffic studies.”). We also note that corporate officers certifying the accuracy of their FCC Form 499 filings should note that filing inaccurate or untruthful information may lead to prosecution under the criminal provisions of Title 18 of the United States Code. See 47 C.F.R. § 54.711.

<sup>119</sup> 47 C.F.R. § 9.3. See *VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24; see also *CALEA First Report and Order*, 20 FCC Rcd at 15008, para. 39.

<sup>120</sup> To the extent that the Commission adopts another contribution methodology in the future, we expect that interconnected VoIP providers, or the carriers providing VoIP providers their numbers, would be required to contribute under that methodology as well.

<sup>121</sup> See *supra* para. 19.

<sup>122</sup> See *supra* para. 18.

<sup>123</sup> See Letter from Jeanine A. Poltronieri, Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed June 2, 2006) (“[I]t is imperative that VoIP providers contribute to universal service support as soon as is practicable.”). But see Letter from Staci L. Pies, President, Voice on the Net (VON) Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 04-36, at 1 (filed June 5, 2006) (opposing the adoption of an interim approach to USF contribution obligations for interconnected VoIP providers).

35. The Commission has not yet classified interconnected VoIP services as “telecommunications services” or “information services” under the definitions of the Act.<sup>124</sup> Again here, we do not classify these services. To the extent interconnected VoIP services are telecommunications services, they are of course subject to the mandatory contribution requirement of section 254(d).<sup>125</sup> Absent our final decision classifying interconnected VoIP services, we analyze the issues addressed in this Order under our permissive authority pursuant to section 254(d) and our Title I ancillary jurisdiction. Specifically, we find that interconnected VoIP providers are “providers of interstate telecommunications” under section 254(d), and we assert the Commission’s permissive authority to require interconnected VoIP providers “to contribute to the preservation and advancement of universal service” because “the public interest so requires.”<sup>126</sup> We also exercise our ancillary jurisdiction to extend contribution obligations to interconnected VoIP providers. We note that both Vonage and the VON Coalition have stated on the record in this proceeding their belief that interconnected VoIP providers should be required to contribute to the Fund, apparently conceding that the Commission has the authority to impose such a requirement.<sup>127</sup> Finally, we address implementation issues related to our requirement that interconnected VoIP providers contribute to the USF.

### 1. Scope

36. We extend universal service obligations to providers of interconnected VoIP services, as previously defined by the Commission. The Commission has defined “interconnected VoIP services” as those VoIP services that: (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user’s location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from *and* terminate calls to the PSTN.<sup>128</sup> We emphasize that interconnected VoIP service offers the *capability* for users to receive calls from and terminate calls to the PSTN; the obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN.<sup>129</sup> Furthermore, these obligations apply regardless of how the interconnected VoIP provider facilitates access to and from the PSTN, whether directly or by making arrangements with a third party. Finally, we recognize that the definition of interconnected VoIP services may need to expand as new VoIP services increasingly substitute for traditional phone service.<sup>130</sup>

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<sup>124</sup> See *IP-Enabled Services Notice*, 19 FCC Rcd at 4893-94, paras. 43-44.

<sup>125</sup> 47 U.S.C. § 254(d) (“Every 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.”); see also, e.g., Virginia Commission *IP-Enabled Services* Comments at 5 (asserting that VoIP is properly characterized as a telecommunications service).

<sup>126</sup> 47 U.S.C. § 254(d).

<sup>127</sup> See Letter from Staci L. Pies, President, VON Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 04-36, at 1 (filed June 14, 2006) (*VON Coalition June 14, 2006 Ex Parte Letter*) (“The VON Coalition agrees that applying USF contributions to Interconnected VoIP services is primarily a question of ‘how’ as opposed to ‘if’ or ‘when.’”); Vonage June 14, 2006 *Ex Parte* Comments at 1 (“Vonage believes that VoIP providers, like itself, should pay into the federal Universal Service Fund (‘USF’). Thus, Vonage supports the FCC’s efforts to comprehensively reform the USF – and even its efforts to adopt interim measures that would include interconnected VoIP providers in the universal service contribution base.”).

<sup>128</sup> *VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24.

<sup>129</sup> See *id.* at 10257-58, para. 24; see also *CALEA First Report and Order*, 20 FCC Rcd at 15008, para. 39. To the extent that the Commission modifies its definition of interconnected VoIP in the future, we expect that the USF obligations we impose today would continue to apply.

<sup>130</sup> *VoIP 911 Order*, 20 FCC Rcd 10245, 10277, para. 58.

37. We believe that it is appropriate to require USF contributions from interconnected VoIP providers because this approach is consistent with important principles that the Commission has established in its implementation of section 254 of the Act. Specifically, the Commission has previously found it appropriate to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN.<sup>131</sup> In addition, in the *Universal Service First Report and Order*, the Commission established competitive neutrality as a principle to guide the development of universal service policies.<sup>132</sup> As discussed in more detail below, we find that these two principles support our conclusion that extending universal service contribution obligations to this particular category of providers is in the public interest.

## 2. Authority

### a. Permissive Authority Under Section 254(d)

38. Section 254(d) states that the Commission may require “[a]ny other provider of interstate telecommunications” to contribute to universal service, “if the public interest so requires.”<sup>133</sup> Pursuant to the Act’s definitions, a “provider of interstate telecommunications” provides “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.”<sup>134</sup> Unlike providers of interstate telecommunications services, however, providers of interstate telecommunications do not necessarily “offer” telecommunications “for a fee directly to the public.”<sup>135</sup> The Commission has previously used this permissive authority to require private carriers and payphone aggregators to contribute to the Fund.<sup>136</sup> In the *IP-Enabled Services Notice*, the Commission sought comment on, among other things, its authority, including mandatory and permissive authority under section 254(d), to require universal service contributions by IP-enabled service providers.<sup>137</sup>

39. *Providers of Interstate Telecommunications.* We find that interconnected VoIP providers are “providers of interstate telecommunications” as required for the use of the permissive authority pursuant section 254(d). Specifically, using the Act’s definitions, we find that interconnected VoIP providers “provide” “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.”<sup>138</sup>

40. First, we must consider whether interconnected VoIP providers “provide” telecommunications. Congress did not define the term “provide” or “provider,” but the structure of the

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<sup>131</sup> See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 9184-85, para. 797 (finding it appropriate to require payphone aggregators to contribute to universal service support mechanisms because they interconnect with the PSTN).

<sup>132</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03, paras. 46-52.

<sup>133</sup> 47 U.S.C. § 254(d).

<sup>134</sup> 47 U.S.C. § 153(43).

<sup>135</sup> 47 U.S.C. § 153(46).

<sup>136</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9183-86, paras. 794-800.

<sup>137</sup> See *IP-Enabled Services Notice*, 19 FCC Rcd at 4905, para. 63. In the *IP-Enabled Services Notice*, the Commission also asked commenters to address, among other things, the universal service contribution obligations of both facilities-based and non-facilities-based providers of IP-enabled services. *IP-Enabled Services Notice*, 19 FCC Rcd at 4905-08, paras. 63-66. In this Order, we do not distinguish between facilities-based interconnected VoIP providers and “over-the-top” interconnected VoIP providers. *SBC/AT&T Merger Order*, 20 FCC Rcd at 18337-38, para. 86 (describing facilities-based and over-the-top VoIP providers).

<sup>138</sup> 47 U.S.C. § 153(43).

Act informs us that “provide” is a different and more inclusive term than “offer.”<sup>139</sup> It is settled law that the determination of what is “offered,” under the Act’s definitions, “turns on the nature of the functions the end user is offered.”<sup>140</sup> Had Congress intended us to look at the same factors in analyzing our permissive authority under section 254(d), it would have referred to “other offerors of telecommunications.” Because Congress used a different term – “providers” – we understand Congress to have meant something broader. Common definitions of the term “provide” suggest that we should consider the meaning of “provide” from a supply side, *i.e.*, from the provider’s point of view. For example, Black’s Law Dictionary defines “provide” to mean “[t]o make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.”<sup>141</sup> Transmission is an input into the finished service “offered” to the customer. But from the interconnected VoIP provider’s point of view, we believe that the provider “provides” more than just a finished service. We believe that it is reasonable to conclude that a provider “furnishes” or “supplies” components of a service, in this case, transmission.

41. Second, we determine that interconnected VoIP providers provide “telecommunications.” As the Commission has recognized, “the heart of ‘telecommunications’ is transmission.”<sup>142</sup> The Commission has previously concluded that interconnected VoIP services involve “transmission of [voice] by aid of wire, cable, or other like connection” and/or “transmission by radio” of voice.<sup>143</sup> Indeed, by definition, interconnected VoIP services are those “permitting users to receive calls from and terminate calls to the PSTN.”<sup>144</sup> To provide this capability, interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others. “Over the top” interconnected VoIP providers generally purchase 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.<sup>145</sup> The telecommunications carrier supplies transmission to or from the PSTN user, or transmits the communication to another carrier that can transmit the communication to the PSTN user. Facilities-based interconnected VoIP providers similarly enter into arrangements with telecommunications carriers to complete communications to and from the PSTN. The telecommunications carriers involved in originating or terminating a communication via the PSTN are by definition offering “telecommunications.” Just as the Commission has previously found resellers to be supplying telecommunications to their customers even though they do not own or operate the transmission

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<sup>139</sup> We acknowledge that in the past, the Commission has sometimes used the terms “offer” and “provide” interchangeably. *See, e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11530, para. 59 (1998) (“A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure.”). In those instances, however, the Commission was clearly discussing telecommunications services, and just as clearly did not intend to make any sort of statement about how the two terms should be interpreted relative to each other.

<sup>140</sup> *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4822-23, para. 38 (2002), *aff’d sub nom. National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 125 S. Ct. 2688, 2702-10 (2005).

<sup>141</sup> *Black’s Law Dictionary* 1244 (6th ed. 1990); *see also American Heritage Dictionary of the English Language* 1411 (4th ed. 2000) (defining “provide” as, *inter alia*, “[t]o furnish; supply; and “[t]o make available; afford”); *Merriam Webster’s Collegiate Dictionary* 940 (10th ed. 1996) (defining “provide” as, *inter alia*, “to supply or make available”).

<sup>142</sup> *Pulver Order*, 19 FCC Rcd at 3312, para. 9.

<sup>143</sup> *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28.

<sup>144</sup> *Id.* at 10257-58, para. 24.

<sup>145</sup> *See, e.g., PointOne Comments*, CC Docket No. 99-200, at 5 (filed Aug. 16, 2004) (“[M]any IP providers already connect to the PSTN through softswitch technology and the use of gateways . . .”).

facilities,<sup>146</sup> we find interconnected VoIP providers to be “providing” telecommunications regardless of whether they own or operate their own transmission facilities or they obtain transmission from third parties. In contrast to services that merely use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission *itself* to end users.<sup>147</sup>

42. Finally, the Commission previously determined that Vonage’s interconnected VoIP service is a jurisdictionally mixed service in which part of the service is interstate in nature.<sup>148</sup> We believe that other interconnected VoIP services similarly are jurisdictionally mixed and thus are subject to USF contributions on interstate and international revenues. For these reasons, we conclude that interconnected VoIP providers are “providers of interstate telecommunications” under section 254(d).

43. *Public Interest.* Next, we must consider whether requiring interconnected VoIP providers to contribute to the USF is in the public interest. We conclude that it is.<sup>149</sup> The Commission has previously found it in the public interest to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN.<sup>150</sup> We believe that providers of interconnected VoIP services similarly 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, which is supported by universal service mechanisms.<sup>151</sup> As the Fifth Circuit explained, “Congress designed the universal service scheme to exact payments from those companies benefiting from the

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<sup>146</sup> See *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)).

<sup>147</sup> Moreover, interconnected VoIP services are not merely directory services that provide information to Internet users without providing transmission. Interconnected VoIP providers do more than just “use” some telecommunications to connect servers to the Internet. Rather, they self-provide or contract with underlying carriers or providers for transmission services, including interconnection with the PSTN. In this way, interconnected VoIP services are distinguished from services that do not supply connectivity to any PSTN user. See *Pulver Order*, 19 FCC Rcd at 3312, para. 9. For the reasons explained above, we disagree with the VON Coalition’s assertion that interconnected VoIP providers do not provide telecommunications and that the use of permissive authority is therefore inappropriate. See VON Coalition June 14, 2006 *Ex Parte* Letter at 8.

<sup>148</sup> See *Vonage Order*, 19 FCC Rcd at 22413, para. 18 (“The nature of DigitalVoice precludes any suggestion that the service could be characterized as a purely intrastate service.”).

<sup>149</sup> See, e.g., BellSouth *IP-Enabled Services* Comments at 48-49; CWA *IP-Enabled Services* Comments at 17-18; NTCA *IP-Enabled Services* Comments at 9; SBC *IP-Enabled Services* Comments at 112-13 (all arguing that interconnected VoIP providers should be required to contribute to the USF).

<sup>150</sup> See *supra* n.131.

<sup>151</sup> See, e.g., Minnesota Commission *IP-Enabled Services* Comments at 12; NASUCA *IP-Enabled Services* Comments at 69; Illinois Commission *IP-Enabled Services* Comments at 15; Texas Attorney General *IP-Enabled Services* Comments at 11 (all arguing that universal service obligations are appropriate for service providers who benefit from interconnection with the PSTN). VoIP service providers generally offer “in network” or “IP-to-IP” calls for free. See, e.g., Yahoo! Inc., Voice, [http://messenger.yahoo.com/feat\\_voice.php?\\_ylt=AmvWJkIiw3XQ4TH8EsWFUgdwMMIF](http://messenger.yahoo.com/feat_voice.php?_ylt=AmvWJkIiw3XQ4TH8EsWFUgdwMMIF) (visited Apr. 7, 2005) (“Free, Worldwide PC-to-PC Calls”). VoIP service providers are able to charge, however, for PSTN interconnection. See, e.g., Vonage America Inc., Products and Service, [http://www.vonage.com/products.php?lid=nav\\_products](http://www.vonage.com/products.php?lid=nav_products) (visited Apr. 7, 2006); Skype Rates (Skype per-minute rates for calls to traditional landline and mobile phones). Indeed, PSTN interconnection is the primary, or sole, source of revenue for many VoIP service providers. See, e.g., eBay Inc., SEC Form 10-K at 9-10 (filed Feb. 24, 2006), available at <http://www.sec.gov/Archives/edgar/data/1065088/000095013406003678/f17187e10vk.htm> (“Skype’s premium offerings, which are currently Skype’s primary source of revenue, provide Skype’s users with low-cost connectivity to traditional fixed-line and mobile telephones.”); Vonage Holdings Corp., SEC Form S-1 at 1 (filed Feb. 8, 2006), available at <http://www.sec.gov/Archives/edgar/data/1272830/000104746906001567/a2167036zs-1.htm>.

provision of universal service.”<sup>152</sup> 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.”<sup>153</sup> It is therefore consistent with Commission precedent to impose obligations that correspond with the benefits of universal service that these providers already enjoy.

44. We also find that the principle of competitive neutrality supports our conclusion that we should require interconnected VoIP providers to contribute to the support mechanisms. Competitive neutrality means that “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”<sup>154</sup> As the Commission has noted, interconnected VoIP service “is increasingly used to replace analog voice service.”<sup>155</sup> As the interconnected VoIP service industry continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations.<sup>156</sup> Moreover, we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage. The approach we adopt today reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations. We therefore find that the principle of competitive neutrality is served by extending universal service obligations to interconnected VoIP service providers.

45. Thus, based on the record before us, we find that interconnected VoIP providers, like telecommunications carriers, have built their businesses, or a part of their businesses, on access to the PSTN. For these reasons, we find that the public interest requires interconnected VoIP providers, as providers of interstate telecommunications, to contribute to the preservation and advancement of universal service in the same manner as carriers that provide interstate telecommunications services. Finally, we note that the inclusion of such providers as contributors to the support mechanisms will broaden the funding base, lessening contribution requirements on telecommunications carriers or any particular class of telecommunications providers.

#### **b. Ancillary Jurisdiction**

46. In addition to permissive authority under section 254(d), we exercise our ancillary jurisdiction under Title I of the Act to extend universal service contribution obligations to interconnected VoIP providers. We conclude that regardless of the statutory classification of these services, the Commission has ancillary jurisdiction to promote universal service by adopting universal service contribution rules for interconnected VoIP services, and commenters largely agree.<sup>157</sup> Ancillary

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<sup>152</sup> *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d at 428.

<sup>153</sup> *Id.* (“Paging carriers such as Celpage benefit from a larger and more universal public network system, because it increases the number of potential locations for paging use.”).

<sup>154</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8801, para. 47.

<sup>155</sup> *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42.

<sup>156</sup> *SBC/AT&T Merger Order*, 20 FCC Rcd at 18337, para. 85; *cf. Universal Service First Report and Order*, 12 FCC Rcd at 9184-85, para. 797 (finding that payphone aggregators should be required to contribute to universal service support mechanisms “because they directly compete with mandatory contributors to universal service”).

<sup>157</sup> *See, e.g.*, AT&T *IP-Enabled Services* Comments at 39 n.28; AFB *IP-Enabled Services* Comments at 4-5; BellSouth *IP-Enabled Services* Comments at 23-24; Cisco *IP-Enabled Services* Comments at 15-16; Cox *IP-Enabled Services* Comments at 22-25; Global Crossing *IP-Enabled Services* Comments at 15-16; U.S. Conference of Catholic Bishops *IP-Enabled Services* Comments at 12-13. *But see, e.g.*, California PUC *IP-Enabled Services* Comments at 39-40; CompTel *IP-Enabled Services* Comments at 18-19; Covad *IP-Enabled Services* Comments at

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jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated<sup>158</sup> and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."<sup>159</sup> Both predicates for ancillary jurisdiction are satisfied here.

47. First, as we concluded in the *VoIP 911 Order*, interconnected VoIP services fall within the subject matter jurisdiction granted to us in the Act.<sup>160</sup> Second, our analysis requires us to evaluate whether imposing universal service contribution obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities. Based on the record in this matter, we find that section 254 and section 1 of the Act provide the requisite nexus.

48. Section 254 requires the Commission to establish "specific, predictable, and sufficient mechanisms . . . to preserve and advance universal service."<sup>161</sup> The Act requires telecommunications carriers to contribute to those mechanisms on a mandatory basis, and as discussed above, section 254(d) grants the Commission permissive authority to require other "providers of interstate telecommunications" to contribute.<sup>162</sup> As discussed above, we recognize that interconnected VoIP service "is increasingly used to replace analog voice service."<sup>163</sup> We expect that trend to continue. If we do not require interconnected VoIP providers to contribute, the revenue base that supports the Fund will continue to shrink, while these providers continue to benefit from their interconnection to the PSTN. We believe that this trend threatens the stability of the Fund and our action to extend contributions obligations to interconnected VoIP

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22-24 (all questioning whether the Commission can exercise its ancillary jurisdiction to regulate IP-enabled services).

<sup>158</sup> See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*); see also *American Library Ass'n v. FCC*, No. 04-1037, slip op. (D.C. Cir. May 6, 2005) (holding that the Commission lacked authority to impose broadcast content redistribution rules on equipment manufacturers using ancillary jurisdiction because the equipment at issue was not subject to the Commission's subject matter jurisdiction over wire and radio communications).

<sup>159</sup> *Southwestern Cable*, 392 U.S. at 178.

<sup>160</sup> See *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 ("[I]nterconnected VoIP services are covered by the statutory definitions of 'wire communication' and/or 'radio communication' because they involve 'transmission of [voice] by aid of wire, cable, or other like connection . . . ' and/or 'transmission by radio . . . ' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act."'). This determination has not been challenged in the pending appeal of the *VoIP 911 Order*. See *supra* n.57.

<sup>161</sup> 47 U.S.C. § 254(d).

<sup>162</sup> 47 U.S.C. § 254(b)(4), (d).

<sup>163</sup> *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42.

providers is “reasonably ancillary to the effective performance of [our] responsibilities”<sup>164</sup> under section 254. Thus, we determine, as required, that the approach we adopt today “will ‘further the achievement of long-established regulatory goals’”<sup>165</sup> to preserve and advance universal service through specific, predictable, and sufficient contribution mechanisms.

49. In addition, section 1 of the Act charges the Commission with responsibility to “make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, . . . wire and radio communication service with adequate facilities at reasonable charges.”<sup>166</sup> In light of this statutory mandate, promoting universal service became one of the Commission’s primary responsibilities under the Act even before Congress adopted section 254 in 1996. Before the 1996 Act, the Commission relied exclusively on its Title I ancillary jurisdiction to adopt regulations establishing a fund to further this statutory goal.<sup>167</sup> In *Rural Telephone Coalition v. FCC*, the United States Court of Appeals for the District of Columbia Circuit upheld the Commission’s assertion of ancillary jurisdiction to establish a funding mechanism to support universal service in the absence of specific statutory authority as ancillary to its responsibilities under section 1 of the Act to “further the objective of making communications service available to all Americans at reasonable charges.”<sup>168</sup> We conclude that as more consumers begin to rely on interconnected VoIP services for their communications needs, the action we take here ensures that the Commission continues to “further the achievement of long-established regulatory goals”<sup>169</sup> to “make available . . . communication service with adequate facilities at reasonable charges.”<sup>170</sup> Thus, pursuant to our ancillary jurisdiction, we extend USF contribution obligations to providers of interconnected VoIP services.<sup>171</sup>

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<sup>164</sup> *Southwestern Cable*, 392 U.S. at 178.

<sup>165</sup> *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

<sup>166</sup> 47 U.S.C. § 151. Our actions today are not in conflict or otherwise inconsistent with any other provision of the Act. We acknowledge that section 230 of the Act provides that “[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2). We do not, however, believe that this policy statement precludes us from adopting universal service contribution rules for interconnected VoIP providers here. We note that the Commission’s discussion of section 230 in the *Vonage Order* as cautioning against regulation was limited to “traditional common carrier economic regulations.” *Vonage Order*, 19 FCC Rcd at 22426, para. 35.

<sup>167</sup> *First Decision*, 96 FCC 2d at 795.

<sup>168</sup> *Rural Tel. Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988).

<sup>169</sup> *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

<sup>170</sup> 47 U.S.C. § 151.

<sup>171</sup> We do not believe that the grant of permissive authority in section 254(d) precludes us from exercising our ancillary jurisdiction in the universal service context. As noted above, before Congress enacted section 254, the D.C. Circuit held that the Commission had ancillary jurisdiction to require universal service contributions. See *Rural Tel. Coalition v. FCC*, 838 F.2d at 1315; see also *NTCA June 14, 2006 Ex Parte Letter* at 5-6. Nothing in the legislative history, text, or structure of the 1996 Act suggests that Congress intended to strip the Commission of its ancillary authority over universal service obligations by adopting section 254. The statutory construction maxim of *expressio unius est exclusio alterius* – the mention of one thing implies the exclusion of another – does not require a different result. This maxim is non-binding and “is often misused.” *Shook v. District of Columbia Fin. Responsibility & Management Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998). “The maxim’s force in particular situations depends entirely on context, whether or not the draftsmen’s mention of one thing, like a grant of authority, does really necessarily, or at least reasonably, imply the preclusion of alternatives.” *Id.* Here, we believe that the relevant provision in section 254(d) was intended to confirm the Commission’s authority to require providers of interstate telecommunications to make universal service contributions and not to limit the Commission’s pre-existing authority to require others to make such contributions. See, e.g., *Shook*, 132 F.3d at 782 (noting that Congress sometimes “drafts statutory provisions that appear preclusive of other unmentioned

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### 3. Implementation

50. In this section, we address implementation issues related to our requirement that interconnected VoIP providers contribute to the USF. Because we are expanding the base of contributors, certain entities that in the past have not been required to report interstate and international revenues will now be required to do so. For that reason, we provide a brief overview of our reporting requirements. This Order does not fully explain all of the Commission's requirements. Interconnected VoIP providers that are new to the USF procedures should familiarize themselves with the Commission's USF rules and with FCC Forms 499-A and 499-Q Telecommunications Reporting Worksheets and the accompanying instructions.<sup>172</sup>

51. *Identifying Revenues for Reporting Purposes.* Most interconnected VoIP providers offer packages of services to consumers for a single price that include telecommunications, as discussed above,<sup>173</sup> along with CPE and/or features that may be information services. To the extent that an interconnected VoIP provider has chosen to structure its offerings in this manner, it may use the safe harbors established in the *CPE Bundling Order* to determine the appropriate amount of telecommunications revenues to be reported (as distinguished from revenue derived from non-telecommunications).<sup>174</sup> Interconnected VoIP service providers are not obligated to use either of the safe harbors in the *CPE Bundling Order*, but we emphasize that other allocation methods may not be considered reasonable and will be evaluated on a case-by-case basis in an audit context.<sup>175</sup>

52. Interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) they may use the interim safe harbor established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies, subject to the conditions described below.

53. As we recognized in the *Vonage Order*, it is difficult for some interconnected VoIP providers to separate their traffic on a jurisdictional basis.<sup>176</sup> Indeed, many of these VoIP providers have advocated to us in other proceedings that their services are "inherently interstate."<sup>177</sup> Consistent with this advocacy

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possibilities—just as it sometimes drafts provisions that appear duplicative of others—simply, in Macbeth's words, "to make assurance double sure"). Absent any affirmative evidence that Congress intended to limit the Commission's judicially recognized ancillary jurisdiction in this area, we find that the *expressio unius* maxim "is simply too thin a reed to support the conclusion that Congress has clearly resolved [the] issue." *Mobile Communications Corp. v. FCC*, 77 F.3d 1399; 1405 (D.C. Cir. 1996); see also *Martini v. Federal Nat'l Mortgage Ass'n*, 178 F.3d 1336, 1342-43 (D.C. Cir. 1999) (noting that the *expressio unius* principle is particularly unhelpful in addressing issues of administrative law).

<sup>172</sup> Revised Forms 499-A and 499-Q are attached to this Order and Notice at Appendices C and D, respectively.

<sup>173</sup> See *supra* paras. 38-45.

<sup>174</sup> *CPE Bundling Order*, 16 FCC Rcd at 7446-48, paras. 47-51.

<sup>175</sup> See *id.* at 7448, paras. 52-54.

<sup>176</sup> See *Vonage Order*, 19 FCC Rcd at 22405, para. 1.

<sup>177</sup> Numerous VoIP providers have argued that "VoIP services are interstate in nature." Letter from John T. Nakahata, Counsel to Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 03-211, 03-266, 04-36, Attach. at 1 (filed Nov. 3, 2004) (attaching a letter from the VON Coalition, MCI, 8x8, Inc., AT&T, Avaya Inc., Dialpad, EDS, EDUCAUSE, iBasis, IceNet, ITAA, Level 3, PointOne, pulver.com, Qovia, Skype, Telic Communications, USA Datanet, and Voiceglo, to Michael K. Powell, Chairman, FCC, dated Nov. 2, 2004); see also, e.g., VON Coalition Comments, WC Docket No. 03-211, at 15 (filed Oct. 27, 2003) ("[T]he Commission should determine that all VoIP traffic is jurisdictionally interstate . . .").

and based on the conclusions in the Vonage Order,<sup>178</sup> we find that it would be reasonable for us to treat the interconnected VoIP traffic as 100% interstate for USF purposes. Indeed, in another context where providers were unable to separate their interstate telecommunications revenues from other revenues, the Commission found a safe harbor of 100 percent to be reasonable.<sup>179</sup> Nevertheless, we establish a safe harbor that is lower than 100 percent as a convenient alternative for interconnected VoIP providers. Our safe harbor is necessarily the product of line drawing.<sup>180</sup> In adopting a safe harbor we consider what would be an appropriate analogue. One industry report has estimated that 83.8 percent of VoIP traffic in 2004 was either long distance or international and only 16.2 percent was local.<sup>181</sup> Thus, it appears that VoIP traffic is predominantly long distance or international. As such, it is much like wireline toll service which similarly offers interstate, intrastate toll, and international services. In fact, as stated in paragraph 55 below, VoIP services are often marketed as a substitute for wireline toll service.<sup>182</sup> The percentage of interstate revenues reported to the Commission by wireline toll providers is 64.9 percent. We therefore find that establishing a safe harbor of 64.9 percent is reasonable for purposes of this interim action.<sup>183</sup>

54. Moreover, we believe that setting the safe harbor at 64.9 percent is reasonable pending the completion of the attached NPRM where we seek comment on whether to change or eliminate all of the safe harbors.<sup>184</sup> To set the safe harbor lower would permit providers that actually provide more interstate service to escape universal service contribution obligations for some of their interstate traffic, thus undermining our actions to preserve and advance the goals of universal service. Furthermore, to the extent the safe harbor percentage is higher than some providers' actual interstate use, providers may instead contribute to the fund based on actual revenue allocations or by conducting a traffic study, as described below. We encourage interconnected VoIP providers to explore these more precise avenues for determining the jurisdictional nature of their revenues.<sup>185</sup>

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<sup>178</sup> See *Vonage Order*, 19 FCC Rcd at 22405, para. 1.

<sup>179</sup> See *CPE Bundling Order*, 16 FCC Rcd at 7447-48, paras. 51-52.

<sup>180</sup> See *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14276, para. 96 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) (citing *United States v. FCC*, 707 F.2d, 610, 618 (D.C. Cir. 1983)); see also *Sinclair v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002) ("Where issues involve 'elusive' and 'not easily defined' areas . . . our review is considerably more deferential, according broad leeway to the Commission's line-drawing determinations.") (citation omitted); *AT&T v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (stating that "the Commission has wide discretion to determine where to draw administrative lines").

<sup>181</sup> See *iLocus Weekly Newsletter*, Sept. 16, 2005, available at [www.ilocus.com](http://www.ilocus.com). This same report estimated that in 2005, 66.2 percent of all VoIP traffic was either long distance or international. See *iLocus Weekly Newsletter*, Mar. 21, 2006, available at [www.ilocus.com](http://www.ilocus.com). Either estimate indicates that VoIP traffic is predominately long distance or international.

<sup>182</sup> See *infra* para. 55.

<sup>183</sup> *2004 Revenues Report*, Table 8. This category of providers includes interexchange carriers, operator service providers, prepaid calling card providers, satellite service providers, toll resellers, and "other toll carriers." *Id.*

<sup>184</sup> See *infra* paras. 68-69.

<sup>185</sup> Vonage concedes that application of a safe harbor is appropriate but argues about the correct percentage. See Vonage June 14, 2006 *Ex Parte* at 8 ("Vonage would support an interim safe harbor of 23% . . ."). Vonage's argument that establishing a safe harbor of 64.9 percent is inconsistent with the *VoIP 911 Order* has no merit. See *id.* at 6. The Commission's rationale for imposing 911 obligations on interconnected VoIP providers was that customers reasonably expect interconnected VoIP service to function like traditional telephone service in some ways. See *VoIP 911 Order*, 20 FCC Rcd at 10256-57, para. 23. Nowhere in the *VoIP 911 Order* did the Commission suggest that interconnected VoIP traffic is predominantly local. Accordingly, there is no inconsistency between the two orders.

55. We do not believe that the percentage used as the wireless safe harbor would serve as a reasonable safe harbor for interconnected VoIP.<sup>186</sup> Indeed, the record reflects that interconnected VoIP service is often marketed as an economical way to make interstate and international calls, as a lower-cost substitute for wireline toll service.<sup>187</sup> For purposes of a safe harbor, it is reasonable to account for the many customers who purchase these services to place a high volume of interstate and international calls, and benefit from the pricing plans the providers offer for such services. We believe that these characteristics differentiate it from wireless service. Accordingly, we find that the interconnected VoIP safe harbor should be substantially higher than the wireless safe harbor in order to properly capture interstate revenues.

56. While, as stated above, interconnected VoIP providers may report their actual interstate telecommunications revenues, we recognize that some interconnected VoIP providers do not currently have the ability to identify whether customer calls are interstate and therefore subject to the section 254(d) contribution requirement. Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries.<sup>188</sup> Therefore, an interconnected VoIP provider may rely on traffic studies or the safe harbor described above in calculating its federal universal service contributions. Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls.<sup>189</sup> Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider.

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<sup>186</sup> *But see* Letter from Tina M. Pidgeon, Vice President, Federal Regulatory Affairs, General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed June 9, 2006) (*GCI June 9, 2006 Ex Parte Letter*); Letter from Neal M. Goldberg, General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed June 13, 2006); Vonage June 14, 2006 *Ex Parte* Comments at 2-5 (all arguing that a safe harbor for VoIP providers should be applied in a manner consistent with the safe harbor for wireless carriers).

<sup>187</sup> *See, e.g.*, Global Crossing Announces New VoIP LDS Service Offering Enterprises Extended Local Presence, <http://www.globalcrossing.com/xml/news/2005/march/07.xml> (last visited June 20, 2006); Broadvoice Rate Plans, <http://www.broadvoice.com/rateplans.html> (last visited June 15, 2006); NetZeroVoice Long Distance, <http://www.netzero.net/voip/rates.html?sep=voip> (last visited June 15, 2006); Sunrocket, *All-Inclusive Service*, <http://www.sunrocket.com/advantages/all-inclusive/> (last visited June 15, 2006); Vonage, <http://www.vonage.com/index.php?ic=1> (last visited June 15, 2006) (all promoting VoIP rate plans that save customers money on interstate and/or international calls); *see also* Robert Poe, "Telegeography Projects 38 Percent Jump in International VoIP Traffic," *VoIP Magazine*, Nov. 14, 2005, [http://www.voip-magazine.com/index.php?option=com\\_content&task=view&id=586](http://www.voip-magazine.com/index.php?option=com_content&task=view&id=586) (reporting that international telephone traffic is increasing generally, and that the VoIP portion of that international traffic is increasing faster than conventional TDM-based international traffic).

<sup>188</sup> *See Vonage Order*, 19 FCC Rcd at 22418-23, paras. 23-31.

<sup>189</sup> Because we permit interconnected VoIP providers to report on actual interstate revenues, this Order does not require interconnected VoIP providers that are currently contributing based on actual revenues to revise their current practices. *Cf.* *GCI June 9, 2006 Ex Parte Letter* at 1. Interconnected VoIP providers must maintain – and must provide to the Commission or to USAC upon request – documentation to support the percentage of interstate telecommunications revenues that they report. *Cf. Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24966, para. 24. We remind providers that the Commission has the authority to investigate compliance with these requirements and to take appropriate enforcement action upon discovery of noncompliance.

57. In lieu of using the interim safe harbor or reporting actual interstate telecommunications revenues, interconnected VoIP providers may rely on traffic studies, as noted above, and as CMRS carriers may do.<sup>190</sup> The record indicates that traffic studies are a feasible option for providers of interconnected VoIP.<sup>191</sup> However, before it can begin to base its USF contributions on a traffic study, an interconnected VoIP provider must submit its proposed traffic study to the Commission for approval. While prior Commission approval of traffic studies is not required for wireless carriers, we have nonetheless identified concerns in the wireless context with the use of traffic studies as a replacement for reporting actual revenues, and we now require wireless carriers to submit their traffic studies to the Commission and to USAC.<sup>192</sup> If we were to allow interconnected VoIP providers to rely on unapproved traffic studies, we would risk extending the problems we have identified with the use of traffic studies by wireless carriers to a new technology, and possibly creating unforeseen problems as well. For these reasons, we find it appropriate to require prior Commission approval of any traffic study on which an interconnected VoIP provider proposes to rely.<sup>193</sup> Until the Commission has approved an interconnected VoIP provider's proposed traffic study, that provider may use the interim safe harbor. We may extend this treatment to wireless traffic studies in the future, but we decline to do so today. While there would be a benefit to parity of requirements between wireless and interconnected VoIP providers, a pre-approval requirement for wireless traffic studies would be disruptive to wireless contributors who, unlike interconnected VoIP providers, are already relying on the current regime.

58. We take one additional interim action here to ensure the health of the USF pending broader reform. As we stated earlier, we have not yet classified interconnected VoIP as either a telecommunications service or an information service. Because we have not yet made that classification, some interconnected VoIP providers may hold themselves out as telecommunications carriers, but others do not, considering themselves instead to be "end users." Carriers that provide telecommunications service inputs to the latter group of interconnected VoIP providers therefore have been reporting the resulting revenues as end-user revenues and including them in their bases.<sup>194</sup> Because we do not classify interconnected VoIP today, nor do we attempt to quantify the magnitude of USF contributions from carriers that supply wholesale inputs to interconnected VoIP providers, carriers supplying telecommunications services to interconnected VoIP providers who are not themselves carriers should continue to include the revenues derived therefrom in their own contribution bases for two full quarters

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<sup>190</sup> See *supra* paras. 29-33; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 1421, 1425-26, para. 8 (2003). An interconnected VoIP provider that chooses to rely on a traffic study must ensure that the study conforms to the requirements detailed in this Order. See *supra* n.115. While interconnected VoIP providers may lack systems to track the jurisdictional nature of individual calls, they are required to know – either automatically or through interaction with the customer – the location of each customer, which will also be the origination point of the customer's calls. See *VoIP 911 Order*, 20 FCC Rcd at 10271, para. 46.

<sup>191</sup> See Letter from Thomas Jones, Counsel for Cbeyond Communications LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 04-36, at 1 (filed June 14, 2006) ("Cbeyond has determined that it would likely be able to conduct accurate traffic studies for determining its interstate and intrastate revenues for VoIP services it may offer in the future."); see also *id.*; Sprint Nextel June 14, 2006 *Ex Parte* Letter at 1 (both urging the Commission to permit interconnected VoIP providers to use traffic studies).

<sup>192</sup> See *supra* para. 29.

<sup>193</sup> But see Letter from Cheryl A. Tritt, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2; Vonage June 14, 2006 *Ex Parte* Comments at 5 (both opposing a requirement that interconnected VoIP providers' traffic studies be approved in advance by the Commission).

<sup>194</sup> When the service was provided through an intrastate tariff or otherwise determined to be intrastate, it may not have been included in the carrier's end user revenues for federal USF purposes.

after the effective date of this Order.<sup>195</sup> Wholesale carriers may not exclude these revenues by invoking the “carrier’s carrier” rule during this interim period.<sup>196</sup> To the extent required, we waive here Commission rule 54.706(b) for the duration of this requirement.<sup>197</sup>

59. We recognize that, by requiring on an interim basis that both the underlying carrier and the interconnected VoIP provider contribute based (in part) on the revenues derived from providing the underlying transmission, the Fund may receive contributions from telecommunications revenues associated with the same facilities two times. We emphasize that this is a temporary measure, and we do not take this step lightly. We are concerned, however, that if carriers are permitted to invoke the carrier’s carrier rule immediately to exclude revenues from interconnected VoIP providers, the result could be a net decrease in the Fund in the short term. Such a result would be inconsistent with our obligation to ensure a sufficient and sustainable Fund and to preserve and advance universal service.<sup>198</sup> By continuing to require contributions from carriers supplying transmission facilities to interconnected VoIP providers for an additional two quarters, we eliminate any risk of decreasing the Fund while we implement contribution obligations for interconnected VoIP providers. Further, we find nothing in section 254 of the 1996 Act that prohibits this interim approach.

60. *Reporting Requirements.* Providers of interconnected VoIP services will follow the same basic USF reporting procedures as other providers of interstate and international telecommunications, using the same forms and filing instructions. Contributors to USF report historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on FCC Form 499-Q.<sup>199</sup> Interconnected VoIP service providers will be required to file FCC Form 499-Q beginning on August 1, 2006.<sup>200</sup> Contributors report gross-billed and actual collected end-user interstate and international revenues on FCC Form 499-A on April 1 of each year.<sup>201</sup> Interconnected VoIP service providers will be required to file a completed FCC Form 499-A beginning on April 1, 2007.

61. Under Commission rules, a provider of interstate and international telecommunications whose annual universal service contribution is expected to be less than \$10,000 is not required to contribute to the USF, or to file a Telecommunications Reporting Worksheet unless it is required to contribute to other support and cost recovery mechanisms.<sup>202</sup> Interconnected VoIP providers that satisfy

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<sup>195</sup> We believe that this action addresses the VON Coalition’s concern about double counting of interconnected VoIP revenues. See VON Coalition June 14, 2006 *Ex Parte* Letter at 3.

<sup>196</sup> See 47 C.F.R. § 54.706(b) (basing contributions on “end-user telecommunications revenues”).

<sup>197</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>198</sup> See 47 U.S.C. §§ 254(b), (d).

<sup>199</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24969, para. 29.

<sup>200</sup> Interconnected VoIP providers who will be submitting the FCC Form 499-Q for the first time because of this Order are not required to complete lines 115-118 on the Form until they submit the Form for the February 1, 2007 deadline. All other portions of the Form must be completed beginning with the submissions due August 1, 2006. Cf. Qwest June 13, 2006 *Ex Parte* Letter at 2.

<sup>201</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24969, para. 29. The FCC Forms 499-A and 499-Q and instructions, along with information for new service providers and contributors, are posted on USAC’s website at: <http://forms.universalservice.org>.

<sup>202</sup> See 47 C.F.R. § 54.708; Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 31, April 2006. Section 254(d) of the Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms if the “carrier’s contribution to the preservation and advancement of universal service would be *de minimis*.” 47 U.S.C. § 254(d). Providers that qualify for the *de minimis* exemption are considered end users for USF reporting purposes, and they must notify the carriers from which they purchase telecommunications that they are exempt from contribution requirements and must be considered end users for USF

(continued...)

this *de minimis* exemption need not contribute to the Fund.<sup>203</sup> We find, however, that it is appropriate to require all providers of interconnected VoIP services – including those that satisfy the *de minimis* exemption – to register with the Commission in order to facilitate our enforcement of the obligations the Commission has imposed in this Order on providers of interconnected VoIP services.<sup>204</sup> In order to fulfill this reporting requirement, every interconnected VoIP provider that has not already registered with the Commission (and designated an agent for service of process) must complete and file an FCC Form 499-A with blocks 1, 2, and 6 completed.<sup>205</sup> Providers should refer to the instructions on the revised FCC Form 499-A for additional details on how to complete this registration requirement. Interconnected VoIP providers will receive an FCC Registration Number (FRN) when they register with the Commission. Because providers must have an FRN in order to submit required USF filings, it is the responsibility of the interconnected VoIP provider to register with the Commission and obtain an FRN prior to the August 1, 2006 deadline for filing FCC Form 499-Q.

62. Finally, interconnected VoIP providers must comply with the Commission's rules with respect to recovering USF contributions from their customers. Contributors may choose to recover part or all of their universal service contributions from their customers, but they are prohibited from marking up universal service line-item amounts above the relevant contribution factor.<sup>206</sup>

#### IV. TECHNICAL MATTERS

63. This Order shall be effective upon publication in the Federal Register, subject to OMB approval for new information collection requirements. We find good cause for the Order to be effective upon publication because the Order is necessary to maintain the stability and sufficiency of the universal

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(...continued from previous page)

contribution purposes. See *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5482, para. 298 (1997).

<sup>203</sup> The \$10,000 revenue limit is an annual limit. Because an interconnected VoIP provider may, as a result of this Order, contribute to the Fund for the first time in the fourth quarter of 2006, we find that such an interconnected VoIP provider will satisfy the *de minimis* exemption for this quarter only if its fourth-quarter 2006 contributions would be less than \$2,500.

<sup>204</sup> See, e.g., 47 C.F.R. § 54.707 (authorizing the Fund administrator to audit Fund contributors).

<sup>205</sup> We require interconnected VoIP providers to register with the Commission and designate an agent for service of process pursuant to section 4(i) of the Act. See 47 U.S.C. 154(i). Cf. 47 C.F.R. § 64.1195; *Consumer Information Bureau Reminds Telecommunications Carriers of Their Obligations to Register and Designate an Agent for Service of Process*, CC Docket No. 94-129, Public Notice, 17 FCC Rcd 1736 (2002) (describing the Commission's registration requirements for telecommunications carriers).

<sup>206</sup> See 47 C.F.R. § 54.712; see also *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24976-83, paras. 45-63. Furthermore, we note that in the *Wireline Broadband Internet Access Order*, the Commission permitted facilities-based providers to cease providing the transmission component underlying that service as a separate common carrier service if they choose. See *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, Report and Order, 20 FCC Rcd 14853, 14899-14900, paras. 87-88 (2005). To the extent that a provider has discontinued providing that service as a common carrier service, it is not required to contribute to the universal service fund based on the revenues derived from providing that transmission service after the expiration of the 270 day contribution freeze period. See *id.* at 14915-16, para. 113. Any line item on a customer bill should reflect only those universal service contributions that a provider is required to make, consistent with rule 54.712. See Letter from Mark J. O'Connor, Counsel to EarthLink, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-33, at 1 (filed June 7, 2006).



service fund, as required by section 254(d) of the 1996 Act.<sup>207</sup> Specifically, the Order must be effective by August 1, 2006, the date by which contributors must submit their Form 499-Q filings containing their revenue projections for the fourth quarter of 2006, so that fourth quarter contributions to Fund will include revenues from interconnected VoIP and wireless services as contemplated herein. Including these additional revenues as soon as the fourth quarter of 2006 is essential to ensure the sustainability of the Fund in the near-term while the Commission continues to examine more fundamental reform.

64. On our own motion, we amend section 54.5 of our rules to correct a typographical error. Section 54.5 currently defines “contributor” as “an entity required to contribute to the universal service support mechanisms pursuant to § 54.703.”<sup>208</sup> Section 54.706 addresses which entities are required to contribute to the universal service support mechanisms, not section 54.703.<sup>209</sup> Accordingly, we amend section 54.5 to define “contributor” as “an entity required to contribute to the universal service support mechanisms pursuant to § 54.706.” Further, in the sections of our rules that we revise to conform to this Order, we also remove references to our contribution methodology prior to April 1, 2003 which are now outdated. Because these rule changes are non-substantive, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.<sup>210</sup>

## V. NOTICE OF PROPOSED RULEMAKING

65. In this Notice, we seek to further refine the record concerning the interim requirements established in the accompanying Order for mobile wireless providers and for interconnected VoIP providers, while we continue to examine more fundamental contribution methodology reform.<sup>211</sup> In the Order, we increased the interim wireless safe harbor from 28.5 percent to 37.1 percent to reflect more accurately actual wireless interstate usage.<sup>212</sup> We also require providers of interconnected VoIP service to contribute to the Fund, by reporting their actual interstate revenues, by using a traffic study (if approved by the Commission), or by using a safe harbor of 64.9 percent.<sup>213</sup>

66. First, we seek comment on whether to eliminate or raise the interim wireless safe harbor. Wireless providers may base contributions on actual interstate and international revenues or on traffic studies conducted to approximate these revenues.<sup>214</sup> In light of these options, we seek comment on whether we should eliminate the interim wireless safe harbor or whether there remains a need to

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<sup>207</sup> See 5 U.S.C. § 553(d)(3) (“The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except . . . as otherwise provided by the agency for good cause found and published with the rule.”). See also 47 C.F.R. §§ 1.103(a), 1.427(b).

<sup>208</sup> 47 C.F.R. § 54.5.

<sup>209</sup> Compare 47 C.F.R. § 54.706 with 47 C.F.R. § 54.703.

<sup>210</sup> 5 U.S.C. § 553.

<sup>211</sup> We hereby incorporate the comments, *ex parte* presentations, and any other submissions on the universal service contribution methodology filed in CC Docket Nos. 96-45, 98-171, 90-571, 92-237/NSD File No. L-00-72, 99-200, 95-116, 98-170, and WC Docket No. 04-36 into WC Docket No. 06-122. Commenters need not resubmit material previously filed in those proceedings in WC Docket No. 06-122. The Initial Regulatory Flexibility Analysis for this Notice is set forth in Appendix F.

<sup>212</sup> See *supra* para. 23; see also TracFone Jun.14 *Ex Parte* Letter, Attach. 2 at 13.

<sup>213</sup> See *supra* para. 52.

<sup>214</sup> See *supra* paras. 23-33. For example, Verizon Wireless suggested that wireless carriers could use call detail records and baseline assumptions to develop a reasonable proxy for allocating wireless revenues for USF purposes. See Verizon Wireless Oct. 28, 2002 *Ex Parte* Letter, Attach. at 1 (proposing that wireless carriers use cell site and area code information, among other things, to determine the percentage of minutes attributable to interstate and international calls, and then apply that percentage to all qualifying end-user revenues).

perpetuate a wireless safe harbor. We seek comment on whether mobile wireless providers can, or should be able to, determine their actual interstate and international end-user revenues. If we decide to eliminate the wireless safe harbor, we seek comment on how mobile wireless providers would determine their actual usage and whether we should continue to permit wireless providers to use traffic studies. For example, the study relied on in the Order utilized originating and terminating Numbering Plan Areas (NPA's), or area codes, to identify interstate revenues.<sup>215</sup> We seek comment on whether originating and terminating NPAs reflect whether a call is interstate or international. We also seek comment on whether originating and terminating cell sites could be used to determine the jurisdictional nature of a call. Are there other methods of determining jurisdiction? We ask commenters to address associated difficulties and costs of implementation. We also seek comment on whether there are unique difficulties associated with analyzing either outgoing or incoming calls, and whether it is necessary to analyze both types of calls or would, for example, out-bound calls reasonably approximate all interstate and international usage.<sup>216</sup>

67. If we decide to retain a wireless safe harbor, we seek comment on whether a safe harbor of 37.1 percent for interstate and international end-user revenue is appropriate or whether the safe harbor should be raised. Given that mobile wireless providers retain the option of reporting their actual interstate end-user telecommunications revenues, we have found that setting the interim safe harbor at the high end of the market for interstate and international end-user revenue is a reasonable approach.<sup>217</sup> If 37.1 percent does not reflect the high end of the market, what percentage does? Since 1998, we have increased the interim wireless safe harbor twice to reflect more accurately wireless interstate end-user revenue.<sup>218</sup> We are mindful that these increases in the safe harbor percentage lagged market conditions, resulting in collecting fewer Fund contributions than market conditions would have supported.<sup>219</sup> We seek comment on how to determine the safe harbor percentage to better reflect market conditions on an ongoing basis. For example, should we periodically (*e.g.*, annually, quarterly) adjust the interim safe harbor percentage to reflect wireless interstate end-user revenue trends? If so, how would we establish these trends?

68. Second, we seek comment on the USF obligations we have established in this Order for interconnected VoIP providers. We encourage commenters to describe possible ways in which our new requirements for interconnected VoIP providers could be improved. Given the interim nature of this Order, we welcome suggestions for a permanent approach to USF contributions from interconnected VoIP providers.

69. In particular, we seek comment on whether to eliminate or change the interim safe harbor we establish in the Order for providers of interconnected VoIP service. We ask commenters to address whether a safe harbor continues to be appropriate for providers of interconnected VoIP service. Can providers of interconnected VoIP service identify the amount of actual interstate and international, as opposed to intrastate, telecommunications they provide? If so, should we require that these providers report based on actual data? If not, is 64.9 percent the most appropriate level, or should we adjust the interim interconnected VoIP safe harbor?<sup>220</sup> We ask that commenters advocating a change to the safe

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<sup>215</sup> See *supra* n.96.

<sup>216</sup> See TracFone Jun.14 *Ex Parte* Letter, Attach. 2 at 7 (relying only on outgoing calls).

<sup>217</sup> See *supra* paras. 25-27.

<sup>218</sup> We have increased the wireless safe harbor from 15% in 1998, to 28.5% in 2002, to 37.1% in this Order. See *First Wireless Safe Harbor Order*, 13 FCC Rcd at 21257, para. 11; *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24965, para. 21; *supra* para. 23.

<sup>219</sup> For example, the safe harbor percentage adopted in this Order is based on bill harvesting data that is almost two years old. See TracFone Jun.14 *Ex Parte* Letter, Attach. 2 (using third quarter 2004 data).

<sup>220</sup> See *supra* para. 53.

harbor explain the basis of their proposed revised safe harbor and how the safe harbor should be calculated.

70. ***New Docket.*** In this Notice, we open a new docket – WC Docket No. 06-122. All filings made in response to this Notice and those addressing the Commission’s universal service contribution methodology rules generally, should be filed in WC Docket No. 06-122. Although we urge parties that previously filed in CC Docket Nos. 96-45, 98-171, 90-571, 92-237/NSD File No. L-00-72, 99-200, 95-116, 98-170, or WC Docket No. 04-36 on the universal service contribution methodology to re-file in new WC Docket No. 06-122, such filings nevertheless will be considered in this proceeding. Therefore, we incorporate by reference comments filed in CC Docket Nos. 96-45, 98-171, 90-571, 92-237/NSD File No. L-00-72, 99-200, 95-116, 98-170, or WC Docket No. 04-36 that are responsive to the issues raised in this proceeding. CC Docket Nos. 96-45, 98-171, 90-571, 92-237/NSD File No. L-00-72, 99-200, 95-116, 98-170, and WC Docket No. 04-36 will remain open for other non-universal service contribution methodology related filings.

## **VI. PROCEDURAL MATTERS**

### **A. Final Regulatory Flexibility Analysis**

71. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix E.

### **B. Initial Regulatory Flexibility Analysis**

72. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix F. Written public comments are requested on this IFRA. Comments must be identified as responses to the IFRA and must be filed by the deadlines for comments on the Notice provided below in section VI.E.

### **C. Paperwork Reduction Act Analysis**

73. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

### **D. Congressional Review Act**

74. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. § 801(a)(1)(A).

### **E. Comment Filing Procedures**

75. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,<sup>221</sup> interested parties may file comments on this NPRM within 30 days after publication in the Federal Register and may file reply

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<sup>221</sup> 47 C.F.R. §§ 1.415, 1.419.

comments within 60 days after publication in the Federal Register. All filings related to this Order and the Notice of Proposed Rulemaking shall refer to WC Docket No. 06-122 only. We hereby incorporate the comments, *ex parte* presentations, and any other submissions on the universal service contribution methodology filed in CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237/NSD File No. L-00-72, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, and WC Docket No. 04-36. Commenters need not resubmit material previously filed in those proceedings in WC Docket No. 06-122.

76. Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>222</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies 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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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 should be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

77. Parties must also send a courtesy copy of their filing to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications

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<sup>222</sup> See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

Commission, 445 12<sup>th</sup> Street, S.W., Room 5-B540, Washington, D.C. 20554. Antoinette Stevens's email address is [Antoinette.Stevens@fcc.gov](mailto:Antoinette.Stevens@fcc.gov) and telephone number is (202) 418-7387.

78. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: [www.bcpiweb.com](http://www.bcpiweb.com), by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

79. For further information regarding this proceeding, contact Amy Bender, Wireline Competition Bureau, (202) 418-1469, e-mail: [Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov).

80. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 via the Internet to [Kristy L. LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov) or by fax to (202) 395-5167.

#### **F. Accessible Formats**

81. 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

### **VII. ORDERING CLAUSES**

82. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 202, 218-220, 254, and 303(r), this Report and Order and Notice of Proposed Rulemaking in WC Docket No. 06-122, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237/NSD File No. L-00-72, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, and WC Docket No. 04-36 IS ADOPTED, Part 54 of the Commission's Rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A, Form 499-A IS AMENDED as set forth in Appendix C, and Form 499-Q IS AMENDED as set forth in Appendix D. The Report and Order shall become effective upon publication in the Federal Register. The information collection contained in the Report and Order will become effective following OMB approval.<sup>223</sup> The Commission will publish a document at a later date establishing the effective date.

83. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 202, 218-220, 254, and 303(r), any mobile wireless provider that uses a traffic study to report actual interstate revenue data for universal service contribution purposes SHALL SUBMIT the traffic study to the Commission and to USAC.

84. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 202, 218-220, 254, and 303(r), any provider of interconnected VoIP service that proposes to use a traffic

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<sup>223</sup> In light of the importance of these rules, the Commission is seeking emergency approval from OMB. The Commission will issue a public notice announcing the date upon which the information collection requirements set forth in this Order shall become effective following receipt of such emergency approval.

study to report actual interstate revenue data for universal service contribution purposes SHALL PETITION the Commission for approval of its proposed traffic study.

85. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****FINAL RULES**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. Parts 1 and 54 as follows:

**PART 1 – PRACTICE AND PROCEDURE**

1. The authority citation for Part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

2. Amend § 1.47 by revising paragraph (h) to read as follows:

**§ 1.47 Service of documents and proof of service.**

\* \* \* \* \*

(h) Every common carrier and interconnected VoIP provider, as defined in section 54.5 of these rules, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier or interconnected VoIP provider in any proceeding before the Commission. Such designation shall include, for both the carrier or interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier or interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier or interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier or interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers and interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the Federal Register, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier or interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers and interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier or interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier or interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

**PART 54 – UNIVERSAL SERVICE**

3. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

4. Amend § 54.5 by correcting the definition of “contributor” and adding the definition of “interconnected VoIP provider” in alphabetical order to read as follows:

**§ 54.5 Terms and definitions.**

\* \* \*

*Contributor.* The term “contributor” shall refer to an entity required to contribute to the universal service support mechanisms pursuant to § 54.706.

\* \* \*

*Information Service.* \* \* \*

*Interconnected VoIP Provider.* An “interconnected VoIP provider” is an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.

\* \* \*

5. Amend § 54.706 by revising paragraphs (a), (a)(16), (a)(17), by adding paragraph (a)(18), and by revising paragraphs (b) and (c):

**§ 54.706 Contributions.**

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms. Certain other providers of interstate telecommunications, such as payphone providers that are aggregators, providers of interstate telecommunications for a fee on a non-common carrier basis, and interconnected VoIP providers, also must contribute to the universal service support mechanisms. Interstate telecommunications include, but are not limited to:

\* \* \*

(16) Resale of interstate services;

(17) Payphone services; and

(18) Interconnected VoIP services.

(b) Except as provided in paragraph (c) of this section, every entity required to contribute to the federal universal service support mechanisms under paragraph (a) of this section shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity’s projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an “entity” shall refer to the entity that is subject



to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of interstate and international telecommunications and telecommunications services.

\* \* \* \* \*

6. Amend § 54.708 to add a new sentence after the first sentence to read as follows:

**§ 54.708 De minimis exemption.**

\* \* \* The foregoing notwithstanding, all interconnected VoIP providers, including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet. \* \* \*

7. Amend § 54.712 by revising the section heading and paragraph (a) to read as follows:

**§ 54.712 Contributor recovery of universal service costs from end users.**

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

\* \* \* \* \*

APPENDIX BLIST OF COMMENTERSLIST OF COMMENTERS IN CC DOCKET NO. 96-45

Ad Hoc Telecommunications Users Committee	Ad Hoc
Alaska Telephone Association	ATA
Allied Personal Communications Industry Association of California	Allied
AOL Time Warner Inc.	AOL
American Association of Paging Carriers	AAPC
American Mobile Telecommunications Assoc. Inc.	AMTA
American Public Communications Council	APCC
Arch Wireless, Inc.	Arch
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
BBG Communications, Inc.	BBG
Beacon Telecommunications Advisors, LLC	Beacon
BellSouth Corporation	BellSouth
BT North America Inc.	BTNA
California Public Utilities Commission and The People of the State of California	CPUC
Coalition for Sustainable Universal Service	CoSUS
Competitive Telecommunications Association	CompTel
Concerned Paging Carriers	CPC
Consumer's Union, Texas Office of Public Utility Counsel, Consumer Federation of America Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition, and Migrant Legal Action Program	CU et al.
ePHONE Telecom, Inc.	ePHONE
Fred Williamson and Associates, Inc.	FW&A
General Services Administration	GSA
Home Telephone Company, Inc., Bluffton Telephone Co., Inc., Hargray Telephone Co., Inc., Chesnee Telephone Co., Chester Telephone Co., Lockhart Telephone Co., Inc. Ridgeway Telephone Co., Inc. Farmers Telephone Co., Inc. Palmetto Rural Telephone Cooperative, Inc. PBT Telecom, Inc. Piedmont Rural Telephone Cooperative, Inc. Sandhill Telephone Cooperative, Inc. Sandwich Isles Communications, Inc., and	Home et al.

Yukon Telephone Co., Inc.	
Information Technology Association of America	ITAA
National Association of State Utility Consumer Advocates	NASUCA
National Exchange Carrier Association, Inc.	NECA
National Rural Telecom Association and the Organization for Promotion and Advancement of Small Telecom Companies	NRTA and OPASTCO
National Telecommunications Cooperative Association	NTCA
Nebraska Independent Companies	Nebraska
Nextel Communications, Inc.	Nextel
OnStar Corporation	OnStar
PaeTec Communications, Inc.	PaeTec
Rural Cellular Association, The	RCA
Rural Independent Competitive Alliance, The	RICA
SBC Communications Inc.	SBC
Sprint Corporation	Sprint
Texas, State of	Texas
Teletouch Communications, Inc.	Teletouch
Time Warner Telecom, XO Communications, and Allegiance Telecom	Time Warner
TracFone Wireless, Inc.	TracFone
United States Cellular Corporation	USCC
United States Telecom Association	USTA
Verizon Telephone Companies	Verizon
Verizon Wireless	Verizon Wireless
Vincent J. Stoneking	V. Stoneking
Virgin Mobiles USA, LLC	Virgin Mobile
VoiceStream Wireless Corporation	VoiceStream
Western Wireless Corporation	Western Wireless
Working Assets Funding Service, Inc.	Working Assets
WorldCom, Inc.	WorldCom

## LIST OF REPLY COMMENTERS IN CC DOCKET NO. 96-45

Alaska Communications Systems	ACS
AOL Time Warner Inc.	AOL
American Public Communications Council	APCC
Arch Wireless	Arch
Association of Communications Enterprises	ASCENT
Association for Local Telecommunications Services	ALTS
BellSouth Corporation	BellSouth
BT North America	BTNA
Cable & Wireless USA, Inc.	C&W
Coalition for Sustainable Universal Service	CoSUS
Concerned Paging Carriers AirCall, Inc. The Beeper People, Inc. Business Service Center, Inc. Com-Nav Inc., d/b/a Radio Telephone of Maine Cook telecom, Inc., Lubbock Radio Paging Service, Inc. Mobile Phone of Texas, Inc. Mobilpage, Inc. Omnicom Paging Plus, LLC Page-All, LLC Professional Answering Service, Inc. RCC Inc., d/b/a/ Radio Comm. Co. RediCall Communications Co. Robert F. Ryder d/b/a Radio Paging Service Salisbury Mobile Telephone, Inc. SEMA-PHOON, Inc. d/b/a/ R.A. Communications, and Starpage, Inc.	CPC
Consumer's Union, Texas Office of Public Utility Counsel, Consumer Federation of America Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition, and Migrant Legal Action Program	CU et al.
Earthlink, Inc.	Earthlink
Industrial Telecommunications Association, Inc.	ITA
Information Technology Association of America	ITAA
National ALEC Association/Prepaid Communications Association	NALA
National Rural Telecom Association Organization for the Promotion and Advancement	NRTA and OPASTCO
National Telecommunications Cooperative Association	NTCA
Nextel Communications, Inc.	Nextel
Public Utilities Commission of Ohio	OhioPUC
OnStar Corporation	OnStar
SBC Communications Inc.	SBC
Sprint Corporation	Sprint

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Southern Communications Services, Inc. d/b/a Southern LINC	Southern
Texas, State of	Texas
TracFone Wireless, Inc.	Tracfone
United States Cellular Corporation	USCC
Verizon Telephone Companies	Verizon
Verizon Wireless	Verizon Wireless
Voice on the Net Coalition	VON
Voicestream Wireless Corporation	Voicestream
Western Alliance	Western
Worldcom, Inc.	Worldcom

## LIST OF COMMENTERS IN WC DOCKET NO. 04-36

<u>Comments</u>	<u>Abbreviation</u>
8X8, Inc.	8X8
AARP	AARP
ACN Communications Services, Inc.	ACN
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alcatel North America	Alcatel
Alliance for Public Technology	APT
America's Rural Consortium	ARC
American Foundation for the Blind	AFB
American Public Communications Council	APCC
Amherst, Massachusetts Cable Advisory Committee	Amherst CAC
Arizona Corporation Commission	Arizona Commission
Artic Slope Telephone Association Cooperative, Inc. Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 Comanche County Telephone, Inc. DeKalb Telephone Cooperative, Inc. d/b/a DTC Communications Grand River Mutual Telephone Corporation Interstate 35 Telephone Company KanOkla Telephone Association, Inc. Siskiyou Telephone Company Uintah Basin Telecommunications Association, Inc. Vermont Telephone Company, Inc. Wheat State Telephone, Inc.	Artic Slope <i>et al.</i>
Association for Communications Technology Professionals in Higher Education	ACUTA
Association for Local Telecommunications Services	ALTS
Association of Public-Safety Communications Officials- International, Inc.	APCO
AT&T Corporation	AT&T
Attorney General of the State of New York	New York Attorney General
Avaya, Inc.	Avaya
BellSouth Corporation	BellSouth
Bend Broadband Cebridge Connections, Inc. Insight Communications Company, Inc. Susquehanna Communication	Bend Broadband <i>et al.</i>
Boulder Regional Emergency Telephone Service Authority	BRETSA
BT Americas Inc.	BTA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Cbeyond Communications, LLC GlobalCom, Inc. MPower Communications, Corp.	Cbeyond <i>et al.</i>
CenturyTel, Inc.	CenturyTel
Charter Communications	Charter
Cheyenne River Sioux Tribe Telephone Authority	Cheyenne Telephone Authority

Cisco Systems, Inc.	Cisco
Citizens Utility Board	CUB
City and County of San Francisco	San Francisco
City of New York	New York City
Comcast Corporation	Comcast
Communication Service for the Deaf, Inc.	CSD
Communications Workers of America	CWA
CompTel/ASCENT	CompTel
Computer & Communications Industry Association	CCIA
Computing Technology Industry Association	CompTIA
Consumer Electronics Association	CEA
Covad Communications	Covad
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Department of Homeland Security	DHS
DialPad Communication, Inc. ICG Communications, Inc. Qovia, Inc. VoicePulse, Inc.	Dialpad <i>et al.</i>
DJE Teleconsulting, LLC	DJE
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
EDUCAUSE	EDUCAUSE
Electronic Frontier Foundation	EFF
Enterprise Communications Association	ECA
Federation for Economically Rational Utility Policy	FERUP
Francois D. Menard	Menard
Frontier and Citizens Telephone Companies	Frontier/Citizens
General Communications, Inc.	GCI
Global Crossing North America, Inc.	Global Crossing
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
IEEE-USA	IEEE-USA
Illinois Commerce Commission	Illinois Commerce Commission
Inclusive Technologies	Inclusive Technologies
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	ITAA
Information Technology Industry Council	ITIC
Interstate Telecom Consulting, Inc.	ITCI
Ionary Consulting	Ionary
Iowa Utilities Board	Iowa Commission
King County E911 Program	King County
Level 3 Communications LLC	Level 3
Lucent Technologies Inc.	Lucent Technologies
Maine Public Utilities Commissioners	Maine Commissioners
MCI	MCI
Microsoft Corporation	Microsoft
Minnesota Public Utilities Commission	Minnesota Commission
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of Regulatory Utility Commission	NARUC

National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Consumers League	NCL
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
National Governors Association	NGA
National Grange	National Grange
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Board of Public Utilities	New Jersey Commission
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
NexVortex, Inc.	nexVortex
Nortel Networks	Nortel
Nuvio Corporation	Nuvio
Office of Advocacy, U.S. Small Business Administration	SBA
Office of the Attorney General of Texas	Texas Attorney General
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Ohio Public Utilities Commission	Ohio Commission
Omnitor	Omnitor
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
People of the State of California and the California Public Utilities Commission	California Commission
Public Service Commission of the State of Missouri	Missouri Commission
Pulver.com	pulver.com
Qwest Communications International Inc.	Qwest
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA



Rural Independent Competitive Alliance	RICA
SBC Communications, Inc.	SBC
Self Help for Hard of Hearing People	SHHHP
Skype, Inc.	Skype
Sonic.net, Inc.	Sonic.net
SPI Solutions, Inc.	SPI Solutions
Spokane County 911 Communications	Spokane County 911
Sprint Corporation	Sprint
TCA, Inc. – Telecom Consulting Associates	TCA
Telecommunications for the Deaf, Inc	TDI
Telecommunications Industry Association	TIA
Tellme Networks, Inc	Tellme Networks
Tennessee Regulatory Authority	TRA
Texas Coalition of Cities for Utility Issues	TCCFUI
Texas Commission on State Emergency Communications.	TCSEC
Texas Department of Information Resources	Texas DIR
Time Warner Inc.	Time Warner
Time Warner Telecom	TWTC
TracFone Wireless, Inc.	TracFone
UniPoint Enhanced Services Inc. d/b/a PointOne	PointOne
United States Conference of Catholic Bishops Alliance for Community Media Appalachian People’s Actions Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
United Telecom Council The United Power Line Council	UTC <i>et al.</i>
USA Datanet Corporation	USAD Datanet
Utah Division of Public Utilities	Utah Commission
Valor Telecommunications of Texas, L.P. and Iowa Telecommunications Services, Inc.	Valor <i>et al.</i>
VeriSign, Inc.	VeriSign
Verizon Telephone Company	Verizon
Vermont Public Service Board	Vermont
Virgin Mobile USA, LLC	Virgin Mobile
Virginia State Corporation Commission	Virginia Commission
Voice on the Net Coalition	VON Coalition
Vonage Holdings Corp	Vonage
Western Telecommunications Alliance	WTA
WilTel Communications, LLC	WilTel
Wisconsin Electric Power Company Wisconsin Gas	Wisconsin Electric <i>et al.</i>
Yellow Pages Integrated Media Association	YPIMA
Z-Tel Communications, Inc.	Z-Tel

## LIST OF REPLY COMMENTERS IN WC DOCKET NO. 04-36

<b>Reply Comments</b>	<b>Abbreviation</b>
8X8, Inc.	8X8
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturers Coalition
Ad Hoc Telecommunications Users Committee	Ad Hoc
Adam D. Thierer, Director of Telecommunications Studies, Cato Institute	Thierer
Alcatel North America	Alcatel
Alliance for Public Technology et al.	APT <i>et al.</i>
American Cable Association	ACA
American Electric Power Service Corporation Duke Energy Corporation Xcel Energy Inc.	American Electric Power <i>et al.</i>
Association for Local Telecommunications Services	ALTS
AT&T Corp.	AT&T
Avaya Inc.	Avaya
BellSouth Corporation	BellSouth
Broadband Service Providers Association	BSPA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Central Station Alarm Association	CSAA
Cingular Wireless LLC	Cingular
Cisco Systems, Inc.	Cisco
City and County of San Francisco	San Francisco
Comcast Corporation	Comcast
CompTel/Ascent	CompTel
Consumer Electronics Association	CEA
Consumer Federation of America Consumers Union	CFA <i>et al.</i>
Covad Communications	Covad
CTC Communications Corp.	CTS
CTIA-The Wireless Association	CTIA
Department of Defense	DoD
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
Educause	Educause
Enterprise Communications Association	ECA
Ericsson Inc.	Ericsson
Florida Public Service Commission	Florida Commission
Francois D. Menard	Menard
General Communication (GCI)	GCI
Global Crossing North America, Inc.	Global Crossing
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	Information Technology Association of America
Intergovernmental Advisory Committee	IAC
Intrado Inc.	Intrado
Knology, Inc.	Knology
Level 3 Communications LLC	Level 3
Massachusetts Office of the Attorney General	Massachusetts Attorney General

MCI	MCI
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
Nextel Communications, Inc.	Nextel
Nuvio Corporation	Nuvio
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
Pennsylvania Public Utility Commission	Pennsylvania Commission
Public Service Commission of Wisconsin	Wisconsin Commission
Qwest Communications International Inc.	Qwest
Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University	Mercatus Center
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
RNKL, Inc. d/b/a RNK Telecom	RNK
Rural Independent Competitive Alliance	RICA
SBC Communications Inc.	SBC
Skype, Inc.	Skype
Southern Communications Services, Inc. d/b/a Southern LINC	Southern LINC
Sprint Corporation	Sprint
Telecommunications Industry Association	TIA

Tellme Networks, Inc	Tellme Networks
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Telephone Cooperative
Time Warner Telecom, Inc.	Time Warner Telecom
T-Mobile USA, Inc.	T-Mobile
TracFone Wireless, Inc.	TracFone
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
USA Datanet Corporation	USA Datanet
Utah Division of Public Utilities	Utah Commission
VeriSign, Inc.	VeriSign
Verizon Telephone Companies	Verizon
Voice on the Net Coalition	VON Coalition
Wisconsin Department of Public Instruction	Wisconsin Department of Public Instruction

APPENDIX C

PROPOSED REVISED FORM 499-A

**2006 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting Calendar 2005 Revenues)**

Approval by OMB  
3060-0855

Revised >>> Please read instructions before completing. <<<

Annual Filing -- due April 1, 2006

**Block 1: Contributor Identification Information**

During the year, filers must refile Blocks 1, 2 and 6 if there are any changes in Lines 104 or 112. See Instructions.

101 Filer 499 ID [If you don't know your number, contact the administrator at (888) 641-8722.

If you are a new filer, write "new" in this block and a Filer 499 ID will be assigned to you.]

102 Legal name of reporting entity

103 IRS employer identification number

[Enter 9 digit number]

104 Name telecommunications provider is doing business as

105 Telecommunications activities of filer [Select up to 5 boxes that best describe the reporting entity. Enter numbers starting with "1" to show the order of importance -- see directions.]

- |  |  |  |  |
|--|--|--|--|
| <input type="checkbox"/> All Distance                                  | <input type="checkbox"/> CAP/CLEC                  | <input type="checkbox"/> Cellular/PCS/SMR (wireless telephony incl. by resale) | <input type="checkbox"/> Coaxial Cable                   |
| <input type="checkbox"/> Incumbent LEC                                 | <input type="checkbox"/> Interconnected VoIP       | <input type="checkbox"/> Interexchange Carrier (IXC)                           | <input type="checkbox"/> Operator Service Provider (OSP) |
| <input type="checkbox"/> Paging & Messaging                            | <input type="checkbox"/> Payphone Service Provider | <input type="checkbox"/> Prepaid Card  | <input type="checkbox"/> Satellite Service Provider      |
| <input type="checkbox"/> Shared-Tenant Service Provider / Building LEC | <input type="checkbox"/> SMR (dispatch)            | <input type="checkbox"/> Toll Reseller   | <input type="checkbox"/> Wireless Data                   |

If Other Local, Other Mobile or Other Toll is checked, describe carrier type / services provided:  Other Local  Other Mobile  Other Toll

106.1 Holding company name (All affiliated companies must show the same name on this line.)

106.2 Holding company IRS employer identification number

[Enter 9 digit number]

107 FCC Registration Number (FRN) [ https://svartifoss2.fcc.gov/cores/CoresHome.html ]  
[For assistance, contact the CORES help desk at 877-480-3201 or CORES@fcc.gov]

[Enter 10 digit number]

108 Management company [if filer is managed by another entity]

109 Complete mailing address of reporting entity corporate headquarters

Note: this address will be used for the ITSP FCC regulatory fee billings unless the appropriate box is checked on Line 208.

Street1  
Street 2  
Street 3  
City State Zip (postal code) Country if not USA

110 Complete business address for customer inquiries and complaints

check if same address as Line 109

Street1  
Street 2  
Street 3  
City State Zip (postal code) Country if not USA

111 Telephone number for customer complaints and inquiries [Toll-free number if available]

( ) - ext -

112 List all trade names used in the past 3 years in providing telecommunications. Include all names by which you are known by customers.

a		g	
b		h	
c		i	
d		j	
e		k	
f		l	

Use an additional sheet if necessary. Each reporting entity must provide all names used for telecommunications activities.

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

**Block 2-A: Regulatory Contact Information**

201 Filer 499 ID [from Line 101]	
202 Legal name of reporting entity [from Line 102]	
203 Person who completed this Worksheet	First MI Last
204 Telephone number of this person	( ) - ext -
205 Fax number of this person	( ) -
206 Email of this person    Required if available	
207 Corporate office, attn. name, and mailing address to which future Telecommunications Reporting Worksheets should be sent check if same name as Line 203 <input type="checkbox"/> check if same address as Line 109 <input type="checkbox"/>	Office Attn First name MI Last Email   required if available   Phone ( ) - ext- Fax ( ) - Street1 Street 2 Street 3 City State Zip (postal code) Country if not USA
208 Billing address and billing contact person: [Plan administrators will send bills for contributions to this address. Please attach a written request for alternative billing arrangements. ] check if name and address same as Line 207 <input type="checkbox"/> check to use Line 208 information for FCC ITSP regulatory fee bill <input type="checkbox"/>	Company Attn First name MI Last Email   required if available   Phone ( ) - ext- Fax ( ) - Street1 Street 2 Street 3 City State Zip (postal code) Country if not USA

**Block 2-B: Agent for Service of Process**

All carriers and providers of interconnected VoIP must complete Lines 209 through 213. During the year, carriers and providers of interconnected VoIP must refile Blocks 1, 2 and 6 if there are any changes in this section. See Instructions.

209 D.C. Agent for Service of Process per 47 U.S.C. § 413	Company Attn First name MI Last
210 Telephone number of D.C. agent	( ) - ext -
211 Fax number of D.C. agent	( ) -
212 Email of D.C. agent    Required if available	
213 Complete business address of D.C. agent for hand service of documents	Street1 Street 2 Street 3 City State DC Zip
214 Local/alternate Agent for Service of Process (optional)	Company Attn First name MI Last
215 Telephone number of local/alternate agent	( ) - ext -
216 Fax number of local/alternate agent	( ) -
217 Email of local/alternate agent    Required if available	
218 Complete business address of local/alternate agent for hand service of documents	Street1 Street 2 Street 3 City State Zip (postal code) Country if not USA

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

**Block 2-C: FCC Registration and Contact Information**

Filers must refile Blocks 1, 2 and 6 if there are any changes in this section. See Instructions.

219 Filer 499 ID [from Line 101]	
220 Legal name of reporting entity [from Line 102]	
221 Chief Executive Officer (or, highest ranking company officer if the filing entity does not have a chief executive officer)	First MI Last
222 Business address of individual named on Line 221 check if same as Line 109 <input type="checkbox"/>	Street1 Street 2 Street 3 City State Zip (postal code) Country if not USA
223 Second ranking company officer, such as Chairman (Must be someone other than the individual listed on Line 221)	First MI Last
224 Business address of individual named on Line 223 check if same as Line 109 <input type="checkbox"/>	Street1 Street 2 Street 3 City State Zip (postal code) Country if not USA
225 Third ranking company officer, such as President or Secretary (Must be someone other than individuals listed on Lines 221 or 223)	First MI Last
226 Business address of individual named on Line 225 check if same as Line 109 <input type="checkbox"/>	Street1 Street 2 Street 3 City State Zip (postal code) Country if not USA

227 Indicate jurisdictions in which the filing entity provides service. Include jurisdictions in which service was provided in the past 15 months and jurisdictions in which service is likely to be provided in the next 12 months.

- |   |   |  |   |  |
|---|---|--|---|--|
| <input type="checkbox"/> Alabama              | <input type="checkbox"/> Guam           | <input type="checkbox"/> Massachusetts | <input type="checkbox"/> New York                 | <input type="checkbox"/> Tennessee           |
| <input type="checkbox"/> Alaska               | <input type="checkbox"/> Hawaii         | <input type="checkbox"/> Michigan      | <input type="checkbox"/> North Carolina           | <input type="checkbox"/> Texas               |
| <input type="checkbox"/> American Samoa       | <input type="checkbox"/> Idaho          | <input type="checkbox"/> Midway Atoll  | <input type="checkbox"/> North Dakota             | <input type="checkbox"/> Utah                |
| <input type="checkbox"/> Arizona              | <input type="checkbox"/> Illinois       | <input type="checkbox"/> Minnesota     | <input type="checkbox"/> Northern Mariana Islands | <input type="checkbox"/> U.S. Virgin Islands |
| <input type="checkbox"/> Arkansas             | <input type="checkbox"/> Indiana        | <input type="checkbox"/> Mississippi   | <input type="checkbox"/> Ohio                     | <input type="checkbox"/> Vermont             |
| <input type="checkbox"/> California           | <input type="checkbox"/> Iowa           | <input type="checkbox"/> Missouri      | <input type="checkbox"/> Oklahoma                 | <input type="checkbox"/> Virginia            |
| <input type="checkbox"/> Colorado             | <input type="checkbox"/> Johnston Atoll | <input type="checkbox"/> Montana       | <input type="checkbox"/> Oregon                   | <input type="checkbox"/> Wake Island         |
| <input type="checkbox"/> Connecticut          | <input type="checkbox"/> Kansas         | <input type="checkbox"/> Nebraska      | <input type="checkbox"/> Pennsylvania             | <input type="checkbox"/> Washington          |
| <input type="checkbox"/> Delaware             | <input type="checkbox"/> Kentucky       | <input type="checkbox"/> Nevada        | <input type="checkbox"/> Puerto Rico              | <input type="checkbox"/> West Virginia       |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Louisiana      | <input type="checkbox"/> New Hampshire | <input type="checkbox"/> Rhode Island             | <input type="checkbox"/> Wisconsin           |
| <input type="checkbox"/> Florida              | <input type="checkbox"/> Maine          | <input type="checkbox"/> New Jersey    | <input type="checkbox"/> South Carolina           | <input type="checkbox"/> Wyoming             |
| <input type="checkbox"/> Georgia              | <input type="checkbox"/> Maryland       | <input type="checkbox"/> New Mexico    | <input type="checkbox"/> South Dakota             |  |

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Save time, avoid problems -- file electronically at

<http://forms.universalservice.org>

FCC Form 499-A (revised)

August 2006



**Block 3: Carrier's Carrier Revenue Information**

301 Filer 499 ID [from Line 101]					
302 Legal name of reporting entity [from Line 102]					
Report billed revenues for January 1 through December 31, 2005. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars.  See instructions regarding percent interstate & international.	Total Revenues  (a)	If breakouts are not book amounts, enter whole percentage estimates Interstate (b) International (c)		Breakouts Interstate Revenues (d) International Revenues (e)	
<b>Revenues from Services Provided for Resale as Telecommunications by Other Contributors to Federal Universal Service Support Mechanisms</b>					
<i>Fixed local service</i>					
Monthly service, local calling, connection charges, vertical features, and other local exchange service including subscriber line and PICC charges to IXCs					
303.1 Provided as unbundled network elements (UNEs)					
303.2 Provided under other arrangements					
Per-minute charges for originating or terminating calls					
304.1 Provided under state or federal access tariff					
304.2 Provided as unbundled network elements or other contract arrangement					
Local private line & special access service					
305.1 Provided to other contributors for resale as telecommunications					
305.2 Provided to other contributors for resale as interconnected VoIP					
306 Payphone compensation from toll carriers					
307 Other local telecommunications service revenues					
308 Universal service support revenues received from Federal or state sources					
<i>Mobile services (including wireless telephony, paging &amp; messaging, and other mobile services)</i>					
309 Monthly, activation, and message charges except toll					
<i>Toll services</i>					
310 Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.)					
311 Ordinary long distance (direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)					
312 Long distance private line services					
313 Satellite services					
314 All other long distance services					

**Note: As stated in the instructions, for all revenues reported on this page, you must retain the Filer 499 ID and contact information for the associated customers. You must verify that each of these customers was a direct contributor to the federal universal service support mechanism for calendar year 2005 and that the customer is purchasing service for resale as telecommunications. These records must be made available to the administrator or the FCC upon request. The FCC website contains information on federal universal service contributors. (See instructions.)**

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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FCC Form 499-A (revised) August 2006

**Block 4-A: End-User and Non-Telecommunications Revenue Information**

401 Filer 499 ID [from Line 101]

402 Legal name of reporting entity [from Line 102]

Report billed revenues for January 1 through December 31, 2005.  
Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate & international.

	Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	
		Interstate (b)	International (c)	Interstate Revenues (d)	International Revenues (e)

**Revenues from All Other Sources (end-user telecom. & non-telecom.)**

403 Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions

Fixed local services

Monthly service, local calling, connection charges, vertical features, and other local exchange service charges except for federally tariffed subscriber line charges and PICC charges

traditional circuit switched

404.1 Provided at a flat rate including interstate toll service

404.2 Provided without interstate toll included (see instructions)

Interconnected VoIP

404.3 Offered in conjunction with a broadband connection

404.4 Offered independent of a broadband connection

405 Tariffed subscriber line charges and PICC charges levied by a local exchange carrier on a no-PIC customer

406 Local private line & special access service

407 Payphone coin revenues (local and long distance)

408 Other local telecommunications service revenues

Mobile services (including wireless telephony, paging & messaging, and other mobile services)

409 Monthly and activation charges

410 Message charges including roaming and air-time charges for toll calls, but excluding separately stated toll charges

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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<http://forms.universalservice.org>

FCC Form 499-A (revised)  
August 2006

Block 4-A: Continued

	Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	
		Interstate	International	Interstate Revenues (d)	International Revenues (e)
<i>Toll services</i>					
411	Prepaid calling card (including card sales to customers and non-carrier distributors) reported at face value of cards				
412	International calls that both originate and terminate in foreign points	0%	100%		
413	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.) other than revenues reported on Line 412				
	Ordinary long distance (direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, interconnected VoIP, and other switched services not reported above)				
414.1	All, other than interconnected VoIP, including, but not limited to, itemized toll on wireline and wireless bills				
414.2	All interconnected VoIP long distance, including: separately stated toll; an allocation of the monthly service plan charges; and, any other interconnected VoIP long distance revenue				
415	Long distance private line services				
416	Satellite services				
417	All other long distance services				
	Revenues other than U.S. telecommunications revenues, including information services, inside wiring maintenance, billing and collection customer premises equipment, published directory, dark fiber, Internet access, cable TV program transmission, foreign carrier operations, and non-telecommunications revenues (See instructions.)				
418.1	Other than bundled with interconnected VoIP local exchange service				
418.2	Bundled with interconnected VoIP local exchange service				

Block 4-B: Total Revenue and Uncollectible Revenue Information

419	Gross billed revenues from all sources (incl. reseller & non-telecom.) [Lines 303 through 314 plus Lines 403 through 418]				
420	Gross universal service contribution base amounts [Lines 403 through 411 Lines 413 through 417] See Figure 4 in instructions.				
421	Uncollectible revenue/bad debt expense associated with gross billed revenues amounts shown on Line 419 [See Instructions Page 26]				
422	Uncollectible revenue/bad debt expense associated with universal service contribution base amounts shown on Line 420				
423	Net universal service contribution base revenues [Line 420 minus line 422]				

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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FCC Form 499-A (revised) August 2006

**Block 5: Additional Revenue Breakouts**

501 Filer 499 ID [from Line 101]

502 Legal name of reporting entity [from Line 102]

Filers that report revenues in Block 3 and Block 4 must provide the percentages requested in Lines 503 through 510. See page 27 of instructions for limited exceptions.

Percentage of revenues reported in Block 3 and Block 4 billed in each region of the country. Round or estimate to nearest whole percentage. Enter 0 if no service was provided in the region.

		Block 3 Carrier's Carrier (a)	Block 4 End-User Telecom. (b)
503	Southeast: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	%	%
504	Western: Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming	%	%
505	West Coast: California, Hawaii, Nevada, American Samoa, Guam, Johnston Atoll, Midway Atoll, Northern Mariana Islands, and Wake Island.	%	%
506	Mid-Atlantic: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia	%	%
507	Mid-West: Illinois, Indiana, Michigan, Ohio, and Wisconsin	%	%
508	Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont	%	%
509	Southwest: Arkansas, Kansas, Missouri, Oklahoma, and Texas	%	%
510	Total [Percentages must add to 0 or 100.]	%	%

511 Revenues from resellers that do not contribute to Universal Service support mechanisms are included in Block 4-B, Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues below. **As stated in the instructions, you must have in your records the FCC Filer 499 ID for each customer whose revenues are included on Line 511. (See instructions.)**

		(a)	(b)
		Total Revenues	Interstate and International
Revenues from resellers that do not contribute to Universal Service	\$		\$

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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FCC Form 499-A (revised)  
August 2006

**Block 6: CERTIFICATION: to be signed by an officer of the filer**

601 Filer 499 ID [from Line 101]

602 Legal name of reporting entity [from Line 102]

Section IV of the instructions provides information on which types of reporting entities are required to file for which purposes. Any entity claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which entities meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify, below.]

603 I certify that the reporting entity is exempt from contributing to: Universal Service  TRS  NANPA  LNP Administration

Provide explanation below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

604 Please indicate whether the reporting entity is State or Local Government Entity  I.R.C. § 501 Tax Exempt  PUHCA § 34 (a)(1) Exempt

605 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.

I certify that I am an officer of the above-named reporting entity as defined on page 28 of the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named reporting entity is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in Section II-B of the instructions.

606 Signature

607 Printed name of officer

First MI Last

608 Position with reporting entity

609 Business telephone number of officer

( ) - ext -

610 Email of officer || Required if available ||

611 Date

612 Check those that apply:  Original April 1 filing for year  New filer, registration only  Revised filing with updated registration  Revised filing with updated revenue data

Do not mail checks with this form. Send this form to: **Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036**  
 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet information: (888) 641-8722 or via email: Form499@universalservice.org

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

## **Telecommunications Reporting Worksheet, FCC Revised Form 499-A (2006)**

### **Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms**

\* \* \* \* \*

NOTICE: Section 52.17 of the Federal Communications Commission's rules provides that all telecommunications carriers in the United States shall contribute on a competitively neutral basis to meet the costs of establishing numbering administration, and directs that contributions shall be calculated and paid in accordance with this Telecommunications Reporting Worksheet (FCC Form 499-A or Worksheet). 47 C.F.R. § 52.17. Section 52.32 provides that the local number portability administrators shall recover the shared costs of long-term number portability from all telecommunications carriers. 47 C.F.R. § 52.32. Sections 54.706, 54.711, and 54.713 require all telecommunications carriers providing interstate telecommunications services, interconnected voice-over-Internet-protocol (VoIP) providers, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Worksheet once a year and the Telecommunications Reporting Worksheet (FCC Form 499-Q) four times a year. 47 C.F.R. §§ 54.706, 54.711, 54.713. Section 64.604 requires that every common carrier providing interstate telecommunications services contribute to the Telecommunications Relay Services (TRS) Fund on the basis of its relative share of interstate end-user telecommunications revenues, with the calculation based on information provided in this Worksheet. 47 C.F.R. § 64.604(c)(5)(iii)(B). Section 64.1195 requires all telecommunications carriers to register using the FCC Form 499-A. 47 C.F.R. § 64.1195(a).

This collection of information stems from the Commission's authority under Sections 151(i), 225, 251, 254, and 258 of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. §§ 151(i), 225, 251, 254, and 258. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms, the telecommunications relay services support mechanism, the cost recovery mechanism for numbering administration, and the cost recovery mechanism for shared costs of long-term number portability. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 13.5 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERMS, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov). Please DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of

Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act to collect the information we request on this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of sections 1.47, 52.17, 52.32, 54.713, 64.604, and 64.1195 of the Commission’s rules. 47 C.F.R. §§ 1.47, 52.17, 52.32, 54.713, 64.604, and 64.1195.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

\* \* \* \* \*

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File FCC Form 499-A online. See: <http://forms.universalservice.org>

## I. Introduction

As required under the Communications Act,<sup>1</sup> the Commission has established, in a series of separate proceedings, procedures to finance interstate telecommunications relay services (TRS), universal service support mechanisms, administration of the North American Numbering Plan (NANPA), and shared costs of local number portability administration (LNPA). To accomplish these congressionally directed objectives, contributions are collected from all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications (including interconnected VoIP providers). On July 14, 1999, the Commission amended its rules so that contributors to these mechanisms need only file one Telecommunications Reporting Worksheet (Worksheet) for the purpose of determining their contribution(s).<sup>2</sup> This Worksheet sets forth the information that the filer must submit, so that the administrators of these mechanisms may calculate and assess contributions.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. §§ 151, 225, 251, 254.

<sup>2</sup> On March 9, 2001, the Commission modified its rules to base universal service contributions on information reported on quarterly Telecommunications Reporting Worksheet filings, with an annual true-up based on information reported on annual Telecommunications Reporting Worksheets. *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T, Report and Order and Order on Reconsideration*, CC Docket No. 96-45, 16 FCC Rcd 5748 (2001) (*Quarterly Reporting Order*). See also *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*, Report and Order, CC Docket 98-171, 14 FCC Rcd 16602 (1999) (*Consolidated Reporting Order*).

<sup>3</sup> In addition, common carriers use data filed on the Form 499-A to calculate their Interstate Telecommunications Service Provider (ITSP) fees. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03-83, Report and Order, 18 FCC Rcd 15985 (2000). Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993 (Public



While some entities that file the Telecommunications Reporting Worksheet may not need to contribute to each of the support and cost recovery mechanisms, in general, all telecommunications carriers and certain additional telecommunications providers must complete and file this Worksheet.<sup>4</sup> These instructions contain an explanation of which filers must contribute to particular mechanisms (*see* Section IV-A.), but filers should consult the specific rules that govern contributions for each of the mechanisms.<sup>5</sup> In general, contributions are calculated based on contributors' end-user telecommunications revenue information, as filed in this Worksheet.

By filing this Worksheet, filers may also satisfy their obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process<sup>6</sup> and their obligations to register with the Federal Communications Commission.<sup>7</sup>

## II. Filing Requirements and General Instructions

### A. Who Must File

All intrastate, interstate and international providers of telecommunications within the United States,<sup>8</sup> with very limited exceptions, must file the FCC Form 499-A Telecommunications Reporting Worksheet.<sup>9</sup>

For purposes of determining whether an entity provides telecommunications, please note that the term "telecommunications" means 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. For the purpose of

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Law 103-66) added Section 9(a) to the Communications Act, which authorizes the Commission to collect annual regulatory fees to recover the annual costs of its enforcement, policy and rulemaking, user information, and international activities. 47 U.S.C. § 159(a), (b)(1)(A), and (g).

<sup>4</sup> Please note that this Worksheet refers to "filers," "reporting entities," and "contributors" interchangeably, except where specifically distinguished.

<sup>5</sup> *See* 47 C.F.R. §§ 52.17 (numbering administration), 52.32 (local number portability), 54.706 (universal service), and 64.604 (TRS).

<sup>6</sup> 47 U.S.C. § 413. *See also* 47 C.F.R. § 1.47.

<sup>7</sup> 47 C.F.R. § 64.1195.

<sup>8</sup> For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

<sup>9</sup> Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications services" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). For more information on these terms, *see* 47 U.S.C. §§ 153(43), (46); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *See Universal Service Contribution Methodology; 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, Truth-in-Billing and Billing Format*, WC Docket No. 06-122, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking and Report and Order, FCC 06-94 (adopted June 21, 2006) (*2006 Contribution Methodology Reform Order*).

filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; frame relay and ATM services; and interconnected VoIP services. Note, for example, that all incumbent and competitive local exchange carriers provide access services and, therefore, provide interstate telecommunications. There are no exemptions for data or non-voice services.

Note also that entities must file this Worksheet, and are subject to the universal service contribution requirement, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services. Included are entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file this Worksheet. Most telecommunications carriers and all interconnected VoIP providers must file this Worksheet even if they qualify for the *de minimis* exemption under the Commission's rules for universal service.<sup>10</sup>

Marketing agents (i.e., entities that market services on behalf of a telecommunications provider) are not themselves telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from underlying carrier revenues. A reseller is not a marketing agent.

The following three sections list types of (non-common carrier) telecommunications providers that are not required to file the FCC Form 499-A Worksheet. Note that some carriers and telecommunications providers are required to file this Worksheet, but may not be required to contribute to all support mechanisms. For example, some carriers may be exempt from contributing directly to the universal service support mechanisms (e.g., because they are *de minimis*), but nevertheless must file because they are required to contribute to TRS, NANPA, or LNPA. These non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.

1. Universal service exemption for *de minimis* telecommunications providers

Section 54.708 of the Commission's rules states that telecommunications carriers and telecommunications providers are not required to contribute to the universal service support mechanisms for a given year if their contribution for that year is less than \$10,000.<sup>11</sup> Thus, except as provided below, providers that offer telecommunications for a fee exclusively on a non-common carrier basis need not file this Worksheet if their contribution to the universal service support mechanisms would be *de minimis* under the universal service rules. Note: Entities that provide solely private line service may nevertheless be considered common carriers if they offer their services directly to the public or to such classes of users as to be effectively available directly to the public. In contrast, telecommunications carriers (i.e., entities providing telecommunications services on a common-carriage basis) that meet the *de minimis* standard must file this Worksheet (because they must contribute to other support and cost recovery mechanisms), but need not contribute to the universal service mechanisms. Regardless, interconnected VoIP providers that meet the *de minimis* standard also must file this Worksheet (but need not submit Form 499-Q). (See Figure 3 "Which telecommunications carriers and telecommunications providers must contribute for which purposes" at page 32, below.)

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<sup>10</sup> See 47 C.F.R. § 54.708.

<sup>11</sup> *Id.*

Telecommunications providers providing telecommunications on a non-common carrier basis and interconnected VoIP providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. To complete Figure 1, potential filers must first complete Block 4 of the Telecommunications Reporting Worksheet and enter the amounts from Line 423(d) and 423(e) in Figure 1. Telecommunications providers whose estimated contributions to universal service support mechanisms would be less than \$10,000 are considered *de minimis* for universal service contribution purposes and will not be required to contribute directly to universal service support mechanisms. Use Figure 1 to calculate estimated universal service contributions for the period January 2005 through December 2005.

Note: For an interconnected VoIP provider that is filing this form as its initial 2006 filing for registration in response to the Commission's *2006 Contribution Methodology Reform Order*, the *de minimis* threshold for the fourth quarter of 2006 is \$2500 (one quarter of the annual *de minimis* exception).<sup>12</sup>

Telecommunications providers that do not file this Worksheet because they are *de minimis* for purposes of universal service contributions (and need not file for any other purpose) should retain Figure 1 and documentation of their contribution base revenues for 3 calendar years after the date each Worksheet is due. Interconnected VoIP providers who are *de minimis* must file this Worksheet and retain Figure 1 and documentation of their contribution base revenues for 3 calendar years after the date each Worksheet is due.

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<sup>12</sup> See *2006 Contribution Methodology Reform Order* at n.203.

**Figure 1: Table to determine if a filer meets the *de minimis* standard for purposes of universal service contribution**

1	Net interstate contribution base for filer (amount reportable on filer's FCC Form 499-A; Line 423(d))	\$
2	Net international contribution base for filer (amount reportable on filer's FCC Form 499-A; Line 423(e))	\$
3	Net interstate contribution base for all affiliates* (total of amounts reportable on FCC Form 499-A; Line 423(d) for all affiliates of the filer)	\$
4	Net international contribution base for all affiliates (total of amounts reportable on FCC Form 499-A; Line 423(e) for all affiliates of the filer)	\$
5	Consolidated interstate contribution base: Line (1) + Line (3)	\$
6	Consolidated international contribution base: Line (2) + Line (4)	\$
7	Total potential contribution base for filer and its affiliates: Line (5) + Line (6)	\$
8	Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7)	%
9	Interstate contribution base for filer from Line (1)	\$
10	If the amount on line (8) is equal to or greater than 12%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 12%, enter \$0	\$
11	Contribution base for the filer for determining contributions to universal service support mechanisms: Line (9) + Line (10)	\$
12	Estimation factor for determining whether to file a FCC Form 499-A on April 1, 2006	0.104**
13	Estimated annual contribution: amount on Line (11) multiplied by Line (12)	\$

\* Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term 'owns' means to own an equity interest (or the equivalent thereof) of more than 10 percent. See 47 U.S.C. § 153(1).

\*\* The estimation factor is based on a contribution factor of .115, which is higher than the contribution factor announced for the first quarter of 2006, and a corresponding circularity factor of 0.102213. Actual contribution and circularity factors for 2006 may increase or decrease depending on quarterly changes in program costs and the projected contribution base. Filers whose actual contribution requirements total less than \$10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total \$10,000 or more are required to contribute to the universal service support mechanisms. Note that telecommunications carriers and interconnected VoIP providers must file this Worksheet regardless of whether they qualify for the *de minimis* exemption. Telecommunications carriers may qualify for one of the exemptions to filing detailed in Sections II-A-2 or II-A-3, below.

2. Exception for government, broadcasters, schools and libraries

Certain entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves (e.g., state networks for schools and libraries) are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the Worksheet or contribute directly to universal service. As explained above, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.

3. Exception for systems integrators and self-providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products. Entities that provide services only to themselves or to commonly-owned affiliates need not file.

B. Filing by Legal Entity

Each legal entity that provides interstate telecommunications service for a fee or that provides interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must complete separately and file a copy of the attached Telecommunications Reporting Worksheet, except as provided for below. Entities that have distinct articles of incorporation, articles of formation, or similar legal document are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1 Line 106 -- Holding Company.

Consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:<sup>13</sup>

- (1) A single entity oversees the management of the affiliated systems;
- (2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
- (3) All revenues are posted to a single general ledger;<sup>14</sup>
- (4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the

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<sup>13</sup> *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, Truth-in-Billing and Billing Format, Further Notice of Proposed Rulemaking and Report and Order, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 17 FCC Rcd 3752 (2002) (First Further Notice).*

<sup>14</sup> The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

- consolidated books;
- (5) Customers have a single point of contact;
  - (6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
  - (7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;<sup>15</sup>
  - (8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
  - (9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
  - (10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.<sup>16</sup>

Each year, entities choosing to file on a consolidated basis must file a statement certifying that they meet all of the above conditions. Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the FCC Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent. Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

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<sup>15</sup> A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entities that also are not subject to the slamming regulations.

<sup>16</sup> For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

C. When and Where to File

Figure 2 provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in Section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day.

**Figure 2: Filing schedule**

When to file	What to file	Where to file *
April 1	Annual Completed FCC Form 499-A	<b>Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036</b>
February 1 May 1 August 1 November 1	Completed FCC Form 499-Q (universal service contributors only)	Form 499 Data Collection Agent (address above)
New telecommunications carriers and other providers of telecommunications; filers with changed registration information	Completed Pages 1, 2, 3 and 8 of FCC Form 499-A	Form 499 Data Collection Agent (address above)**
Telecommunications carriers within one week of a change in information concerning their designated agent for service of process	Completed Page 1, Block 2-B and Page 8 of FCC Form 499-A	One Copy to: Chief, Market Disputes Resolution Division, Enforcement Bureau Room 5-A865 445 12th Street, S.W. Washington, D.C. 20554
Telecommunications carriers and other providers of telecommunications within one week of a change in other registration information	Appropriate revised Blocks and completed Page 8 of FCC Form 499-A	Form 499 Data Collection Agent (address above) **
<p>* Do not send universal service, TRS, NANPA or LNPA contributions with this Worksheet or to any of these addresses. The appropriate administrators will calculate the amount of contribution due and send a bill to the billing contact person and billing address identified on line 208 of the FCC Form 499-A. <b>For information on filing electronically</b>, go to: <a href="http://forms.universalservice.org">http://forms.universalservice.org</a></p> <p>** Filers may instead, send new carrier filings and corrected filings to the Office of the Secretary, Reference Information Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. <b>Annual and quarterly filings should not be sent to the Office of the Secretary or any other FCC address.</b></p>		

If you have questions about the Worksheet or the instructions, you may contact:

Form 499 Telecommunications Reporting Worksheet Information	Form499@universalservice.org (888) 641-8722
Wireline Competition Bureau Industry Analysis and Technology Division	(202) 418-0940
TTY	(202) 418-0484

If you have questions regarding contribution amounts, billing procedures or the support and cost recovery mechanisms, you may contact:

Universal Service Administration	(888) 641-8722
TRS Administration	(973) 884-8173
NANPA Billing and Collection Agent	(613) 236-9191
Local Number Portability Administrators	(877) 245-5277

D. Rounding of Numbers and Negative Numbers

All information provided in the Worksheet should be neatly printed in ink or typed. Please provide an original officer signature in ink on Line 606.

Dollar Amounts. Reported revenues in Blocks 3, 4 and 5 that are greater than a thousand dollars may be rounded to the nearest thousand dollars. Regardless of rounding, **all dollar amounts must be reported in whole dollars.** For example, \$2,271,881.93 could be reported as \$2,271,882 or as \$2,272,000, but could not be reported as \$2272 thousand, \$2,270,000.00, \$2,271,881.93, or \$2.272 million. Please enter \$0 in any line for which the filer had no revenues for the year.

Percentages. Percentages reported in Block 3 and Block 4, columns (b) and (c), should be rounded to the nearest whole percent. For example, if the exact amount of interstate revenues for a line is not known, but the filer estimates that the ratio of interstate to total revenues was .425, then the figure 43% should be reported and used for calculating the amount reported in column (b).

Negative Numbers. Filers are directed to provide billed revenues without subtracting any expenses, allowances for uncollectibles or settlement payments and without making out-of-period adjustments. Therefore, do not enter negative numbers on any billed revenue lines on the Worksheet. See instructions for Lines 421 and 422 regarding negative uncollectibles.

E. Obligation to File Revisions

Line 612 provides check boxes to show whether the Worksheet is the original April 1 filing for the year, a registration form for a new filer, a revised filing with updated registration information, or a revised filing with updated revenue data for the year. Filers must submit a revised Form 499-A if there is a change in any of the following types of information: Contributor identification contained in Block 1; regulatory contact information contained in Block 2-A; agent for service of process in Block 2-B; or FCC registration information in Block 2-C.

A filer must submit a revised Worksheet if it discovers an error in the revenue data that it reports. Companies generally close their books for financial purposes by the end of March. Accordingly, for such telecommunications providers, the April filing should be based on closed books. In filing a revised Worksheet, filers should not include (carry back or bring forward) routine out-of-period adjustments to revenue data unless such adjustments would affect a reported amount by more than ten percent. To file revised revenue data, filers must complete Block 3, Block 4, Block 5, and Block 6.



Filers should not file revised revenue information to reflect mergers, acquisitions, or sales of operating units. In the event that a filer that submitted a Form 499-A no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent. If the operations of an entity ceased during the previous calendar year and are now part of a successor, the successor must include the previous calendar year revenues of the now-defunct entity with its own Worksheet. Otherwise, the defunct entity must file its own Worksheet. The entity that ceased operations may owe additional universal service contributions or may be due refunds, depending on how its FCC Form 499-A Worksheet compares to previously filed FCC Form 499-Q Worksheets. Such entities are not liable for TRS, LNP or NANPA contributions for the upcoming year. Check the appropriate boxes on Line 603 and write "Not in business as of filing date" on the explanation line.

Filers shall submit any revised FCC Form 499-A Worksheet that would result in decreased contributions by March 31 of the year after the original filing due date.<sup>17</sup>

F. Record Keeping

Filers shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for three years. Filers shall provide such records and documentation to the Commission or the Administrator upon request.<sup>18</sup> Entities that acquire carrier operations through acquisition of property, consolidation, merger, etc, must maintain the records of the acquired entity.<sup>19</sup>

G. Compliance

Failure to file the Telecommunications Reporting Worksheet or to pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.<sup>20</sup> In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.<sup>21</sup> Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.<sup>22</sup>

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<sup>17</sup> 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 Mechanism; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, Order, DA 04-3669 (rel. Dec. 9, 2004), applications for review pending.

<sup>18</sup> See 47 C.F.R. § 54.711. Administrator refers to the Universal Service Administrative Company.

<sup>19</sup> See 47 C.F.R. § 42.1.

<sup>20</sup> In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. See 47 C.F.R. § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, 19 FCC Rcd 640 (2004).

<sup>21</sup> See 47 C.F.R. § 54.713 (universal service); 47 C.F.R. § 64.604(c)(5)(iii)(B) (TRS). See also 47 C.F.R. § 52.17(b) (NANPA); 47 C.F.R. § 52.32(c) (LNPA).

<sup>22</sup> See 47 C.F.R. § 54.711.

### III. Specific Instructions

#### A. Block 1: Filer Identification Information

Block 1 of the Telecommunications Reporting Worksheet requires identification information.

Line 101 -- enter the "Filer 499 ID" number for the filing entity. This code is assigned by the Commission's Data Collection Agent after a company files its first FCC Form 499. Filer 499 IDs for current filers can be found at <http://gullfoss2.fcc.gov/cib/form499/499a.cfm> or in the FCC report *Telecommunications Provider Locator*, which is available on the Commission's web site at <http://www.fcc.gov/wcb/iatd/stats.html>. This code should be entered at the top of each page on the paper version of the Worksheet, the cover letter, and on supporting documentation, if any. First time filers should write "New" in this block. The Data Collection Agent will assign a Filer 499 ID number after it receives a completed FCC Form 499-A Telecommunications Reporting Worksheet.

Line 102 -- enter the legal name of the reporting entity as it appears on articles of incorporation or articles of formation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis.<sup>23</sup>

Line 103 -- provide the Internal Revenue Service (IRS) employer identification number (EIN) for the filer. This should be the same EIN that the company uses to file federal excise taxes or income taxes, if the company offers services subject to that tax. Consolidated filers should provide the EIN of the holding company. The EIN is also known as the taxpayer identification number (TIN) or for individuals as the social security number (SSN).

Line 104 -- provide the principal name under which the company conducts telecommunications activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries.

Line 105 -- mark the boxes that describe the telecommunications activity or activities of the filer. If more than one is appropriate, please label the telecommunications activities in order of importance to filer's business, *e.g.* enter a "1" in the box for type of entity that represents the most important part of the filer's telecommunications business, enter a "2" in the box that represents the next most important part, *etc.* Select no more than 5 of the following categories:

- |  |  |
|--|--|
| All Distance                             | -- primarily provides for a flat rate fixed local exchange service that is bundled with unmetered intrastate and interstate long distance. This category does not include interconnected VoIP.   |
| CAP/CLEC                                 | (Competitive Access Provider/Competitive Local Exchange Carrier)<br>-- competes with incumbent local exchange carriers (LECs) to provide local exchange services, or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers, other than Coaxial Cable providers. |
| Cellular/PCS/SMR<br>(wireless telephony) | (Cellular, Personal Communications Service, and Specialized Mobile Radio - telephone service provider)<br>-- primarily provides wireless telecommunications services (wireless telephony). This category includes all providers of real-time two-way switched voice services that interconnect with the public switched              |

<sup>23</sup> See Section II-B, page 8, for information on making consolidated filings. See also Figure 1 (defining "affiliate").

network, including providers of prepaid phones and public coast stations interconnected with the public switched network.<sup>24</sup> This category includes the provision of wireless telephony by resale. An SMR provider would select this category if it primarily provides wireless telephony rather than dispatch or other mobile services.

Coaxial Cable	-- uses coaxial cable (cable TV) facilities to provide local exchange services or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers.
Incumbent LEC	-- provides local exchange service. An incumbent LEC generally is a carrier that was at one time franchised as a monopoly service provider. <i>See</i> 47 U.S.C. § 251(h).
Interexchange Carrier (IXC)	-- provides long distance telecommunications services substantially through switches or circuits that it owns or leases.
Interconnected VoIP Provider	-- provides "interconnected VoIP service" as that term is defined in 47 C.F.R. § 9.3.
Local Reseller	-- provides local exchange or fixed telecommunications services by reselling services of other carriers.
Operator Service Provider (OSP)	-- serves customers needing the assistance of an operator to complete calls, or needing alternate billing arrangements such as collect calling.
Paging and Messaging	-- provides wireless paging or wireless messaging services. This category includes the provision of paging and messaging services by resale.
Payphone Service Provider	-- provides customers access to telephone networks through payphone equipment, special teleconference rooms, etc. Payphone service providers also are referred to as payphone aggregators.
Prepaid Card	-- provides prepaid calling card services by selling prepaid calling cards to the public or to retailers. Prepaid card providers typically resell the toll service of other carriers and determine the price of the service by setting the price of the card and controlling the number of minutes that the card can be used for.
Private Service Provider	-- offers telecommunications to others for a fee on a non-common carrier basis. This would include a company that offers excess capacity on a private system that it uses primarily for internal purposes. This category does not include SMR operators.
Satellite Service Provider	-- provides satellite space segment or earth stations that are used for telecommunications service.
Shared-Tenant Service Provider / Building LEC	-- manages or owns a multi-tenant location that provides

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<sup>24</sup> 47 C.F.R. § 80.451.

telecommunications services or facilities to the tenants for a fee.

SMR (dispatch)	(Specialized Mobile Radio Service Provider) -- primarily provides dispatch services and mobile services other than wireless telephony. While dispatch services may include interconnection with the public switched network, this category does not include carriers that primarily offer wireless telephony. This category includes LTR dispatch or community repeater systems.
Toll Reseller	-- provides long distance telecommunications services primarily by reselling the long distance telecommunications services of other carriers.
Wireless Data	-- provides mobile or fixed wireless data services using wireless technology. This category includes the provision of wireless data services by resale.

The Worksheet also provides boxes for "Other Local," "Other Mobile," and "Other Toll." If one of these categories is checked, the filer should describe the nature of the service it provides under the check boxes.

Line 106 -- **use this block to provide a common identifier for all affiliated filers.** Typically, this would be the name of the filer's holding company or controlling entity, if any. The common name used by all affiliates need not be a common carrier. All reporting affiliates or commonly controlled entities should have the **identical** name appearing on Line 106.1 and an **identical** IRS employee identification number on Line 106.2.

Line 107 -- provide the FCC Registration Number (FRN) of the filing entity. The FRN is a ten-digit number that includes a check-digit. The FRN is used to identify an entity within all Commission Licensing/Filing systems and Ramis (the Commission's Revenue Accounting Management Information System.) This number is assigned by CORES (the Commission Registration System) and can be obtained at <https://gullfoss2.fcc.gov/cores/CoresHome.html>. For assistance, contact the CORES help desk at (877) 480-3201 or by e-mail at CORES@fcc.gov.

Line 108 -- provide the name of the management company, if the filer is managed by an entity other than itself. If the reporting entity and one or more other telecommunications provider(s) are commonly managed, then each should show the same management company on Line 108. Filers need not be affiliated to have a common management company. The management company would typically be the point of contact for the administrators of the support mechanisms.

Line 109 -- enter the complete mailing address of the corporate headquarters of the reporting entity.

Line 110 -- provide a business address of the reporting entity that could be used either for customer inquiries or that parties could use to contact the reporting entity in order to resolve complaints. If this address is the same as the mailing address of the corporate headquarters on line 109, then enter "same" on this line.

Line 111 -- enter a telephone number that can be used to resolve customer complaints, for customer service or billing inquiries. Typically, this would be a customer toll-free number, such as an 800 or 888 number.

Line 112 -- provide all names that the reporting entity used in the past three years for providing telecommunications. Consolidated filers should provide all names used by all telecommunications affiliates covered by the filing. The Worksheet provides space for additional names under which the reporting entity conducts telecommunications activities (other than that contained on Line 104). Use an additional sheet if this space is not sufficient. Enter all names by which the filer would be known to customers, government bodies, creditors, the press, etc. This list must include the filer's billing agents if those parties, rather than the reporting entity, are identified on customer bills.

This list also should include names of predecessor companies that would have filed a universal service, TRS, NANP, local number portability (LNP) or Telecommunications Reporting Worksheet in the prior year. In such cases, include the prior Filer 499 ID as part of the name. This information will be used by the administrators in instances where other information indicates that a non-reporting entity might exist, and also to ensure that entities are not billed improperly for predecessor companies that no longer exist.

B. Block 2: Contact Information

1. Block 2-A: Regulatory Contact Information

Lines 201-202 -- copy the Filer 499 ID from Line 101 into Line 201. Copy the legal name of the reporting entity from Line 102 into Line 202.

Lines 203-206 -- enter the name, telephone number, fax number, and e-mail address of the person who filled out the FCC Form 499. This should be a person who can provide clarifications or additional information, and, if necessary, who could serve as the first point of contact in the event that either the Commission or an administrator should choose to verify or audit information provided in the Telecommunications Reporting Worksheet.

Line 207 -- provide the contact person name, office name, and mailing address of a corporate office to which future Telecommunications Reporting Worksheets should be sent. The next Telecommunications Reporting Worksheet will be mailed to this address unless other arrangements are made. Failure to receive a Telecommunications Reporting Worksheet from an administrator or the FCC does not relieve the filer from its obligation to file in a timely fashion.

Line 208 -- provide a billing contact person name and address for administrators to send billing information for contributions to the mechanisms. Information on establishing electronic fund transfer and bills for universal service, TRS, NANPA or LNPA contributions will be sent to this address unless other arrangements are made via written request. Filers may use a check box on Line 208 to indicate that the address should be used for FCC ITSP regulatory fee billings. If this box is not checked, an FCC ITSP regulatory fee, if due, will be sent to the address specified on Line 109.

2. Block 2-B: Agent for Service of Process

Section 413 of the Act requires each carrier “to designate in writing an agent in the District of Columbia” upon whom all notices, process, orders, and decisions made by the Commission may be served on behalf of that carrier in any proceeding pending before the Commission.<sup>25</sup>

Lines 209-218 -- The second part of Block 2 contains information on the filer's agents for service of process, including the agent located in the District of Columbia (“D.C. Agent”). All carriers and interconnected VoIP providers must enter the name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for their designated D.C. Agent. Note that service of any notice, process, orders, decisions, and requirements of the Commission may be made upon the reporting entity by leaving a copy thereof with this designated agent during normal business hours at the agent's office or other usual place of residence. In addition to providing the required information on the carrier's D.C. Agent, the reporting entity may elect to provide a local or alternate agent for service of process located outside the District of Columbia. Reporting entities other than carriers and interconnected VoIP providers need only report one agent for service of process, whether located inside the District of Columbia or otherwise.

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<sup>25</sup> 47 U.S.C. § 413. *See also* 47 C.F.R. § 1.47(h) (stating that every common carrier and interconnected VoIP provider subject to the Act “shall designate an agent in the District of Columbia” for service of process).

Carriers and interconnected VoIP providers must designate a *single* agent for service of process in the District of Columbia for all Commission business. Although FCC Form 499-A permits carriers and interconnected VoIP providers to designate a preferred alternate or local agents for service of process, each designated agent for a particular carrier or interconnected VoIP provider must accept service for all purposes relating to Commission business. A carrier or interconnected VoIP provider may not limit a designated agent's ability to accept service on behalf of the carrier or interconnected VoIP provider by subject matter, by jurisdiction, by affiliate or by any other grounds. The Commission may assume that the local or alternate agent is the filer's preferred destination for all service of process.

Note: New carriers or interconnected VoIP providers must identify an agent for service of process within 30 days of providing service and all carriers or interconnected VoIP providers must notify the FCC within one week if the contact information changes for their D.C. Agent. See Section II-C, above, for filing directions.

3. Block 2-C: FCC Registration Information

New telecommunications carriers and other telecommunications providers must register with the Commission when they begin to provide service. Carriers and other telecommunications providers must update registration information within one week of a material change. See Section II-C, above, for filing directions. Registration information includes information reported in Blocks 1, 2-A, 2-B, and 2-C of FCC Form 499-A.

Lines 219-227 -- The third part of Block 2 contains FCC registration information, as required of all interstate telecommunications carriers pursuant to section 64.1195 of the Commission's rules. 47 C.F.R. § 64.1195. As explained above, virtually all carriers filing the FCC Form 499 are considered to be interstate carriers. Interstate telecommunications carriers must provide the names and business addresses of their Chief Executive Officer, Chairman, and President. If the reporting entity does not have one or more of these officers or if the same person occupies more than one position, then names should be supplied for the three most senior-level officers of the reporting entity. For purposes of this filing, an officer is an occupant of a position listed in the articles of incorporation, articles of formation, or other similar legal document. List only one name if the filing entity is a sole proprietorship. If the filing entity is a partnership, list the managing partner on Line 221. If the legal entity is owned by two partners, list the second partner on Line 223. If there are three or more partners, provide information for the managing partner and the two other partners with the greatest financial interest in the partnership.

Line 227 -- check those jurisdictions where the filing entity provided telecommunications service or interconnected VoIP service in the past 15 months, and any additional jurisdictions in which the filing entity expects to provide telecommunications service or interconnected VoIP service in the next 12 months. Identify jurisdictions where customers physically obtain service. For most switched services, identify jurisdictions where customers can originate calls. However, for services where the called party pays, also identify jurisdictions where calls terminate.<sup>26</sup> For example, an operator service provider that handled inmate calls originating in New Jersey and terminating collect in New Jersey, New York, and Pennsylvania, would identify New Jersey, New York, and Pennsylvania as jurisdictions served.

C. Block 3, Block 4-A and Block 4: Filer Revenue Information

Lines 301-302; 401-402 -- copy the Filer 499 ID from Line 101 into Lines 301 and 401. Copy the legal name of the reporting entity from Line 102 into Lines 302 and 402.

Lines 303-314; 403-423 contain detailed revenue data.

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<sup>26</sup> Both parties to a collect call are "consumers." 47 C.F.R § 64.708. See also 47 C.F.R § 64.710(b)(1).

1. Separating revenues from other contributors to the federal universal service support mechanisms (Block 3) from end-user and non-telecommunications revenues (Block 4) (carrier's carrier vs. end-user)

In the Telecommunications Reporting Worksheet, filers must report revenues using two broad categories: (1) Revenues from other contributors to the federal universal service support mechanisms; and, (2) Revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the reporting entities' books of account.

For the purposes of this Worksheet, "Revenues from services provided for resale by other contributors to federal universal service support mechanisms" are revenues from services provided by underlying carriers to other entities that currently are contributors to universal service support mechanisms and that are resold in the form of telecommunications. Such revenues are referred to herein as "carrier's carrier revenues" or "revenues from resellers." An underlying carrier also may include as carrier's carrier revenues any switched service revenues received from another U.S. carrier where that carrier is using the underlying carrier's service to refile the foreign-billed traffic of a foreign telephone operator. Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

For the purpose of completing Block 3, a "reseller" is a telecommunications carrier or telecommunications provider that: 1) incorporates purchased telecommunications services into its own telecommunications offerings; and 2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from such offerings when provided to end users.

On an interim basis, carriers that provide telecommunications inputs to interconnected VoIP providers should report the resulting revenues as end-user revenues on Line 406. These carriers may not exclude these revenues by invoking the "carrier's carrier" rule.<sup>27</sup>

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. The procedures should include, but not be limited to, maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. Filers shall provide this information to the Commission or the Administrator upon request. The filer should verify that each reseller will: 1) resell the filer's services in the form of telecommunications (and not as information services); and 2) contribute directly to the federal universal service support mechanisms. If the filer does not have independent reason to know that the reseller satisfies these criteria, it should obtain a signed statement certifying that these criteria are met. Current contributors to universal service are identified at <http://gullfoss2.fcc.gov/cib/form499/499a.cfm>. Filers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.

Note: For the purposes of filling out this Worksheet -- and for calculating contributions to the universal service support mechanisms -- certain telecommunications carriers and other providers of telecommunications may be exempt from contribution to the universal service support mechanisms. These exempt entities, including "international only" and "intrastate only" providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues in Block 3. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Lines 403-417 of Block 4 of the Telecommunications Reporting Worksheet, as appropriate. Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues. In Block 5, Line 511,

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<sup>27</sup> See 2006 Contribution Methodology Reform Order at paras. 58-59 (This requirement is in effect for two full quarters following the effective date of this Order.).

however, filers may elect to report the amounts of such revenues (*i.e.*, those revenues from exempt entities that are reported as end-user revenues) so that these revenues may be excluded for purposes of calculating contributions to TRS, LNPA, and NANPA.

2. Column (a) - total revenues

The reporting entity must report gross revenues from all sources, including non-regulated and non-telecommunications services on Lines 303 through 314 and Lines 403 through 418 and these must add to total gross revenues as reported on Line 419. Gross revenues include account set-up, connection, service restoration, termination and other non-recurring charges. These charges should be reported on the same line that the filer reports any associated recurring revenue. For example, an early termination charge for an interstate private line service would be reported as interstate revenue on Line 415. Deposits are not revenue. Gross revenues should include revenues derived from the activation and provision of interstate, international, and intrastate telecommunications, and non-telecommunications services. Gross revenues consist of total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments. Gross revenues do not include amounts that cannot be billed to customers. Gross revenues should include collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats. Gross billed revenues may be distinct from booked revenues. National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.

An entity is not required to impute or report revenues for services provided to itself or to wholly owned affiliates unless: 1) it is required to record such revenues for some other federal or state regulatory purpose; or 2) the filer is providing service to an affiliate for resale and the affiliate is not a direct universal service contributor.

If revenue category breakout cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet a good-faith estimate of the breakout. Filers may not simply report all revenues on one of the “other revenue” lines.

Where two contributors have merged prior to the filing date, the successor company should report total revenues for the reporting period for all predecessor operations. The two contributors, however, should continue to report separately if each maintains separate corporate identities and continues to operate.<sup>28</sup> Where an entity obtains, through purchase, merger or transfer, the telecommunications operations or customer base of a telecommunications provider during the calendar year, it must report all telecommunications revenues associated with such operations or customer base including revenues billed in the calendar year prior to the date of acquisition

Gross revenues also should include any surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be shown separately on Line 403. Other surcharges treated as revenues should be included in the revenue categories on which the surcharges were levied.

For international services, gross revenues consist of gross revenues billed by U.S. telecommunications providers with no allowances for settlement or settlement-like payments. International settlement and settlement-like receipts for foreign-billed service should not be included in revenues. For common carriers providing international

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<sup>28</sup> See also Section II-E, above.



telecommunications services: except in very limited circumstances, such as receipts from foreign carriers for calls that are reoriginated and reported as U.S. billed traffic, the total revenues identified as international on Line 419(e) should match the total U.S. billed revenues that will be reported each year pursuant to 47 C.F.R. § 43.61. For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then refiles and carries the traffic to a foreign point, the filer would not include those settlement-like payments as revenues on the FCC Form 499-A even though they might be reported as revenues on the filer's 43.61 international traffic data report. Note that if the filer receives the traffic in the United States, then it is providing ordinary international service from the United States to a foreign point and receipts from the originating carrier would be reported as revenue on Line 414.

For international private line services, U.S. providers must report on Line 415 revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the reporting carrier or by a partner carrier in a foreign point. Circuits within the United States that connect a customer to an international circuit should be reported as interstate. Circuits that connect foreign points should be reported on Line 418.

If you have any revenues for Lines 303-314 and 403-420, you may not omit the dollar amounts from column (a) even if 100% of the revenues are for interstate or international services.

3. Columns (b), (c), (d), and (e) interstate & international

Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417. Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. 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. Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed LNP surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the per-minute revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account. If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.<sup>29</sup> In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but may not be reported as intrastate revenues. Filers should report intrastate revenues on Line 403 only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills.

Note: Where possible, filers should report their amount of total revenues that are interstate and international by using information from their books of account and other internal data reporting systems. Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (d) and (e), respectively.

<sup>29</sup> See 47 C.F.R. § 36.154(a).

If interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures. In such cases, the filer should enter the good-faith estimates of the percentage of interstate and the percentage of international revenues in columns (b) and (c), respectively. A reporting entity may not submit a good-faith estimate lower than one percent unless the correct figure should be \$0. Information supporting good-faith estimates must be made available to either the FCC or to the administrators upon request. Using the good-faith estimate, calculate the amount of interstate revenues as the amount in column (a) times the percentage in column (b), and calculate the amount of international revenues as the amount in column (a) times the percentage in column (c). For convenience, calculated interstate and international revenue amounts that are greater than one thousand dollars may be rounded to the nearest thousand dollars. Please enter zero dollars in columns (d) and (e) if, and only if, there were no interstate revenues for the line for the reporting period.

Note that the FCC provides the following safe harbor percentages of interstate revenues associated with Line 309, Line 404.3 and 404.4, Line 409, and Line 410.<sup>30</sup>

- 64.9% of interconnected VoIP telecommunications revenues
- 37.1% of cellular and broadband PCS telecommunications revenues
- 12.0% of paging revenues
- 1.0% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll service charges. **All filers must report the actual amount of interstate and international revenues for these services.** For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.

Wireless telecommunications providers and interconnected VoIP providers that choose to avail themselves of these safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages. All affiliated wireless telecommunications providers and interconnected VoIP providers must make a single election, each quarter, whether to report actual revenues or to use the current safe harbor within the same safe harbor category.<sup>31</sup> So, for example, if in a calendar quarter a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings. The same wireless telecommunications

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<sup>30</sup> See 2006 Contribution Methodology Reform Order at paras. 25-27, 53-55. *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, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 02-329 (rel. Dec. 13, 2002) (*Contribution Methodology Order*); see also *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998).

<sup>31</sup> See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, FCC 03-20 (rel. Jan. 30, 2003). Note: Wireless telecommunications providers are “affiliated” for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an “identity of interest” with another contributor. See also 47 C.F.R. § 1.2110(c)(5).

provider and all affiliates, however, could use the safe harbor for paging services. Annual revenues reported on the FCC Form 499-A should reflect the filer's reporting of revenues in each quarter on FCC Form 499-Q.

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service for a single price. Revenues for the whole bundle, except for tariffed subscriber line and PICC charges, should be reported on Line 404, as described more fully below. The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively. Filers should make a good faith estimate of the amounts of interstate and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

Interconnected VoIP and CMRS providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.<sup>32</sup> In developing their traffic studies, interconnected VoIP and CMRS providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international. Such sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample. Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above. Mobile wireless providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request. In addition, CMRS providers that rely on traffic studies must submit those studies to the Commission and USAC for review. Interconnected VoIP providers that rely on traffic studies must submit their traffic studies to the Commission for prior approval. Until the Commission has approved an interconnected VoIP provider's proposed traffic study, that provider may use the interim safe harbor.<sup>33</sup>

Filers report total uncollectible revenue/bad debt expenses on Lines 421 and 422. Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

#### 4. Explanation of Block 3 and Block 4-A revenue categories

The revenue detail provided in Block 3 on Lines 303 through 314 and in Block 4-A on Lines 403 through 418 should total to total gross revenues reported on Line 419. This section explains the detailed revenue categories.

Filers are instructed to report revenues from other universal service contributors on Lines 303 through 314. See Section III-C-1, above. Filers are instructed to report all other revenues on Lines 403 through 418. In many cases, the line-item categories are duplicated in the two sections. Carriers that are required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their responses on their USOA account data and supplemental records, dividing revenues into those received from universal service contributors and those received from end users and other non-contributors. All filers should report revenues based on the following descriptions.

<sup>32</sup> See 2006 Contribution Methodology Reform Order at paras. 29-33, 57. See also Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-51 (2001) (CPE Bundling Order).

<sup>33</sup> See 2006 Contribution Methodology Reform Order at para. 57.

Fixed local service revenue categories

Fixed local services connect a specific point to one or more other points. These services can be provided using either wireline, fixed wireless, or interconnected VoIP technologies and can be used for either local exchange service, private communications, or access to toll services.

Line 303 and Lines 404.1-404.4 -- Monthly service, local calling, connection charges, vertical features, and other local exchange services should include the basic local service revenues except for local private line revenues, access revenues, and revenues from providing mobile or cellular services. These lines should include charges for optional extended area service, dialing features, local directory assistance, added exchange services such as automatic number identification (ANI) or teleconferencing, LNP surcharges, connection charges, charges for connecting with mobile service and local exchange revenue settlements. Revenues for services provided to carriers should be divided between Line 303.1 -- provided as unbundled network elements (UNEs) -- and Line 303.2 -- provided under tariffs or arrangements other than unbundled network elements (for example, resale). Line 303.2 should include Presubscribed Interexchange Carrier Charge (PICC) charges levied on carriers.

Lines 404.1-404.4 should not include subscriber line charges levied under a tariff filed by the reporting entity or placed on customer bills as a pass-through of underlying carrier subscriber line charges. Filers should instead report such revenues on line 405. Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service. Filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of the appropriate line 404.1-404.4. Line 404.1-404.4 also should include revenues from federally tariffed LNP surcharges and these surcharges should be identified as interstate revenues.

Line 404.1-404.4 revenues should be divided between local exchange service provided using methods other than interconnected VoIP (Lines 404.1 and 404.2) and using interconnected VoIP (Lines 404.3 and 404.4). Revenue from plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee should be reported on Line 404.1 and revenue from other local exchange services plans (other than interconnected VoIP plans) should be reported on Line 404.2. Consistent with the filer's books of account, Line 404.1 should include all revenues associated with flat-rate calling plans that allow customers to make fixed local and interstate long distance calls for at least some specified time periods. For revenues reported on Line 401.1, the filer must attribute a portion of the flat monthly charge to local exchange service and an appropriate portion to toll service. Of the portion attributed to toll service, an appropriate share must be identified as interstate and international and shown in columns (d) and (e). If the toll portion is accounted as revenue for an affiliate, that affiliate must show these revenues on Line 404.1 and may not include these revenues on Line 414. Line 404.2 should include all revenues billed for fixed local service that does not include interstate toll calling as part of the flat monthly charge.

Local exchange service provided *via* interconnected VoIP service should be reported in Lines 404.3 or 404.4 depending on whether the revenues are earned from interconnected VoIP offered in conjunction with a broadband connection (Line 404.3) or independent of the broadband connection (Lines 404.4).<sup>34</sup> The filer must attribute a portion of the flat monthly charge to local exchange service and an appropriate portion of this local exchange revenue must be identified as interstate and shown in column (d). We note that for incumbent local exchange carriers the interstate subscriber line charge represents the interstate portion of local exchange service revenues. These amounts are separate from toll revenues and correspond to the costs associated with allowing customers to originate and terminate interstate calls. Interconnected VoIP providers not reporting based on the safe harbor must make a similar allocation. In contrast to the treatment for other combined local and long distance services, the portion of interconnected VoIP charges that correspond to toll services should be reported on Line 414.2 (see below).

Line 304 -- Line 304 should include per-minute charges for originating or terminating calls. This line also would include revenues to the local exchange carrier for messages between a cellular customer and another station within the mobile service area. The line should include any other gross charges to other carriers for the origination or termination of toll or non-toll traffic. Do not deduct or net payments to carriers for origination or termination of traffic on their networks. Revenues for originating and terminating minutes should be divided between Line 304.1 - provided under state or federal access and Line 304.2 - provided as unbundled network elements or other contract arrangements. Do not include international settlement or settlement-like receipts or transiting fees from international toll services.

Line 405 -- Line 405 should include charges to end users specified in access tariffs, such as tariffed subscriber line charges and PICC charges levied by a local exchange carrier on customers that are not presubscribed to an interexchange carrier (*i.e.*, a no-PIC customer). However, Line 405 should not include charges to end users for special access services (which are reported on Line 406). Telecommunications providers that do not have subscriber line charge or PICC tariffs on file with the Commission or with a state utility commission or who are not reselling such tariffed charges, should report \$0 on Line 405.

Line 305 and Line 406 -- Local private line and special access service should include revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths. Line 406 should include revenues from special access lines resold to end users unless the service is bundled with, and charged as part of a toll service, in which case the revenues should be reported on the appropriate toll service line. Line 406 also should include revenues from telecommunications inputs provided by carriers to interconnected VoIP providers. Report on Lines 305 and 406 revenues from offering dedicated capacity between specified points even if the service is provided over local area switched ATM or frame relay networks.

Line 306 and Line 407 -- Line 306 should include revenues received from carriers as payphone compensation for originating toll calls. Line 407 should include revenues received from customers paid directly to the payphone service provider, including all coin-in-the-box revenues. Do not deduct commission payments to premises' owners.

Line 307 and Line 408 -- Other local telecommunications service revenues should include local telecommunications service revenues that reasonably would not be included with one of the other fixed local service revenue categories. Line 307 should include charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6). Report on these lines revenues from offering switched capacity on local area data networks such as ATM or frame relay networks.

Line 308 -- Universal service support revenues should include all amounts that filers receive as universal service support from either states or the federal government. Line 308 should include as revenues Lifeline Assistance reimbursement for the waived portion of subscriber line or presubscribed interexchange carrier charges or credits for

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<sup>34</sup> Bundled broadband and interconnection offerings include those offered directly by the reporting entity and those offered by the reporting entity through an affiliate.

subsidized services provided to schools, libraries, and rural health care providers. Line 308 should include amounts received as cash as well as amounts received as credit against contribution obligations. Line 308 should not include any amounts charged to customers to recover universal service or similar contributions.

#### Mobile service

Mobile services are wireless communications between mobile wireless equipment, such as cellular phones, and other points.

Line 309, Line 409, and Line 410 -- Data reported on these lines should contain mobile service revenues other than toll charges to mobile service customers. Charges associated with customer premises equipment should not be included on these lines. A single category -- Line 309 -- is provided for all mobile service provided to resellers. Line 309 should include revenues received from another carrier for roaming service provided to customers of that carrier. For services provided to end users, Line 409 should contain monthly charges, activation fees, service restoration, and service order processing charges, etc. Line 410 should contain message charges, including any roaming charges assessed on customers for calls placed out of customers' home areas and local directory assistance charges. End-user prepaid wireless service revenues attributable to activation and daily or monthly access charges should be reported on Line 409. End-user prepaid wireless service revenues attributable to airtime should be reported on Line 410. Itemized toll charges to mobile service customers should be included in the Lines 413 or 414, as appropriate.

Roaming charges for service provided by foreign carriers operating in foreign points are not U.S. telecommunications revenues and therefore should be reported on Line 418.

#### Toll service revenue categories

Toll services are telecommunications services, wireline, wireless, or interconnected VoIP services, that enable customers to communicate outside of local exchange calling areas. Toll service revenues include intrastate, interstate, and international long distance services.

Line 411 -- This line should include revenues from prepaid calling cards provided either to customers or to retail establishments. Gross billed revenues should represent the amounts 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 revenues. For purposes of completing this Worksheet, prepaid card revenues should be recognized when end-user customers purchase the cards. International revenues may be reported differently on the filer's 43.61 international traffic data reports, where revenues may be based on calls actually placed.

Line 412 -- International calls that traverse the United States but both originate and terminate in foreign points are excluded from the universal service contribution base regardless of whether the service is provided to resellers or to end users. These revenues should be segregated from other toll revenues by showing them on Line 412. Telecommunications providers should not report international settlement revenues from traditional settlement transiting traffic on the Worksheet.

Line 310 and Line 413 -- Operator and toll calls with alternative billing arrangements should include all calling card or credit card calls, person-to-person calls, and calls with alternative billing arrangements such as third-number billing, collect calls, and country-direct type calls that either originate or terminate in a U.S. point. These lines should include all charges from toll or long distance directory assistance. Lines 310 and 413 should include revenues from all calls placed from all coin and coinless, public and semi-public, accommodation and prison telephones, except that calls that are paid for via prepaid calling cards should be included on Line 411 and calls paid for by coins deposited in the phone should be included on Line 407.

Line 311 and Lines 414.1 and Line 414.2 -- Ordinary long distance and other switched toll services should include amounts from account 5100 -- long distance message revenues-- except for amounts reported on Lines 310, 407, 411, 412 or 413. Line 311 and Line 414.1 and Line 414.2 should include ordinary message telephone service (MTS), WATS, subscriber toll-free, 900, "WATS-like," and similar switched services. This category includes most toll calls placed for a fee and should include flat monthly charges billed to customers, such as account maintenance charges, PICC pass-through charges, package plans giving fixed amounts of toll minutes, and monthly minimums. Ordinary long distance includes separately stated toll revenue from wireline, wireless and interconnected VoIP services. Ordinary long distance provided to end users using non-interconnected VoIP technologies should be reported on Line 414.1. Ordinary long distance provided to end users using interconnected VoIP should be reported on Line 414.2. Interconnected VoIP long distance service includes separately stated toll charges provided *via* interconnected VoIP.

Where customers are charged a single rate for a combined local and long distance service (other than interconnected VoIP service), all revenues for such service should be reported on Line 404.1. Where customers are charged a single rate for a combined interconnected VoIP local and long distance service, and the reporting entity is not reporting based on the safe harbor, the portion of revenues corresponding to local service should be reported on Line 404.3 or 404.4 and the portion of revenues corresponding to long distance service should be reported on line 414.2.

Line 312 and Line 415 -- Long distance private line service should include revenues from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area. Line 312 and Line 415 should include frame relay and similar services where the customer is provided a dedicated amount of capacity between points in different basic service areas. This category should include revenues from the resale of special access services if they are included as part of a toll private line service.

Line 313 and Line 416 -- Satellite services should contain revenues from providing space segment service and earth station link-up capacity used for providing telecommunications or telecommunications services via satellite. Revenues derived from the lease of bare transponder capacity should not be included on Lines (313) and (416).

Line 314 and Line 417 -- All other long distance services should include all other revenues from providing long distance communications services. Line 314 and Line 417 should include toll teleconferencing. Line 314 and Line 417 should include switched data, frame relay and similar services where the customer is provided a toll network service rather than dedicated capacity between two points.

#### Other revenue categories

Line 403 -- Itemized charges levied by the reporting entity in order to recover contributions to state and federal universal service support mechanisms should be classified as end-user billed revenues and should be reported on Line 403. Any charge that is identified on a bill as recovering contributions to universal service support mechanisms must be shown on Line 403 and should be identified as either interstate or international revenues, as appropriate. Filers should report intrastate revenues on line 403 only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills.

Line 418.1 and 418.2 -- Other revenues that should not be reported in the contribution bases. Lines 418.1 and 418.2 should include all non-telecommunications service revenues on the reporting entity's books, as well as some revenues that are derived from telecommunications-related functions, but that should not be included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do 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. Information services also are called enhanced services because they are offered over transmission facilities used in interstate communications and employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's

transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. For example, call moderation and call transcription services are information services. These services are exempt from contribution requirements and should be reported on Lines 418.1 or 418.2. Lines 418.1 and 418.2 should include revenues from published directory and billing and collection services. Lines 418.1 and 418.2 should include revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE). Lines 418.1 and 418.2 should include inside wiring charges and inside wiring maintenance insurance. Lines 418.1 and 418.2 should include the sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE. Lines 418.1 and 418.2 should include pole attachment revenues. Lines 418.1 and 418.2 should include revenues from providing open video systems (OVS), cable leased access, and direct broadcast satellite (DBS) services. Lines 418.1 and 418.2 should include late payment charges and charges (penalties) imposed by the company for customer checks returned for non-payment. Lines 418.1 and 418.2 should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e. a carrier licensed in that country.

The Commission adopted two “safe harbor” methods for allocating revenue when telecommunications and CPE/enhanced services are offered as a bundled package.<sup>35</sup> The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services. Alternatively, contributors may elect to treat all bundled revenues as telecommunications service revenues for purposes of determining their universal service obligations. Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context.

5. Block 4-B total revenue and uncollectible revenue information

The Administrator relies on the detail line information on the Worksheet to arrive at the totals shown in Block 4-B. The Administrator will attempt to resolve conflicts between any sums that differ from the information entered into the totals on Block 4-B.

Line 419 -- Gross billed revenues from all sources should equal the sum of revenues by type of service reported on Lines 303 through 314 and Lines 403 through 418.

Line 420 -- Universal service contribution base revenues should equal the subtotal of Lines 403 through 411 and Lines 413 through 417 for each column. The totals on this line represent gross end-user revenues for the purpose of determining contributions to universal service support mechanisms. See also instructions for Line 511 in Section III-D.

Line 421 -- Show the uncollectible revenue/bad debt expense associated with gross billed revenues amounts reported on Line 419. This should be the amount reported as bad debt expense in the filer’s income statement for the year. Note that it will include uncollectibles associated with all revenue on the filer’s books (Line 419), covering carrier’s carrier revenues, end-user telecommunications revenues and revenues reported on Line 418. The contributor’s uncollectible revenues/bad debt expense should be calculated in accordance with Generally Accepted Accounting Principles. Thus, uncollectibles should represent the portion of gross billed revenues that the contributor reasonably expects will not be collected. Note that uncollectibles may not include any amounts associated with unbillable

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<sup>35</sup> *Policies and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, CC Docket No. 96-61, 16 FCC Rcd 7418 (2001).



revenues.<sup>36</sup> Filers that operate on a cash basis should report \$0 on this line.

Line 422 -- Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the universal service contribution base amounts reported on Line 420.<sup>37</sup> Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 422. Filers that do not have such detail should make such assignments in proportion to reported gross revenues. Filers must be able to document how the amounts reported on Line 422 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

In exceptional circumstances, amounts reported on Line 422 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Line 423 -- Net universal service contribution base revenues should equal the amounts reported on Line 420 minus the amounts reported on Line 422.

#### 6. Notes for carriers that use the USOA

The revenue accounts in the USOA as adopted in 1986 generally correspond to specific revenue lines in Block 3 and Block 4. For example, revenue amounts recorded in accounts 5001, 5002, 5050, 5060 and 5069 should be reported on Line 303 or Line 404, as appropriate. Similarly, revenues recorded in account 5280 should be reported on Line 407. There are some exceptions. For example, monthly and connection revenues from mobile services provided to end users in account 5004 should be reported on Line 409. Per-minute revenues from end users in account 5004 should be reported on Line 410. However, revenues in account 5004 from exchanging traffic with mobile service carriers should be reported on Line 304. Similarly, state per-minute access revenues recorded in account 5084 should be reported on Line 304; state special access revenues recorded in account 5084 should be reported on Line 305 and Line 406, as appropriate; and, state subscriber line charge revenues recorded in account 5084 should be reported on Line 405. Uncollectible revenue recorded in account 5300 should be reported on Line 421. The portion of these revenues that correspond to contribution base revenues should be reported on Line 422.

In 2001, the Commission adopted changes to the USOA.<sup>38</sup> These changes in account structure have not changed which revenues should be reported on which FCC Form 499 lines. Most revenues classified in account 5001 -- basic area revenues, should continue to be reported on Line 303 or Line 404. However, local exchange carrier revenues from mobile carriers for calls between wireless and wireline customers should be reported on Line 304 and revenues from mobile services on Line 309, Line 409 or Line 410, as appropriate. Revenues classified in account 5200, miscellaneous revenues, should be divided into several lines for reporting purposes. For example, account 5200 includes revenues derived from UNEs, which should continue to be reported on Line 303 and, reciprocal compensation, which will continue to be reported on Line 304.

Some types of incidental regulated revenues contained in account 5200, miscellaneous revenues, will continue to

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<sup>36</sup> See *Contribution Methodology Order*, FCC 02-329 (rel. Dec. 13, 2002), footnote 95.

<sup>37</sup> See *Contribution Methodology Order*, FCC 02-329 (rel. Dec. 13, 2002). Also see, for example, *Proposed First Quarter 2004 Universal Service Contribution Factor* CC Docket No. 96-45, Released December 4, 2003; DA 03-3866.

<sup>38</sup> See *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, CC Docket No. 00-199, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286 and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911 (2001), *recon. pending*.

be reported on Lines 403 through 408. These include collection overages and non-refundable prepaid amounts that are not used by the customer. Note that late payment charges, bad check penalties imposed by the company, enhanced services, billing and collection, customer premises equipment sale, lease or insurance, and published directory revenues should continue to be reported on Line (418).

Revenues recorded in account 5100, long distance network service revenues, will continue to be reported on Line 310 through Line 314 and Line 411 through Line 417, as appropriate.

D. Block 5: Additional Revenue Breakouts

Lines 501-502 -- Copy the Filer 499 ID from Line 101 into Line 501. Copy the legal name of the reporting entity from Line 102 into Line 502.

Lines 503-510 -- In these lines, filers should identify the percentages of their telecommunications revenues by LNPA region. Payphone service providers, private service providers, and shared-tenant service providers that have certified that they are exempt from contributing to the shared costs of LNP need not provide these breakdowns. Carriers should calculate or estimate the percentage of revenues that they billed in each region based on the amount of service they actually provided in the parts of the United States listed for each region. The percentages in column (a) should add to 100% unless the filer did not provide any services for resale by other contributors to the federal universal service support mechanisms. The percentages in column (b) should add to 100% unless the filer did not provide any telecommunications services to end users or non-contributing carriers. Carriers do not need to complete column (a) if they have some end-user revenues in each of the regions in which they have carrier operations.

Line 511 -- Identify revenues from resellers that do not contribute to universal service support mechanisms and that are included in Block 4. Revenues from resellers that do not contribute to universal service support mechanisms are included on Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues on Line 511. Line 420 may contain revenues from some FCC Form 499 filers that are exempt from contributing directly to universal service support mechanisms. For example, these would include filers that meet the universal service *de minimis* exception or that provide "international only" service. Since these universal service exempt entities generally do contribute directly to the TRS, LNP, and NANPA mechanisms, revenues from these entities need not be included in the underlying service provider contribution bases for those mechanisms. Filers choosing to report revenues on Line 511 must have the FCC Filer 499 ID for each customer whose revenues are so reported.

E. Block 6: Certification.

Lines 601-602 -- Copy the Filer 499 ID from Line 101 into Line 601. Copy the legal name of the reporting entity from Line 102 into Line 602.

Line 603 -- In this line, filers may certify that they are exempt from one or more contribution requirement(s) by checking the box next to the mechanism(s) from which they are exempt. As explained above, the FCC Form 499 Telecommunications Reporting Worksheet enables telecommunications carriers and service providers to satisfy a number of requirements in one consolidated form. Not all entities that file the Telecommunications Reporting Worksheet must contribute to all of the support and cost-recovery mechanisms (universal service, LNP, TRS, and NANPA). For example, certain telecommunications providers that are not telecommunications carriers must contribute to the universal service support mechanisms, but not to the TRS, LNP, and NANPA mechanisms. Section IV-A below provides summary information on which filers must contribute and which filers are exempt from particular contribution requirements. Filers that certify that they are exempt from one or more mechanism(s) should use the space provided on Line 603 to explain the exemption.

Note: It is not necessary for a filer to certify that it is *de minimis* for universal service purposes because the universal

service administrator can determine whether a filer meets the contribution threshold from other information provided on the form. If, however, a reseller or other provider of telecommunications qualifies for the *de minimis* exemption, it must notify its underlying carriers that it is not contributing directly to universal service, so that it may be treated as an end user when the underlying carriers file FCC Form 499.

Line 604 – In this line, filers indicate whether they are exempt from FCC regulatory fees or the filer is an “exempt telecommunications company.”<sup>39</sup> A state or local governmental entity is any state, possession, city, county, town, village, municipal corporation, or similar political organizations.<sup>40</sup> The second check box identifies organizations duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. § 501. These organizations typically qualify for non-profit status under sections 501(c)(3) or 501(c)(12). Note that such entities are not exempt from universal service, TRS, LNP, or NANPA contributions unless they qualify under some other exemption.

Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA) allows registered public utility holding companies to enter the telecommunications industry without prior Securities and Exchange Commission (SEC) approval by acquiring or maintaining an interest in an “exempt telecommunications company”. Moreover, exempt public utility holding companies, by owning or acquiring an interest in an exempt telecommunications company, may acquire a “safe harbor” from potential SEC regulation under PUHCA Section 3(a). The law vests the Commission with jurisdiction to determine whether a company warrants exempt status based on specific statutory criteria. Filers that are exempt telecommunications companies affiliated with a public utility holding company must identify themselves by checking the appropriate box on Line 604.

Line 605 – Filers may use the box in Line 605 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet. By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission’s rules.<sup>41</sup> All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2-B contact information) of the entities that file the Telecommunications Reporting Worksheet and information on which filers contribute to which funding mechanisms, including entities that checked the boxes in Line 603.

Lines 606-611 – An officer of the reporting entity must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and complete. Officers of entities making consolidated filings should refer to Section II-B, above and must certify that they comply with the conditions listed in Section II-B. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, vice president for finance, comptroller, treasurer, or a comparable position. If the reporting entity is a sole proprietorship, the owner must sign the certification. The signature on Line 606 must be in ink.

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<sup>39</sup> 47 C.F.R. § 1.1162(c). The FCC will presume that otherwise exempt carriers prefer to pay FCC regulatory fees unless they check this box.

<sup>40</sup> 47 C.F.R. § 1.1162(b).

<sup>41</sup> 47 C.F.R. § 0.459. *See also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

Reporting entities have the opportunity to enter data, verify, submit and certify FCC Forms 499-A and 499-Q online via a web-based data entry system. Company officers, who have previously filed a signed paper form, may certify subsequent forms online without being required to submit signed paper forms. For those officers, an electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form. By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form. Visit <http://www.universalservice.org/fund-administration/forms> for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under Title 18 of the United States Code.<sup>42</sup>

Line 612 – Indicate whether this filing is an original filing for the year, due on April 1, a registration filing for a new service provider, a filing with revised registration information or a filing with revised revenue information. See Sections II-C and II-E, above, for information on the obligation to file revisions.

#### IV. Calculation of Contributions

##### Figure 3 Contribution Requirements

Most filers must contribute to the universal service, TRS, NANPA, and LNPA funding mechanisms. This section provides a short summary to assist carriers and service providers in determining whether they must contribute to one or more of the mechanisms. Filers should consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms.

**Federal universal service support mechanisms.** Entities that provide interstate telecommunications to the public for a fee must contribute to the universal service support mechanisms. *See* 47 C.F.R. § 54.706.

**Telecommunications Relay Services.** Every common carrier providing interstate telecommunications services shall contribute to the TRS Fund. *See* 47 C.F.R. § 64.604.

**North American Numbering Plan Administration.** All telecommunications carriers in the United States shall contribute to meet the costs of establishing numbering administration. *See* 47 C.F.R. § 52.17.

**Shared Costs of Local Number Portability.** The shared costs of long-term number portability attributable to a regional database shall be recovered from all telecommunications carriers providing telecommunications service in that region. *See* 47 C.F.R. § 52.32.

Figure 3 summarizes which telecommunications carriers and service providers must file for particular purposes.

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<sup>42</sup> *See* 18 U.S.C. § 1001.

**Figure 3: Which telecommunications carriers and telecommunications providers must contribute for which purposes<sup>43</sup>**

Type of filer	Universal Service	TRS	NANPA	LNPA
<i>De minimis</i> payphone aggregators that do not also have telecommunications carrier revenues		X		
Other payphone aggregators that do not also have telecommunications carrier revenues	X	X		
Telecommunications providers with no telecommunications service revenues <u>and</u> that are <i>de minimis</i>				
Telecommunications providers with no telecommunications service revenues <u>and</u> that are not <i>de minimis</i>	X			
Telecommunications carriers that provide services only to other universal service contributors			X	X
Telecommunications carriers that provide only international services		X	X	X
Telecommunications carriers that provide only intrastate services			X	X
Satellite carriers providing interstate telecommunications services	X	X	X	X
<i>De minimis</i> telecommunications carriers providing interstate telecommunications		X	X	X
All other telecommunications carriers providing interstate telecommunications	X	X	X	X
Interconnected VoIP providers	X			

<sup>43</sup> This chart is provided for informational purposes only. It is not intended to be exhaustive, nor is it intended to serve as legal guidance or precedent. Filers are instructed to consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms. See 47 C.F.R. §§ 52.17, 52.32, 54.706, 64.604.

B. Contribution Bases

Filers do not calculate, in this Worksheet, the amounts that they must contribute. The administrators will use the revenue information on the Worksheet to calculate a funding base and individual contributions for each support mechanism. Individual contributions are determined by the use of "factors" -- factors reflect the total funding requirement of a particular mechanism divided by the total contribution base for that mechanism. Information on the contribution bases and individual filer contributions are shown in Figure 4.

**Figure 4: Contribution bases**

Support Mechanism	Funding Basis
Universal service low income and high cost; Universal service schools and libraries and rural health care	Line 423(d)* + Line 423(e) ** less revenues corresponding to universal service contributions***
TRS (Filers with interstate or international end-user revenues must pay a minimum of \$25)	plus Line 420(d) + Line 420(e) less Line 412(e) less Line 511(b)
NANPA (Filers with end-user revenues must pay a minimum of \$25. Filers with no end-user revenues must pay \$25.)	plus Line 420(a) less Line 412(a) less Line 511(a)
LNPA - by region (Filers with no end-user revenues must pay \$100)	plus Line 420(a) less Line 412(a) less Line 511(a) times percentage of end-user revenues shown on Lines 503 through 509

\* As of April 2003, monthly billings for universal service are based on projected collected revenue information filed on the quarterly FCC Form 499-Q. Historical amounts reported on FCC Form 499-Q Line 116(b) and (c) correspond to FCC Form 499-A Line 420(d) and (e), respectively. The FCC Form 499-Q provides instructions for projecting revenues, and for removing uncollectible amounts from billed revenue projections. Projected collected revenues on FCC Form 499-Q Line 120(b) and (c) correspond to net universal service base revenues on FCC Form 499-A Line 423 (d) and (e), respectively. The amounts filed on the FCC Form 499-A are used to review and true-up FCC Form 499-Q filings and associated contributions.

\*\* Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filing entity consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filing entity consolidated with all affiliates. See 47 C.F.R. §54.706(c).

\*\*\* For the second quarter of 2002 through the first quarter of 2003, the contribution base for an individual filer was the subject interstate and international revenues from two quarters prior, less the universal service contributions actually made in that prior quarter.<sup>44</sup> Starting in the second quarter of 2003, the contribution base for an individual filer is the projected collected interstate and international revenues for the quarter, reduced by an imputed amount of universal service support pass-through charges, based on the actual factor for the quarter.<sup>45</sup>

<sup>44</sup> See *First Further Notice*, 17 FCC Rcd 3752 (2002).

<sup>45</sup> See *Contribution Methodology Order*, FCC 02-329 (rel. Dec. 13, 2002). See also, e.g., *Proposed First Quarter 2004 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 03-3866 (rel. Dec. 4, 2003).

V. Reminders

- File the FCC Form 499-A online at <http://forms.universalservice.org>.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. See Section II-B above. Each affiliate or subsidiary must show the same holding company information on Lines 106.1 and 106.2.
- Provide data for all lines that apply. Show a zero for services for which the filer had no revenues for the filing period. Be sure to include on Line 112 all names by which the filer is known to customers, including the names of agents or billers if those names appear on customer bills.
- Telecommunications providers that are required to contribute to universal service support mechanisms must also file quarterly FCC Form 499-Q on February 1, May 1, August 1 and November 1.
- Wherever possible, revenue information should be taken from the telecommunications providers' financial records.
- The Worksheet must be signed by an officer of the reporting entity. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. See Section II-C for filing instructions.
- Remember -- you must refile parts of the Worksheet if the Agent for Service of Process or FCC Registration information changes during the year.
- Note that FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the Commission's web site, at [www.fcc.gov/wcb/filing.html](http://www.fcc.gov/wcb/filing.html)

If you have questions about the Worksheet or the instructions, you may contact:

Form 499 Telecommunications Reporting Worksheet Information	Form499@ universalservice.org (888) 641-8722
Wireline Competition Bureau Industry Analysis and Technology Division TTY	(202) 418-0940 (202) 418-0484

If you have questions regarding contribution amounts, billing procedures or the mechanisms, you may contact:

Universal Service Administration	(888) 641-8722
TRS Administration	(973) 884-8173
NANPA Billing and Collection Agent	(613) 236-9191
Local Number Portability Administrators	(877) 245-5277

- FEDERAL COMMUNICATIONS COMMISSION -

APPENDIX D

PROPOSED REVISED FORM 499-Q



# FCC Form 499-Q Telecommunications Reporting Worksheet

Quarterly Filing for Universal Service Contributors

>>> Please read instructions before completing <<<

Approval by OMB  
3060-0855

<b>Block 1: Contributor Identification Information</b>		101	Filer 499 ID	
102	Legal name of reporting entity			
103	IRS employer identification number			
104	Name telecommunications provider is doing business as			
105	Holding company [All affiliated companies should show same name here.]			
106	FCC Registration Number (FRN)			
107	Complete mailing address of reporting entity's corporate headquarters			

<b>Block 2: Contact Information</b>				
108	Person who completed this worksheet	First	MI	Last
109	Telephone number of this person	( ) -		
110	Fax number of this person	( ) -		
111	Email of this person			
112	Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.]			

<b>Block 3: Contributor Historical and Projected Revenue Information</b>				
113	Year of historical revenue information			
114	Indicate which quarterly filing this represents	<b>Filing due</b> <input type="checkbox"/> February 1 <input type="checkbox"/> May 1 <input type="checkbox"/> August 1 <input type="checkbox"/> November 1	<b>Historical revenues for</b> October 1 - December 31 (prior year) January 1 - March 31 April 1 - June 30 July 1 - September 30	<b>Projected revenues for</b> April 1 - June 30 July 1 - September 30 October 1 - December 31 January 1 - March 31 (following calendar year)
Historical billed revenues with no allowance or deductions for uncollectibles. See instructions.		Total Revenues (a)	Interstate Revenues (b)	International Revenues (c)
115	Telecommunications provided to other universal service contributors for resale as telecommunications			
116	End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues			
117	All other goods and services	Column (b) and (c) not requested		
118	Gross-billed revenues from all sources [sum of above]	for Lines 117 and 118		
119	Projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues			
120	Projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues			

<b>Block 4: CERTIFICATION: to be signed by an officer of the reporting entity</b>				
121	I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules. <input type="checkbox"/>			
I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.				
122	Signature			
123	Printed name of officer	First	MI	Last
124	Position with reporting entity			
125	Email of officer    Required if available			
126	Date			
127	This filing is: <input type="checkbox"/> Original filing <input type="checkbox"/> Revised filing [revisions due within 45 days of original filing deadline]			

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036  
 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (888) 641-8722 or via e-mail: Form499@universalservice.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

## **Telecommunications Reporting Worksheet, FCC Form 499-Q**

### **Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms**

\* \* \* \* \*

NOTICE: Sections 54.706, 54.711, and 54.713 of the Federal Communications Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected voice-over-Internet-protocol (VoIP) providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Telecommunications Reporting Worksheet (FCC Form 499-Q or Worksheet) on February 1, May 1, August 1, and November 1, each year. 47 C.F.R. §§ 54.706, 54.711, 54.713. This collection of information stems from the Commission's authority under Sections 151(i) and 254 of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. §§ 151(i), 254. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 10.0 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, project growth or decline in revenues, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov). Please **DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS**.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of sections 1.47, 52.17, 52.32, 54.713, and 64.604 of the Commission's rules. 47 C.F.R. §§ 1.47, 52.17, 52.32, 54.713, and 64.604.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. §§ 3501, *et seq.*

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File FCC Form 499-Q online. See: <http://forms.universalservice.org>

## I. Introduction

As required under the Communications Act of 1934, as amended,<sup>1</sup> the Commission has established procedures to finance universal service support mechanisms. To accomplish this Congressionally-directed objective, contributions are collected from telecommunications carriers providing interstate telecommunications and certain other providers of interstate telecommunications (including interconnected VoIP providers). This Worksheet sets forth information that the contributor must submit, so that the administrator of the universal service support mechanisms may calculate and assess contributions.<sup>2</sup>

## II. Filing Requirements and General Instructions

### A. Who Must File

All providers of interstate telecommunications within the United States,<sup>3</sup> with very limited exceptions, must file an FCC Form 499-Q Telecommunications Reporting Worksheet.<sup>4</sup>

For purposes of determining whether an entity provides telecommunications, please note that the term "telecommunications" means 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. For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area

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<sup>1</sup> 47 U.S.C. §§ 151 *et seq.*

<sup>2</sup> On March 9, 2001, the Commission modified its rules to base universal service contributions on information reported on quarterly Telecommunications Reporting Worksheet filings, with an annual true-up based on information reported on annual Telecommunications Reporting Worksheets. *Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, FCC 01-85 (rel. Mar. 14, 2001). *See also 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*, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. Jul. 14, 1999) (*Contributor Reporting Requirements Order*).

<sup>3</sup> For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

<sup>4</sup> Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications services" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). *See* 47 U.S.C. §§ 3(43), (46); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *Universal Service Contribution Methodology*; *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, Truth-in-Billing and Billing Format*, WC Docket No. 06-122, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking and Report and Order, FCC 06-94 (adopted June 21, 2006) (*2006 Contribution Methodology Reform Order*).

telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; frame relay and ATM services; and interconnected VoIP services.<sup>5</sup> Note, for example, that all incumbent and competitive local exchange carriers provide access to an interstate public network and, therefore, provide interstate telecommunications. There are no exemptions for data or non-voice services.

Note also that entities must file this Worksheet, and are subject to universal service contribution requirements, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services. Included are entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," and interconnected VoIP providers must file this Worksheet if they do not qualify for the *de minimis* exemption under the Commission's universal service rules.

Marketing agents (i.e., entities that market services on behalf of a telecommunications provider) are not themselves telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from underlying carrier revenues. A reseller is not a marketing agent.

The following three sections list types of telecommunications providers that are not required to file the FCC Form 499-Q. Note that such entities are treated as end users by their underlying carriers and therefore may be subject to pass-through charges.

1. Universal service exemption for *de minimis* telecommunications providers

Section 54.708 of the Commission's rules states that telecommunications carriers and telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than \$10,000.<sup>6</sup> For an interconnected VoIP provider that would otherwise contribute to the universal service fund in response to the Commission's 2006 *Contribution Methodology Reform Order*, the *de minimis* threshold for the fourth quarter of 2006 is \$2500 (one-quarter of the annual *de minimis* exception).<sup>7</sup> Thus, potential contributors whose contribution to the universal service support mechanisms would be *de minimis* under the universal service rules are not required to file the Worksheet (FCC Form 499-Q) or contribute directly to universal service. Telecommunications carriers and other telecommunications providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. To complete Figure 1, potential filers and all affiliates must first complete block 3 of the Worksheet and enter the amounts from Line 120(b) and 120(c) in Figure 1.

Telecommunications providers that do not file this Worksheet because their contributions would be *de minimis* should retain Figure 1 and documentation of their contribution base revenues for three years and may be required to provide it to the FCC, the FCC's Data Collection Agent or the Universal Service Administrative Company (USAC) upon request.

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<sup>5</sup> See 47 C.F.R. § 9.3 (defining interconnected VoIP service).

<sup>6</sup> 47 C.F.R. § 54.708.

<sup>7</sup> See 2006 *Contribution Methodology Reform Order* at n.203.

Figure 1: Table to determine if a contributor meets the *de minimis* standard for purposes of universal service contribution

1	Interstate contribution base for the quarter for filer (amount reportable on filer's FCC Form 499-Q; Line 120(b))	\$
2	International contribution base for the quarter for filer (amount reportable on filer's FCC Form 499-Q; Line 120(c))	\$
3	Interstate contribution base for the quarter for all affiliates* (total of amounts reportable on FCC Form 499-Q; Line 120(b) for all affiliates of the filer)	\$
4	International contribution base for the quarter for all affiliates (total of amounts reportable on FCC Form 499-Q; Line 120(c) for all affiliates of the filer)	\$
5	Consolidated interstate contribution base: Line (1) + Line (3)	\$
6	Consolidated international contribution base: Line (2) + Line (4)	\$
7	Total potential contribution base for filer and its affiliates: Line (5) + Line (6)	\$
8	Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7)	%
9	Interstate contribution base for filer from Line (1)	\$
10	If the amount in Line (8) is equal to or greater than 12%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 12%, enter \$0	\$
11	Revenue base for the filer for the quarter for determining contributions to universal service support mechanisms: Line (9) + Line (10)	\$
12	If the projected revenues on Lines (1) and (2) include projected pass-through charges for contributions to federal universal service support mechanisms, enter the total amount of projected pass-through charges. If the projected revenues on Lines (1) and (2) do not include any universal service pass-through charges, enter \$0.	\$
13	Contribution base; Line (11) – Line (12)	\$
14	Annualizing multiplier	4
15	Annualized contribution base; Line (13) multiplied by Line (14)	
16	Estimation factor for determining whether to file a 499-Q	0.104**
17	Estimated annual contribution: amount in Line (15) multiplied by Line (16)	\$
<p>* Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term 'owns' means to own an equity interest (or the equivalent thereof) of more than 10 percent. See 47 U.S.C. § 153(1).</p> <p>** The estimation factor is based on a contribution factor of .115, which is higher than the contribution factor announced for the second quarter of 2006, and a corresponding circularity factor of .102213. See <i>Public Notice</i>, DA 06-571. Actual contribution factors for future quarters may increase or decrease depending on quarterly changes in program costs and the contribution base. Filers whose actual contribution requirements total less than \$10,000 for the calendar year will be treated as <i>de minimis</i> and will receive refunds, if necessary. Filers whose actual contribution requirements total \$10,000 or more are required to contribute to the universal service support mechanisms and must file this Worksheet.</p>		

2. Exception for government, broadcasters, schools, and libraries

Certain entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, *e.g.*, state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the Worksheet or contribute directly to universal service. As explained above, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.

3. Exception for systems integrators and self providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products). Legal entities that provide services only to themselves or to commonly-owned affiliates need not file.

B. Filing by Legal Entity

Each legal entity that provides interstate telecommunications service for a fee, or that provides interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must complete separately and file a copy of the attached Telecommunications Reporting Worksheet, except as provided for below. Entities that have distinct articles of incorporation, articles of formation or similar legal documents are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1 Line (105) -- Holding Company.

Consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:<sup>8</sup>

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<sup>8</sup> *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, Truth in Billing and Billing Format, Further Notice of Proposed Rulemaking and Report and Order, CC Docket Nos. 96 45, 98 171, 90 571, 92 237, 99 200, 95 116, 98 170, 17 FCC Rcd 3752 (2002) (First Further Notice).*

- (1) A single entity oversees the management of the affiliated systems;
- (2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
- (3) All revenues are posted to a single general ledger;<sup>9</sup>
- (4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- (5) Customers have a single point of contact;
- (6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
- (7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;<sup>10</sup>
- (8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- (9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- (10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.<sup>11</sup>

Each year, entities choosing to file on a consolidated basis must file a statement certifying that they meet all of the above conditions. Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the FCC Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent. Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

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<sup>9</sup> The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

<sup>10</sup> A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entities that also are not subject to the slamming regulations.

<sup>11</sup> For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).



C. When and Where to File

Figure 2 provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in Section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day.

Figure 2: Filing schedule

When to file	What to file	Where to file *
February 1 of each year	Completed FCC Form 499-Q containing revenue information for October 1 through December 31 of the prior calendar year and projections for April 1 through June 30	<b>Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036</b>
April 1 of each year	Completed FCC Form 499-A containing revenue information for January 1 through December 31 of the prior calendar year	Form 499 Data Collection Agent (address above)
May 1 of each year	Completed FCC Form 499-Q containing revenue information for January 1 through March 31 and projections for July 1 through September 30	Form 499 Data Collection Agent (address above)
August 1 of each year	Completed FCC Form 499-Q containing revenue information for April 1 through June 30 and projections for October 1 through December 31	Form 499 Data Collection Agent (address above)
November 1 of each year	Completed FCC Form 499-Q containing revenue information for July 1 through September 30 and projections for January 1 through March 31 of the coming year	Form 499 Data Collection Agent (address above)
<p>* Do not send universal service contributions with this Worksheet or to the above address. The universal service administrator will calculate the amount of contribution due and send a bill to the billing contact person and billing address identified in Line (112) of the FCC Form 499-Q. For information on filing electronically, go to <a href="http://forms.universalservice.org">http://forms.universalservice.org</a>. <b>Annual and quarterly filings should not be sent to the Office of the Secretary or any other FCC address.</b></p>		

D. Rounding of Numbers and Negative Numbers

All information provided in the Worksheet should be neatly printed in ink or typed. Please provide an original officer signature in ink in Line (122).

Dollar Amounts. Reported revenues in Block 3 that are greater than a thousand dollars may be rounded to the nearest thousand dollars. Regardless of rounding, **all dollar amounts must be reported in whole dollars.** For example, \$2,271,881.93 could be reported as \$2,271,882 or as \$2,272,000, but could not be reported as \$2272 thousand, \$2,270,000.00 or \$2.272 million. Please enter \$0 in any line for which the contributor had no revenues for the period being reported.

Negative Numbers. Contributors are directed to provide billed revenues on Lines (115) through (119) without subtracting any expenses, allowances for uncollectibles or settlement payments and without making out-of-period adjustments. The amount of projected uncollectibles (the difference between Line (119) and Line (120)) cannot exceed projected billings. Therefore, do not enter negative numbers on the form.

E. Obligation to File Revisions

Line 127 provides check boxes to show whether the Worksheet is the original filing or a revised filing for the quarter. A contributor must file a revised 499-Q Worksheet if it discovers an error in the data that it reports, *i.e.*, if the filer discovers that it omitted or misclassified a major category of revenue. However, revised filings must be made within 45 calendar days of the original filing date. In general, the historical revenues contained in the quarterly filings will be based on unaudited books from a point in time and the projections will represent the filer's expectations as of a point in time. Contributors need not file revisions to the FCC Form 499-Q as a result of ordinary accounting adjustments such as out-of-period adjustments. Revenue information from the FCC Form 499-A will be used to ensure that contributions for the whole year are based on all subject revenues for the year.

Contributors should not file a revised FCC Form 499-Q Telecommunications Reporting Worksheet to reflect mergers, acquisitions, or sales of operating units. In the event that a contributor that filed an FCC Form 499-Q no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make payments, if any, for the funding period and must notify the Commission's Data Collection Agent.

F. Record Keeping

Filers shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for three years. Filers shall provide such records and documentation to the Commission or the Administrator upon request.<sup>12</sup> Entities that acquire carrier operations through acquisition of property, consolidation, merger, etc., must maintain the records of the acquired entity.<sup>13</sup>

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<sup>12</sup> See 47 C.F.R. § 54.711. Administrator refers to the Universal Service Administrative Company.

<sup>13</sup> See 47 C.F.R. § 42.1.

## G. Compliance

Failure to file the Telecommunications Reporting Worksheet or to pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.<sup>14</sup> In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.<sup>15</sup> Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.<sup>16</sup>

## III. Specific Instructions

### A. Block 1: Contributor Identification Information

Block 1 of the Telecommunications Reporting Worksheet requires identification information.

Line 101 -- enter the "Filer 499 ID" number for the filing entity. This code is assigned by the Commission's Data Collection Agent after a company files its first FCC Form 499-A. Filer 499 IDs for current filers can be found at <http://gullfoss2.fcc.gov/cib/form499/499a.cfm> or in the FCC report *Telecommunications Provider Locator*, which is available on the Commission's web site at <http://www.fcc.gov/wcb/iatd/stats.html>. This code should be entered at the top of any cover letter or supporting documentation. New filers are assigned Filer 499 ID numbers after a completed FCC Form 499-A Telecommunications Reporting Worksheet is received by the Data Collection Agent.

Line 102 -- enter the legal name of the filer as it appears on articles of incorporation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis.<sup>17</sup>

Line 103 -- provide the Internal Revenue Service (IRS) employer identification number (EIN) for the filer. This should be the same EIN that the company uses to file federal excise taxes or income taxes, if the filer offers services subject to those taxes. Consolidated filers should provide the EIN of the holding company. The EIN is also known as the taxpayer identification number (TIN) or for individuals as the social security number (SSN).

Line 104 -- provide the principal name under which the company conducts telecommunications activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries.

Line 105 -- **use this block to provide a common identifier for all affiliated filers.** Typically, this would be the name of the filer's holding company or controlling entity, if any. The common name used by all affiliates need not be a common carrier. All reporting affiliates or commonly controlled

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<sup>14</sup> In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. *See* 47 C.F.R. § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, 19 FCC Rcd 640 (2004).

<sup>15</sup> *See* 47 C.F.R. § 54.713 (universal service); 47 C.F.R. § 64.604(c)(5)(iii)(B) (TRS). *See also* 47 C.F.R. § 52.17(b) (NANPA); 47 C.F.R. § 52.32(c) (LNPA).

<sup>16</sup> *See* 47 C.F.R. § 54.711.

<sup>17</sup> *See* Section II-B, page 6, for information on making consolidated filings.

entities should have the **identical** name appearing on Line 105. Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term 'owns' means to own an equity interest (or the equivalent thereof) of more than 10 percent..<sup>18</sup>

Line 106 -- provide the FCC Registration Number (FRN). The FRN is a ten digit number that includes a check-digit. The FRN is used to identify an entity within all Commission Licensing/Filing systems and RAMIS (the Commission's Revenue Accounting Management Information System.) This number is assigned by CORES (the Commission Registration System) and can be obtained at <https://gulfoss2.fcc.gov/cores/CoresHome.html>. For assistance, contact the CORES help desk at (877) 480-3201 or by e-mail at CORES@fcc.gov.

Line 107 -- enter the complete mailing address of the corporate headquarters of the reporting entity.

B. Block 2: Contact Information

Lines 108-111 -- enter the name, telephone number, fax number, and email address of the person who filled out the FCC Form 499-Q. This should be a person who can provide clarifications or additional information, and, if necessary, who could serve as the first point of contact in the event that either the Commission or an administrator should choose to verify or audit information provided in the Telecommunications Reporting Worksheet.

Line 112 -- provide a billing contact person name and address for administrators to send billing information for contributions to the universal service fund. Information on establishing electronic fund transfer and bills for universal service will be sent to this address unless other arrangements are made via written request.

C. Block 3: Contributor Revenue Information

Line 113 – enter the year for which revenue information is being filed.

Line 114 – indicate the calendar quarters for which historical and projected revenue information are being reported.

Lines 115-120 contain detailed revenue data.

1. Separating Telecommunications Revenues from Service Provided to Other Contributors to the Federal Universal Service Support Mechanisms for Resale [Line (115)] from Telecommunications Revenues from Service Provided to End Users [Line (116)] (carrier's carrier vs. end-user)

In the Telecommunications Reporting Worksheet, filers must report revenues using two broad categories: (1) Revenues from other contributors to the federal universal service support mechanisms; and (2) Revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the reporting entities' books of account.

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<sup>18</sup> See 47 U.S.C. § 153(1).

For the purposes of this Worksheet, “Revenues from services provided for resale by other contributors to federal universal service support mechanisms” are revenues from services provided by underlying carriers to other entities that currently are contributors to federal universal service support mechanisms and that are resold in the form of telecommunications. Such revenues are referred to herein as "carrier's carrier revenues" or "revenues from resellers." An underlying carrier also may include as carrier's carrier revenues any switched service revenues received from another U.S. carrier where that carrier is using the underlying carrier's service to refile the foreign-billed traffic of a foreign telephone operator. Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes non-telecommunications revenues.

For the purpose of completing Line (115), a “reseller” is a telecommunications carrier or telecommunications provider that: 1) incorporates purchased telecommunications services into its own telecommunications offerings; and 2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from such offerings when provided to end users.

On an interim basis, carriers that provide telecommunications inputs to interconnected VoIP providers should report the resulting revenues as end-user revenues on Line 116. These carriers may not exclude these revenues by invoking the “carrier’s carrier” rule.<sup>19</sup>

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. The procedures should include, but not be limited to, maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. Filers shall provide this information to the Commission or the Administrator upon request. The filer should verify that each reseller will: 1) resell the filer’s services in the form of telecommunications; and 2) contribute directly to the federal universal service support mechanisms. If the filer does not have independent reason to know that the reseller satisfies these criteria, it should obtain a signed statement certifying that these criteria are met. Current contributors to universal service are identified at <http://gulfoss2.fcc.gov/cib/form499/499a.cfm>. Filers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.

Note: For the purposes of filling out this Worksheet -- and for calculating contributions to the universal service support mechanisms -- certain telecommunications carriers and service providers may be exempt from contribution to the universal service support mechanisms. These exempt entities, including "international only" and "intrastate only" providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues on Line 115. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Line (116). Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.

2. Column (a) - total revenues

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<sup>19</sup> See 2006 Contribution Methodology Reform Order at paras. 58-59 (This requirement is in effect for two full quarters following the effective date of this Order.).

The reporting entity must report gross revenues from all sources, including nonregulated and non-telecommunications services on Lines 115 through 117 and these must add to total gross revenues as reported on Line 118. Gross revenues include account set-up, connection, service restoration, termination and other non-recurring charges. These charges should be reported on the same line that the filer reports any associated recurring revenue. For example, an early termination charge to an end user for an interstate private line service would be reported as interstate revenue on Line 116. Deposits are not revenue. Gross revenues should include revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services. Gross revenues consist of total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments. Gross revenues do not include amounts that cannot be billed to customers. Gross revenues should include collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats. Gross billed revenues may be distinct from booked revenues. National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.

An entity is not required to impute or report revenues for services provided to itself or to wholly owned affiliates unless: 1) it is required to record such revenues for some other federal or state regulatory purpose; or 2) the filer is providing service to an affiliate for resale and the affiliate is not a direct universal service contributor.

Where two contributors have merged prior to the filing date, the successor company should report total revenues for the reporting period for all predecessor operations. The two contributors, however, should continue to report separately if each maintains separate corporate identities and continues to operate.<sup>20</sup> Where an entity obtains, through purchase, merger or transfer, the telecommunications operations or customer base of a telecommunications provider during a quarter, it must report all telecommunications revenues associated with such operations or customer base including revenues billed in the quarter prior to the date of acquisition.

Gross revenues also should include any surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the contributor or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be included in Line (116). Filers should report as intrastate revenues state universal service charges only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills. Other surcharges treated as revenue should be included in the revenue categories on which the surcharges were levied.

For international services, gross revenues consist of gross revenues billed by U.S. contributors with no allowances for settlement payments. International settlement receipts for foreign billed service should not be included in revenues. For common carriers providing international telecommunications services: except in very limited circumstances, the total revenues reported on the FCC Form 499-Q should match the total U.S. billed revenues that will be reported each year pursuant to 47 C.F.R. § 43.61. For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then

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<sup>20</sup> See also Section II-E, above.

refiles and carries the traffic to a foreign point, the filer would not include those settlement-like payments as revenues on the FCC Form 499-Q even though they might be reported as revenues on the Filer's 43.61 international traffic data report. Note that if the carrier receives the traffic in the United States, then it is providing ordinary international service from the United States to a foreign point and receipts from the originating carrier would be reported as revenue on Line 116 (c).

For international private line services, U.S. providers must report on Line 116 revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the filer or by a partner provider in a foreign point. Circuits within the United States that connect a customer to an international circuit should be reported as interstate. Circuits that connect foreign points should be reported on Line 118.

For purposes of completing this Worksheet, prepaid card revenues should be recognized when end-user customers purchase the cards. International revenues may be reported differently on the filer's 43.61 international traffic data reports, where revenues may be based on calls actually placed.

If you have any revenue for Lines (115) and (116), you may not omit the dollar amounts from column (a) even if 100% of the revenue is for interstate or international service.

### 3. Column (b) and (c) - interstate & international

Columns (b) and (c) are provided to identify the part of gross revenues that arise from interstate and international services for Lines (115) and (116). Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. 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. Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed local number portability surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the end-user revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account. If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.<sup>21</sup> In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, on Line 116 but may not be reported as intrastate revenues.

Note: Where possible, filers should report their amount of total revenues that are interstate and international by using information from their books of account and other internal data reporting

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<sup>21</sup> See 47 C.F.R. § 36.154(a).

systems. Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (b) and (c), respectively.

If interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers provide on the Worksheet good-faith estimates of these figures. Interconnected VoIP and CMRS providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.<sup>22</sup> Information supporting good-faith estimates must be made available to either the FCC, data collection agent, or to the Administrator upon request. For convenience, calculated interstate and international revenue amounts that are greater than one thousand dollars may be rounded to the nearest thousand dollars. Please enter zero dollars in column (b) or column (c) if, and only if, there were no interstate or international revenues for the line for the reporting period.

Note that the FCC provides the following safe harbor percentages of interstate revenues associated with Lines 115, 116, 119 and 120:<sup>23</sup>

- 64.9% of interconnected VoIP telecommunications revenues
- 37.1% of cellular and broadband PCS telecommunications revenues
- 12% of paging revenues
- 1% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll service charges. **All filers must report the actual amount of interstate and international revenues for these services.** For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls. Thus, for example, if a filer uses the safe harbor percentage for wireless revenues and has separate charges only for international calls, it would report as interstate 37.1% of its cellular wireless revenues on Line 116 column (b) and it would report as international 100% of its revenues associated with international calls on Line 116 column (c). As a result, the total of revenues identified as interstate and international in columns (b) and (c) on FCC Form 499-Q Line 116 would exceed 37.1% of the amount reported in Line 116 column (a).

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<sup>22</sup> See 2006 Contribution Methodology Reform Order at paras. 29-33, 57. See also Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-51 (2001) (CPE Bundling Order).

<sup>23</sup> See 2006 Contribution Methodology Reform Order at paras. 25-27, 53-55. 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, Truth-in-Billing and Billing Format, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 02-329 (rel. Dec. 13, 2002) (Contribution Methodology Order); see also Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998).



Wireless telecommunications providers and interconnected VoIP providers that choose to avail themselves of these safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages. All affiliated wireless telecommunications providers and interconnected VoIP providers must make a single election, each quarter, whether to report actual revenues or to use the current safe harbor within the same safe harbor category.<sup>24</sup> So, for example, if in a calendar quarter a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings. The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services. Annual revenues reported on the FCC Form 499-A should reflect the filer's reporting of revenues in each quarter on FCC Form 499-Q.

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service for a single price. Revenues for the whole bundle, except for tariffed subscriber line and PICC charges, should be reported on Line 404, as described more fully below. The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively. Filers should make a good faith estimate of the amounts of interstate and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

Interconnected VoIP and CMRS providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.<sup>25</sup> In developing their traffic studies, interconnected VoIP and CMRS providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international. Such sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample. Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above. Mobile wireless providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request. In addition, CMRS providers that rely on traffic studies must submit those studies to the Commission and USAC for review. Interconnected VoIP providers that rely on traffic studies must submit their traffic studies to the Commission for prior approval.<sup>26</sup> Until the Commission has approved an interconnected VoIP provider's proposed traffic study, that provider may use the interim safe harbor.

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<sup>24</sup> See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, FCC 03-20 (rel. Jan. 30, 2003). Note: Wireless telecommunications providers are "affiliated" for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an "identity of interest" with another contributor. See also 47 C.F.R. § 1.2110(c)(5).

<sup>25</sup> See *2006 Contribution Methodology Reform Order* at paras. 29-33, 57. See also *CPE Bundling Order* 16 FCC Rcd at 7446-48, paras. 47-51.

<sup>26</sup> See *2006 Contribution Methodology Reform Order* at para. 57.

#### 4. Explanation of historical revenue categories

Total gross revenue reported on Line 118 should equal the total of the detail amounts reported on Lines 115 through 117.

Line 115 -- Revenues from services provided to other universal service contributors for resale. This line should contain revenues from telecommunications services provided to resellers (*i.e.*, telecommunications revenue derived from other universal service contributors). This category comprises what is commonly-referred to as “carrier’s carrier revenues.” Filers may wish to consult the instructions for FCC Form 499-A, Lines 303 through 314, when calculating this figure.

On an interim basis, carriers that provide telecommunications inputs to interconnected VoIP providers must report the resulting revenues as end-user revenues and include them in their own contribution bases on Line 116. These carriers may not exclude these revenues by invoking the “carrier’s carrier” rule.<sup>27</sup>

Line 116 -- Universal service contribution base revenues. This line should contain end-user telecommunications revenues (*i.e.*, telecommunications revenues derived from entities that do not contribute directly to universal service), except for revenue from international calls that both originate and terminate in foreign points. Filers should consult the instructions for FCC Form 499-A, Line 420, when calculating this figure.

Line 117 -- Other revenue that should not be reported in the universal service contribution base. This line should contain revenue from international calls that both originate and terminate in foreign points and revenues that are reportable on FCC Form 499-A, Line 418.

Line 117 should include all non-telecommunications service revenues on the reporting entity's books as well as some revenues that are derived from telecommunications-related functions but that should not be included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do 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. Information services also are called enhanced services because they are offered over transmission facilities used in interstate communications and employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. For example, call moderation and call transcription services are information services. These services are exempt from contribution requirements and should be reported on Line 117. Line 117 should include revenues from published directory and carrier billing and collection services. Line 117 should include revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE). Line 117 should include inside wiring charges and inside wiring maintenance insurance. Line 117 should include the sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE. Line 117 should include pole attachment revenues. Line 117 should include revenues from providing open video systems (OVS), cable leased access, and direct broadcast satellite (DBS) services. Line 117 should

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<sup>27</sup> See 2006 *Contribution Methodology Reform Order* at paras. 58-59 (This requirement is in effect for two full quarters following the effective date of this Order.).

include late payment charges and charges (penalties) imposed by the company for customer checks returned for non-payment. Line 117 should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e. a carrier licensed in that country.

The Commission adopted two “safe harbor” methods for allocating revenue when telecommunications and CPE/enhanced services are offered as a bundled package.<sup>28</sup> The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications. Alternatively, contributors may elect to treat all bundled revenues as telecommunications revenues for purposes of determining their universal service obligations. Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context.

Line 118 -- Gross billed revenues from all sources. This line should equal the sum of revenues by type of service reported on Lines 115 through 117.

As noted above, for further detail on the types of revenues that should be reported on Lines 115 through 117, filers may wish to consult the Instructions for the FCC Form 499-A, available at the Commission's web site ([www.fcc.gov/formpage.html](http://www.fcc.gov/formpage.html)).

5. Projected gross billed end-user interstate and international revenues

The projection quarter is the calendar quarter that starts two months after the filing date and finishes five months after the filing date. Line 119 should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions. These amounts should be the amounts that the filer anticipates reporting on Line 116, column (b) and column (c), in the FCC Form 499-Q filing due six months after the present filing date. In order to estimate these amounts, the filer could review the amounts they are reporting on Line 116 in the instant filing and amounts reported in recent filings. In addition, filers could take into account general business conditions, new contracts covering the projection period, pricing trends, marketing programs, expansion plans, and other relevant information. Filers must develop good faith projections based on company procedures and policies. If the filer anticipates that revenues are as likely to increase as decrease, then it may copy the historic values from Line 116 to use as its projections for Line 119 or it could develop projections by trending historic values from previous quarterly filings. Filers need not make projections for Line 119 column (a).

6. Projected collected end-user interstate and international revenues

Line 120 should show the interstate and international revenues that the filer anticipates collecting from customers during the projection quarter. For this purpose “collected end-user” revenues refers to gross-billed end-user interstate and international telecommunications revenues, including any pass-through charges for federal universal service contributions, less estimated

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<sup>28</sup> *Policies and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, CC Docket No. 96-61, 16 FCC Rcd 7418 (2001).

uncollectibles.<sup>29</sup> We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. This percentage should be calculated in accordance with Generally Accepted Accounting Principles.<sup>30</sup> Thus, uncollectibles should represent the portion of gross billed revenues that the contributor reasonably expects will not be collected. Filers that use the accrual method of accounting should use the percentage of billed revenues that they recognize currently as a reserve for uncollectibles in their books of accounts. Filers that use the cash method of accounting should base this percentage on a comparison of actual collections and billed revenues, with the periods chosen to allow for the average delay between when services are billed and when payments are received. The amounts shown on Line 120 should be the amounts on Line 119 reduced by the percentage of uncollectibles.

Filers will be billed based on the amounts reported on Line 120. Any revisions to these amounts must be filed within 45 calendar days. No adjustments to billings will be made during the quarter to reflect actual levels of billed service and actual collection rates. The Administrator will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.<sup>31</sup> As necessary, the administrator will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499-A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its annual revenue report (Form 499-A), then the administrator will collect the difference from the contributor using an average of the two highest contribution factors from that year.

#### D. Block 4: Certification.

Line 121 -- Filers may use the box in Line 121 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet. By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules.<sup>32</sup> All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2 contact information) of the entities that file the Telecommunications Reporting Worksheet.

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<sup>29</sup> *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998); *Contribution Methodology Order*, para 32.

<sup>30</sup> General Accepted Accounting Principles (GAAP) encompasses the conventions, rules, and procedures necessary to define accepted practice in the preparation of financial statements in the United States. The Financial Accounting Standards Board (FASB) is currently the primary authority to establish GAAP for all companies. Carriers subject to the Uniform System of Accounts would derive this figure from the amount recorded in Account 5301, Uncollectible Revenue - Telecommunications.

<sup>31</sup> See Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0855 (February 2003) (FCC Form 499-A).

<sup>32</sup> 47 C.F.R. § 0.459. See also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

Lines 122 through 126 -- An officer of the reporting entity must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and that projections provided therein represent good faith estimates based on company procedures and policies. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, vice president for finance, comptroller, treasurer, or a comparable position. If the reporting entity is a sole proprietorship, the owner must sign the certification. The signature on Line 122 must be in ink.

Reporting entities have the opportunity to enter data, verify, submit and certify FCC Forms 499-A and 499-Q online via a web-based data entry system. Company officers, who have previously filed a signed paper form, may certify subsequent forms online without being required to submit signed paper forms. For those officers, an electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form. By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form. Visit <http://www.universalservice.org/fund-administration/forms> for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under title 18 of the United States Code.<sup>33</sup>

Line 127 -- Indicate whether this filing is an original filing or a revised filing.<sup>34</sup>

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<sup>33</sup> See 18 U.S.C. § 1001.

<sup>34</sup> See Section II-E.

IV. Reminders

- Filers are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for three years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. *See* Section II-B. Each affiliate or subsidiary must show the same holding company name on Line 105.
- For information on filing electronically, go to <http://forms.universalservice.org>.
- Provide data for all lines that apply. Show a zero for services for which the contributor had no revenues for the filing period.
- Contributors to universal service support mechanisms must make five FCC Form 499 filings each year. *See* Figure 2.
- Wherever possible, revenue information should be taken from the contributors' financial records. Filers also must provide projected revenue information on Line 119 through Line 120.
- The Worksheet must be signed by an officer of the reporting entity. An officer is a person who occupies a position specified in the corporate by laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* Section II-C for filing instructions.
- Note that FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the FCC web site, at [www.fcc.gov/wcb/filing.html](http://www.fcc.gov/wcb/filing.html).

If you have questions about the Worksheet or the instructions, you may contact:

Form 499 Telecommunications Reporting Worksheet Information	Form499@ universalservice.org (888) 641-8722
Wireline Competition Bureau Industry Analysis and Technology Division TTY	(202) 418-0940 (202) 418-0484

If you have questions regarding contribution amounts, billing procedures or the mechanisms, you may contact:

Universal Service Administrative Company	(888) 641-8722
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APPENDIX EFINAL REGULATORY FLEXIBILITY ANALYSIS

87. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>224</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice*.<sup>225</sup> The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>226</sup> To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

**A. Need for, and Objectives of, the Report and Order**

88. In the Report and Order (Order), the Commission makes interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order to maintain the stability and sufficiency of the Fund in the near-term in response to marketplace changes while we continue to examine more fundamental reform. Under the revised approach, the Commission raises the interim wireless safe harbor from its current 28.5 percent level to 37.1 percent. The Commission also establishes universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service. As detailed in the Order, interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) they may use the interim safe harbor of 64.9 percent established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies if those studies are approved by the Commission. The interim changes made in the Order are essential for securing the viability of universal service – a fundamental goal of communications policy as expressed in the Communications Act – in the near-term.<sup>227</sup>

89. The interim modifications adopted in the Order respond to marketplace developments and minimize the impact of changes to the current system on consumers, service providers, and universal

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<sup>224</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract with American Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>225</sup> 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, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3808-18, paras. 131-161 (2002) (*Further Notice*); see also *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4905-08, paras 63-66 (2004) (*IP-Enabled Services Notice*).

<sup>226</sup> See 5 U.S.C. § 604.

<sup>227</sup> See 47 U.S.C. § 151 (“One of Congress’s primary purposes in establishing the Federal Communications Commission was to “make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide . . . communications service with adequate facilities at reasonable charges.”). The Communications Act of 1934, as amended (the Act or the Communications Act), is codified at 47 U.S.C. §§ 151, *et seq.*

service administration, while we continue to work towards more fundamental reform. Specifically, the revised approach to USF contributions will ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service. For example, applying universal service obligations to providers of interconnected VoIP service is consistent with the principle of competitive neutrality. In the *Universal Service First Report and Order*, the Commission established competitive neutrality as a principle to guide the development of universal service policies.<sup>228</sup> Competitive neutrality means that “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”<sup>229</sup> The Commission has recognized that interconnected VoIP service is increasingly seen by consumers as a potential substitute for traditional telephone service.<sup>230</sup> As interconnected VoIP service continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations.<sup>231</sup>

90. The interim modifications will provide near-term stability and sustainability for the Fund by responding to the fundamental changes in the telecommunications market while retaining the essential elements of the current approach to USF contributions. They also ensure that telecommunications carriers and providers of telecommunications contribute on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service. For these reasons, the Order revises the existing approach for assessing contributions to the Fund.

#### **B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

91. On June 15, 2006, the Office of Advocacy of the U.S. Small Business Administration (SBA) filed an *ex parte* letter with the Commission.<sup>232</sup> In its letter, the SBA challenges the sufficiency of the Commission’s IRFA released with the notice of proposed rulemaking in the *IP-Enabled Services* proceeding.<sup>233</sup> The SBA states that the item itself “did not propose specific regulations and the IRFA released with the proposal reflected this lack of specificity.”<sup>234</sup> The SBA states that the *IP-Enabled Services* IRFA “makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities.”<sup>235</sup> This analysis leads SBA to conclude that the Commission has not analyzed

<sup>228</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03, paras. 46-52.

<sup>229</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8801, para. 47.

<sup>230</sup> See, e.g., *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, 18337-40, paras. 86-88 (*SBC/AT&T Merger Order*) (determining, in the context of a merger analysis, that facilities-based VoIP is appropriately considered part of the mass market local service product market); *id.* at 18349, para. 104 (noting that facilities-based VoIP providers “are likely to capture an increasing share of mass market local and long distance services”); *VoIP CALEA Order*, 20 FCC Rcd at 15009-10, para. 42 (noting that interconnected VoIP service “is increasingly used to replace analog voice service”).

<sup>231</sup> See *SBC/AT&T Merger Order*, 20 FCC Rcd at 18337, para. 85; cf. *Universal Service First Report and Order*, 12 FCC Rcd at 9184-85, para. 797 (finding that payphone aggregators should be required to contribute to universal service support mechanisms “because they directly compete with mandatory contributors to universal service”).

<sup>232</sup> See Letter from Thomas M. Sullivan, Chief Counsel for Advocacy, and Eric E. Menge, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration to Chairman Kevin J. Martin, FCC, CC Docket No. 96-45, WC Docket No. 04-36 (filed June 15, 2006).

<sup>233</sup> *Id.* at 2 (citing *IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2005)).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*



the economic impact of the actions taken in the Order on small businesses, and to recommend that the Commission defer action and complete an IRFA that it believes would meet the requirements of the RFA.<sup>236</sup>

92. We disagree with SBA that the Commission should postpone taking action in this proceeding to change the safe harbor percentage for wireless carriers and to impose universal service obligations on interconnected VoIP providers, and instead issue a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives.<sup>237</sup> We believe the additional steps suggested by SBA are unnecessary because small entities already have received sufficient notice of the issues addressed in today's Order and because the Commission has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented less burdensome alternatives.<sup>238</sup> Moreover, SBA's proposal to postpone and thus further delay these interim actions is antithetical to the core purpose of the Order, which is to ensure the near-term stability and sufficiency of the USF.

93. The Commission also received some general small business-related comments. Some commenters, for example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *Further Notice*. Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission. To the extent that these commenters' concerns are implicated by today's actions, they are discussed throughout the Order.

### **C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

94. 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 rules adopted herein.<sup>239</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>240</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>241</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>242</sup>

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<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> For example, the Commission has extended the *de minimis* exception to interconnected VoIP providers and has provided interconnected VoIP providers that are required to contribute three means of determining their contributions. Such flexibility will allow an entity to determine which method is least administratively burdensome for it. See Order, *supra*, at paras. 51-57, 61.

<sup>239</sup> 5 U.S.C. § 604(a)(3).

<sup>240</sup> 5 U.S.C. § 601(6).

<sup>241</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 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 in the Federal Register."

<sup>242</sup> 15 U.S.C. § 632.

95. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report.<sup>243</sup> According to data in the most recent report, there are 5,679 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

96. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>244</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>245</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>246</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>247</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>248</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>249</sup> Thus, we estimate that most governmental jurisdictions are small.

97. We have perhaps been overbroad in our list of entities directly affected, below, in an effort to encourage comment.

### 1. Wireline Carriers and Service Providers

98. We have included small incumbent local exchange carriers 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.”<sup>250</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>251</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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<sup>243</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (June 2005) (*Trends in Telephone Report*). This source uses data that are current as of October 1, 2004.

<sup>244</sup> See SBA, *Programs and Services*, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>245</sup> 5 U.S.C. § 601(4).

<sup>246</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>247</sup> 5 U.S.C. § 601(5).

<sup>248</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>249</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>250</sup> 15 U.S.C. § 632.

<sup>251</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (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) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

99. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. 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.<sup>252</sup> According to Commission data,<sup>253</sup> 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

100. *Competitive Local Exchange Carriers (CLECs), 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 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.<sup>254</sup> According to Commission data,<sup>255</sup> 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are “Shared-Tenant Service Providers,” and all 12 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are “Other Local Service Providers.” Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. 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 our action.

101. *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.<sup>256</sup> According to Commission data,<sup>257</sup> 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

102. *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.<sup>258</sup> According to Commission data,<sup>259</sup> 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

103. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate

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<sup>252</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>253</sup> “Trends in Telephone Service” at Table 5.3.

<sup>254</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>255</sup> “Trends in Telephone Service” at Table 5.3.

<sup>256</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>257</sup> “Trends in Telephone Service” at Table 5.3.

<sup>258</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>259</sup> “Trends in Telephone Service” at Table 5.3.

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.<sup>260</sup> According to Commission data,<sup>261</sup> 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

104. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. 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.<sup>262</sup> According to Commission data,<sup>263</sup> 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

105. *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.<sup>264</sup> According to Commission data,<sup>265</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

106. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. 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.<sup>266</sup> According to Commission data,<sup>267</sup> 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

107. *800 and 800-Like Service Subscribers*.<sup>268</sup> 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.<sup>269</sup> The

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<sup>260</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>261</sup> “Trends in Telephone Service” at Table 5.3.

<sup>262</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>263</sup> “Trends in Telephone Service” at Table 5.3.

<sup>264</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>265</sup> “Trends in Telephone Service” at Table 5.3.

<sup>266</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>267</sup> “Trends in Telephone Service” at Table 5.3.

<sup>268</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>269</sup> 13 C.F.R. § 121.201, NAICS code 517310.

most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.<sup>270</sup> According to our data, at the beginning of January 2005, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789 and the number of 877 numbers assigned was 4,805,568. 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 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; and 4,805,568 or fewer small entity 877 subscribers.

## 2. International Service Providers

108. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.<sup>271</sup>

109. 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.”<sup>272</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>273</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>274</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

110. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>275</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>276</sup> Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>277</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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<sup>270</sup> “Trends in Telephone Service” at Tables 18.4, 18.5, 18.6.

<sup>271</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

<sup>272</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>273</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>274</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>275</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>276</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>277</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

### 3. Wireless Telecommunications Service Providers

111. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

112. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>278</sup> and “Cellular and Other Wireless Telecommunications.”<sup>279</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>280</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>281</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>282</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>283</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

113. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.”<sup>284</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.<sup>285</sup> We have estimated that 260 of these are small, under the SBA small business size standard.<sup>286</sup> Thus, under this category and size standard, the majority of firms can be considered small. This information is also included in paragraph 114.

114. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.<sup>287</sup> According to Commission data,<sup>288</sup> 375 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an

<sup>278</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>279</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>280</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

<sup>281</sup> *Id.* The 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 “1000 employees or more.”

<sup>282</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

<sup>283</sup> *Id.* The 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 “1000 employees or more.”

<sup>284</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>285</sup> “Trends in Telephone Service” at Table 5.3.

<sup>286</sup> *Id.*

<sup>287</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>288</sup> “Trends in Telephone Service” at Table 5.3.

estimated 370 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we 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.<sup>289</sup> 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.<sup>290</sup> The SBA has approved these small business size standards.<sup>291</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>292</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

115. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.<sup>293</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

116. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>294</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>295</sup> According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony.<sup>296</sup> We have estimated that 260 of these are small under the SBA small business size standard.

117. *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.<sup>297</sup> For Block F, an additional classification for “very small business” was added and is defined as

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<sup>289</sup> 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, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295, 62 FR 16004 (Apr. 3, 1997).

<sup>290</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 letter).

<sup>291</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

<sup>292</sup> *Id.* at 10085, para. 98.

<sup>293</sup> SBA Dec. 2, 1998 letter.

<sup>294</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>295</sup> *Id.*

<sup>296</sup> “Trends in Telephone Service” at Table 5.3.

<sup>297</sup> See 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, Report and Order, 11 FCC Rcd 7824, 61

an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.”<sup>298</sup> These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>299</sup> 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.<sup>300</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. 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.

118. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>301</sup> 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. 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. The SBA has approved these small business size standards.<sup>302</sup> In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

119. *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

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FR 33859 (July 1, 1996) (PCS Order); *see also* 47 C.F.R. § 24.720(b).

<sup>298</sup> *See PCS Order*, 11 FCC Rcd 7824.

<sup>299</sup> *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 5332, 59 FR 37566 (July 22, 1994).

<sup>300</sup> 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 Services (PCS) Licenses, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436, 62 FR 55348 (Oct. 24, 1997).

<sup>301</sup> *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456, 65 FR 35875 (June 6, 2000).

<sup>302</sup> *See* SBA Dec. 2, 1998 letter.



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 “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>303</sup> The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

120. *220 MHz Radio Service – Phase II Licensees.* The Phase II 220 MHz service is a new service, and 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.<sup>304</sup> 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.<sup>305</sup> 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. The SBA has approved these small business size standards.<sup>306</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>307</sup> 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.<sup>308</sup> Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>309</sup>

121. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.<sup>310</sup> These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service 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. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small

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<sup>303</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>304</sup> *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

<sup>305</sup> *Id.* at 11068, para. 291.

<sup>306</sup> See Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

<sup>307</sup> See generally Public Notice, “220 MHz Service Auction Closes,” 14 FCC Rcd 605 (1998).

<sup>308</sup> See, e.g., Public Notice, “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” 14 FCC Rcd 1085 (1999).

<sup>309</sup> Public Notice, “Phase II 220 MHz Service Spectrum Auction Closes,” 14 FCC Rcd 11218 (1999).

<sup>310</sup> 47 C.F.R. § 90.814(b)(1).

entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

122. *700 MHz Guard Band Licensees.* 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.<sup>311</sup> A “small business” as 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>312</sup> 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.<sup>313</sup>

123. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>314</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>315</sup> The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>316</sup> 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 the rules and policies adopted herein.

124. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.<sup>317</sup> We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>318</sup> 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.

125. *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 “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>319</sup> Most applicants for

<sup>311</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission’s Rules, WT Docket No. 99-168, Second Report and Order, 65 FR 17599 (Apr. 4, 2000).

<sup>312</sup> See generally Public Notice, “220 MHz Service Auction Closes,” Report No. WT 98-36 (Oct. 23, 1998).

<sup>313</sup> Public Notice, “700 MHz Guard Band Auction Closes,” DA 01-478 (rel. Feb. 22, 2001).

<sup>314</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

<sup>315</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

<sup>316</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>317</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

<sup>318</sup> 13 C.F.R. § 121.201, NAICS codes 517212.

<sup>319</sup> 13 C.F.R. § 121.201, NAICS code 517212.

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. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>320</sup> 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.

126. *Fixed Microwave Services.* Fixed microwave services include common carrier,<sup>321</sup> private operational-fixed,<sup>322</sup> and broadcast auxiliary radio services.<sup>323</sup> 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 the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>324</sup> 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 the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

127. *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.<sup>325</sup> 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

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<sup>320</sup> *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 (1998).

<sup>321</sup> 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).

<sup>322</sup> 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.

<sup>323</sup> 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.

<sup>324</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>325</sup> This service is governed by Subpart I of Part 22 of the Commission’s rules. See 47 C.F.R. §§ 22.1001-22.1037.

size standard for “Cellular and Other Wireless Telecommunications” services.<sup>326</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>327</sup>

128. *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 calendar years.<sup>328</sup> 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.<sup>329</sup> The SBA has approved these small business size standards.<sup>330</sup> 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 the rules and policies adopted herein.

129. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).<sup>331</sup> In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.<sup>332</sup> The MDS 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. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts.<sup>333</sup> According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.<sup>334</sup> Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>335</sup> Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

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<sup>326</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>327</sup> *Id.*

<sup>328</sup> 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, Report and Order, 63 Fed. Reg. 6079 (Feb. 6, 1998).

<sup>329</sup> *Id.*

<sup>330</sup> See Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

<sup>331</sup> 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).

<sup>332</sup> 47 C.F.R. § 21.961(b)(1).

<sup>333</sup> 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

<sup>334</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization)”, Table 4, NAICS code 513220 (issued October 2000).

<sup>335</sup> In addition, the term “small entity” within SBREFA applies to small organizations (nonprofits) and to small

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130. *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.<sup>336</sup> The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 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.<sup>337</sup> 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.<sup>338</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>339</sup> 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. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

131. *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.<sup>340</sup> 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.<sup>341</sup> A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>342</sup> These size standards will be used in future auctions of 218-219 MHz spectrum.

132. *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. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no

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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 ITFS licensees.

<sup>336</sup> See *Local Multipoint Distribution Service*, Second Report and Order, 12 FCC Rcd 12545 (1997).

<sup>337</sup> *Id.*

<sup>338</sup> See *id.*

<sup>339</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>340</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 Fed. Reg. 24947 (May 13, 1994).

<sup>341</sup> *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, 64 Fed. Reg. 59656 (Nov. 3, 1999).

<sup>342</sup> *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, 64 Fed. Reg. 59656 (Nov. 3, 1999).

more than 1,500 persons.<sup>343</sup> We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>344</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less 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.

133. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.<sup>345</sup> “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.<sup>346</sup> The SBA has approved these small business size standards.<sup>347</sup> These size standards will apply to the future auction, if held.

#### 4. Cable and OVS Operators

134. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”<sup>348</sup> The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.<sup>349</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>350</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>351</sup> Thus, under this size standard, the majority of firms can be considered small.

135. *Cable Companies and Systems.* The Commission has also 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.<sup>352</sup> Industry data indicate that, of

<sup>343</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>344</sup> 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.

<sup>345</sup> Amendments to Parts 1,2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

<sup>346</sup> Amendments to Parts 1,2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

<sup>347</sup> *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

<sup>348</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>349</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>350</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>351</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>352</sup> 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. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>353</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>354</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>355</sup> Thus, under this second size standard, most cable systems are small.

136. *Cable System Operators.* The Communications Act of 1934, as amended, 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."<sup>356</sup> 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.<sup>357</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>358</sup> 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,<sup>359</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

137. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.<sup>360</sup> As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.<sup>361</sup> This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>362</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to

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<sup>353</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages 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," pages D-1805 to D-1857.

<sup>354</sup> 47 C.F.R. § 76.901(c).

<sup>355</sup> Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>356</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>357</sup> 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>358</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages 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," pages D-1805 to D-1857.

<sup>359</sup> 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. See 47 C.F.R. § 76.909(b).

<sup>360</sup> See 47 U.S.C. § 573.

<sup>361</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>362</sup> See <<http://www.fcc.gov/csb/ovs/csovsr.html>> (current as of March 2002).

generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

## 5. Internet Service Providers

138. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”<sup>363</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.<sup>364</sup> According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.<sup>365</sup> Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

## 6. Other Internet-Related Entities

139. *Web Search Portals.* Our action pertains to 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 “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”<sup>366</sup> The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.<sup>367</sup> According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.<sup>368</sup> Of these, 303 had annual receipts of under \$5 million, and an additional 15 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 our action.

140. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”<sup>369</sup> The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.<sup>370</sup> According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.<sup>371</sup> Of these, 6,418 had annual receipts of under \$10 million, and an additional

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<sup>363</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>364</sup> 13 C.F.R. § 121.201, NAICS code 518111.

<sup>365</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

<sup>366</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>367</sup> 13 C.F.R. § 121.201, NAICS code 518112.

<sup>368</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

<sup>369</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>370</sup> 13 C.F.R. § 121.201, NAICS code 518210.



251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

141. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”<sup>372</sup> Our action pertains to 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 \$6.5 million or less in average annual receipts.<sup>373</sup> According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.<sup>374</sup> Of these, 138 had annual receipts of under \$5 million, and an additional four 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 our action.

142. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”<sup>375</sup> The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.<sup>376</sup> According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.<sup>377</sup> Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

143. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users.<sup>378</sup> The SBA has developed a small business size standard of \$23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services.<sup>379</sup> For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year.<sup>380</sup> Of these, 7,633 had annual

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<sup>371</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

<sup>372</sup> U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

<sup>373</sup> 13 C.F.R. § 121.201, NAICS code 519190.

<sup>374</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

<sup>375</sup> U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

<sup>376</sup> 13 C.F.R. § 121.201, NAICS code 516110.

<sup>377</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

<sup>378</sup> See U.S. Census Bureau, “2002 NAICS Definitions: 511210 Software Publishers”; <http://www.census.gov/epcd/naics02/def/NDEF511.HTM>.

<sup>379</sup> 13 C.F.R. § 121.201, NAICS codes 511210, 541511, and 541519.

<sup>380</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 511210 (issued Nov. 2005).

receipts of under \$10 million, and an additional 403 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year.<sup>381</sup> Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 firms had receipts of between \$10 million and \$24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year.<sup>382</sup> Of these, 6,187 had annual receipts of under \$10 million, and an additional 101 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

144. As discussed in detail in the Order,<sup>383</sup> the modifications to the reporting system only expand the scope of entities that are required to report to include interconnected VoIP service providers. Under the modified reporting system, contributors will continue to report projected and historical revenues on Form 499-Q and their annual revenues on the Form 499-A. Failure to file the required form by the applicable deadline, or failure to file accurate information on the form, could subject a contributor to enforcement action.<sup>384</sup> In addition, we note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the Form 499 submitted to USAC. To ensure that contributors report correct information, we also require all contributors to maintain records and documentation to justify the information reported in the Form 499, and to provide such records and documentation to the Commission and to USAC upon request.

145. Our action today raises the wireless safe harbor and imposes new USF contribution obligations on interconnected VoIP providers. We note, however, that neither wireless providers nor interconnected VoIP providers are required to use the safe harbors established in this order; they have the additional options of basing their contributions on actual interstate and international revenues, or of relying on a traffic study. We emphasize once again that the interim actions adopted in the Order are necessary to ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service.

#### **E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

146. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather

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<sup>381</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 541511 (issued Nov. 2005).

<sup>382</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 541519 (issued Nov. 2005).

<sup>383</sup> See Order, *supra*, at paras. 60-62.

<sup>384</sup> See *id.* n.189.

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>385</sup>

147. With respect to wireless providers, the Commission considered and rejected setting the interim safe harbor higher than the 37.1 percent established in this Order.<sup>386</sup> Similarly, the Commission considered and rejected a requirement that interconnected VoIP providers contribute on 100 percent of their end-user revenues.<sup>387</sup> Thus both wireless and interconnected VoIP providers – especially smaller entities – benefit from being able to use a lower safe harbor to report their interstate and international end-user revenues.

148. The Commission’s application of the *de minimis* exception to interconnected VoIP providers remains the best means of minimizing the impact on small entities of adopting our interim changes to USF contribution methodology. The *de minimis* exception protects small businesses and ensures that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. As noted by several commenters, the *de minimis* exemption is critical to curtailing the potential administrative costs of contributing for small entities.<sup>388</sup>

## F. Report to Congress

149. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>389</sup> In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>390</sup>

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<sup>385</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>386</sup> See Order, *supra*, at para. 28.

<sup>387</sup> See Order, *supra*, at para. 53.

<sup>388</sup> See, e.g., ITA Reply Comments at 6-7; NECA Comments at 7-8; Teletouch Comments at 10.

<sup>389</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>390</sup> See 5 U.S.C. § 604(b).

**APPENDIX F****INITIAL REGULATORY FLEXIBILITY ANALYSIS**

150. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>391</sup> the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). 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 NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>392</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>393</sup>

**A. Need for, and Objectives of, the Proposed Rules**

151. In the NPRM, we seek to further refine the record concerning the interim requirements established in the accompanying Order for mobile wireless providers and for interconnected VoIP providers, while we continue to examine more fundamental contribution methodology reform. In the Order, we increased the interim wireless safe harbor from 28.5 percent to 37.1 percent to reflect more accurately actual wireless interstate usage.<sup>394</sup> We also require providers of interconnected VoIP service to contribute to the Universal Service Fund (USF or Fund).<sup>395</sup> These actions are necessary to ensure the stability and sufficiency of the Fund. The objective of the NPRM is to explore whether the Commission should take additional action to meet these goals.<sup>396</sup>

**B. Legal Basis**

152. The legal basis for any action that may be taken pursuant to the NPRM 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, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 202, 218-220, 254, and 303(r), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 C.F.R. §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, 1.1200-1.1216.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

153. 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.<sup>397</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

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<sup>391</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

<sup>392</sup> See 5 U.S.C. § 603(a).

<sup>393</sup> See *id.*

<sup>394</sup> See Order, *supra*, at para. 23; see also TracFone June 14, 2005 *Ex Parte* Letter, Attach. 2 at 13.

<sup>395</sup> See Order, *supra*, at para. 34.

<sup>396</sup> See IRFA section D, *infra*.

<sup>397</sup> 5 U.S.C. §§ 603(b)(3), 604(a)(3).

“small governmental jurisdiction.”<sup>398</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>399</sup> 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 Small Business Administration (SBA).<sup>400</sup> The present NPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be directly affected by our action.

154. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>401</sup>

155. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.<sup>402</sup>

156. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>403</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>404</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>405</sup> Thus, we estimate that most governmental jurisdictions are small.

157. We have described and estimated the number of small entities to which the proposed rules might apply in the FRFA, *supra*, and hereby incorporate by reference those descriptions here.

#### **D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

158. The NPRM addresses required USF contribution levels; these levels, plus associated routine reporting requirements,<sup>406</sup> constitute compliance burdens. The NPRM seeks comment, first, on whether to eliminate or raise the interim wireless safe harbor. The NPRM asks whether mobile wireless providers can, or should be able to, determine their actual interstate and international end-user revenues. If we decide to eliminate the wireless safe harbor, the NPRM seeks comment on how mobile wireless

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<sup>398</sup> 5 U.S.C. § 601(6).

<sup>399</sup> 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 terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register.”

<sup>400</sup> 15 U.S.C. § 632.

<sup>401</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>402</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>403</sup> 5 U.S.C. § 601(5).

<sup>404</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>405</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>406</sup> See 47 C.F.R. §§ 54.706-54.713.

providers would determine their actual usage and whether we should continue to permit wireless providers to use traffic studies. For example, the NPRM seeks comment on whether originating and terminating Numbering Plan Areas (NPAs) reflect whether a call is interstate or international. The NPRM also seeks comment on whether originating and terminating cell sites could be used to determine the jurisdictional nature of a call. The NPRM asks commenters to address associated difficulties and costs of implementation. The NPRM also seeks comment on whether there are unique difficulties associated with analyzing either outgoing or incoming calls, and whether it is necessary to analyze both types of calls or would, for example, out-bound calls reasonably approximate all interstate and international usage.

159. If we decide to retain a wireless safe harbor, the NPRM seeks comment on whether the new interim safe harbor of 37.1 percent for interstate and international end-user revenue is appropriate or whether the safe harbor should be raised. Given that mobile wireless providers retain the option of reporting their actual interstate end-user telecommunications revenues, we have found that setting the interim safe harbor at the high end of the market for interstate and international end-user revenue is a reasonable approach. The NPRM asks whether a safe harbor of 37.1 percent reflects a reasonable approximation of the high end of wireless interstate and international end-user usage today, and if not, what percentage does. Since 1998, the Commission has increased the interim wireless safe harbor twice to reflect more accurately wireless interstate end-user revenue. We are mindful that these increases in the safe harbor percentage lagged market conditions, resulting in collecting fewer Fund contributions than market conditions would have supported. The NPRM seeks comment on how to determine the safe harbor percentage to better reflect market conditions on an ongoing basis, and on whether the Commission should periodically (*e.g.*, annually, quarterly) adjust the interim safe harbor percentage to reflect wireless interstate end-user revenue trends.

160. The NPRM also seeks comment on the USF obligations we have established in the Order for interconnected VoIP providers. We encourage commenters to describe possible ways in which our new requirements for interconnected VoIP providers could be improved. Given the interim nature of this order, we welcome suggestions for a permanent approach to USF contributions from interconnected VoIP providers.

161. In particular, the NPRM seeks comment on whether to eliminate or change the interim safe harbor established in the Order for providers of interconnected VoIP service. Commenters are asked to address whether a safe harbor continues to be appropriate for providers of interconnected VoIP service, and whether providers of interconnected VoIP service can identify the amount of actual interstate and international, as opposed to intrastate, telecommunications they provide. If so, the NPRM asks whether these providers should be required to report based on actual data. If not, the NPRM seeks comment on whether 64.9 percent is the most appropriate level, or whether we should adjust the interim interconnected VoIP safe harbor. The NPRM asks that commenters advocating a change to the safe harbor explain the basis of their proposed revised safe harbor and how the safe harbor should be calculated.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

162. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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 or reporting requirements under the rule for 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 small entities.<sup>407</sup>

163. The NPRM specifically seeks comment on whether the Commission should revise the USF obligations established for interconnected VoIP providers.<sup>408</sup> In addition, the NPRM seeks comment on the appropriateness of the interim safe harbors established for wireless carriers and interconnected VoIP providers.<sup>409</sup> We seek comment here on the effect the various proposals summarized above will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of ensuring the stability and sufficiency of the Fund while also imposing minimal burdens on small entities? What specific steps could the Commission take in this regard?

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

164. None.

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<sup>407</sup> 5 U.S.C. § 603(c).

<sup>408</sup> See NPRM, *supra*, para. 68.

<sup>409</sup> See NPRM, *supra*, paras. 66, 69.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Universal Service Contribution Methodology (WC Docket No. 06-122); Federal-State Joint Board on Universal Service (CC Docket No. 96-45); 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 (CC Docket No. 98-171); Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90-571); Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size (CC Docket No. 92-237; NSD File No. L-00-72); Number Resource Optimization (CC Docket No. 99-200); Telephone Number Portability (CC Docket No. 95-116); Truth-in-Billing and Billing Format (CC Docket No. 98-170); IP-Enabled Services (WC Docket No. 04-36)*

Maintaining the stability of the universal service contribution system is one of the Commission's most important responsibilities. We take an interim step today to ensure the stability of the fund by raising the wireless safe harbor and broadening the contribution base to include interconnected VoIP providers. We take these actions because we recognize the changing telecommunications marketplace.

First, for the first time in nearly four years, we raise the mobile wireless safe harbor from 28.5 to 37.1%. We find that, given the tremendous growth of wireless communications, the current safe harbor no longer accurately reflects the extent to which wireless consumers utilize their wireless phones for interstate calls. This is true particularly in light of the increased substitution of wireless for traditional wireline service. Of course, wireless providers will continue to have the option to contribute to the fund based on traffic studies that serve as a proxy for their actual interstate telecommunications service revenues rather than contribute based on the safe harbor.

Second, we require interconnected VoIP providers to contribute to the fund. Like wireless services, consumers are increasingly using interconnected VoIP services as a substitute for traditional wireline service. And, many of these VoIP providers claim that their services are "inherently interstate." Thus, we could require these providers to pay based on 100% percent of their revenues. Instead, we only require them to contribute based on a safe harbor of 64.9% - the percentage of interstate revenues reported by wireline toll providers. Similar to the options available to wireless providers, interconnected VoIP providers may choose instead to contribute based on their actual interstate revenues or use a traffic study as proxy for these revenues.

As the item recognizes, by requiring interconnected VoIP providers to contribute to the fund, the Commission is furthering the principle of competitive neutrality. This principle of competitive neutrality has guided the Commission's universal service policies over the past decade. It requires us to ensure that our universal service rules do not unfairly favor nor disfavor one technology over another, or unfairly advantage or disadvantage one provider over another. Like public safety goals, universal service obligations transcend new technologies and cannot be compromised.

The preservation and advancement of universal service depend on the Commission's ability to respond effectively to the ever-evolving telecommunications marketplace. Today's order recognizes the increasing use of wireless and VoIP services by consumers and adjusts the Commission universal services rules accordingly. Thus, the actions we take today ensure that the contribution base reflects the current market realities. And, at the same time, our actions ensure that universal service contributions remain equitable and nondiscriminatory.



Although today's item should ensure the stability and sufficiency of the universal service support system, it is just an interim step. I still believe that this system needs fundamental reform, and I remain committed to adopting and implementing a numbers-based contribution system. Accordingly, our work in this area is far from complete. I look forward to working with my colleagues to preserve the values of universal service.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, CONCURRING IN PART**

Re: *In the Matter of Universal Service Contribution Methodology; 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; Truth-in-Billing and Billing Format; and IP-Enabled Services, Report and Order and Notice of Proposed Rulemaking (WC Docket No. 06-122, CC Docket Nos. 96-45 98-171, 90-571, 92-237 NSD File No. L-00-72, 99-200, 95-116, 98-170, and WC Docket No. 04-36)*

Nothing is closer to the heart of the Telecommunications Act than universal service. It's the very life-blood of the Act—a clear national commitment to bring the best, most accessible and cost-effective communications services to all Americans—no matter who they are or where they live. No matter whether they live in city or town, work in the factory or on the farm or in Indian Country, whether they are affluent or economically disadvantaged, or if they are healthy or are part of our nation's several disabilities communities—every citizen has a right to communications services. And if they are denied access to the advanced communications services now becoming available, they will be left behind. The rest of the world is not going to wait, for example, for rural America to catch up. Rural America's kids will either have these tools or they will lose in the global competition—it's about as simple as that. And they will lose also for lack of the tools they need to fulfill themselves and become fully productive members of our society.

The Order before us today takes some important steps towards shoring up the financial stability of the universal service fund. It does so by raising the wireless safe harbor contribution, by requiring interconnected VoIP providers to contribute to the fund, and by increasing the FCC's ability to ensure that providers are accurately and completely reporting their universal service obligations. I support and approve these steps.

But the outcome isn't all good. Today's actions need to be understood in a broader context, because universal service needs to be seen whole. Last August the Commission put in motion a process to exempt DSL from contributing to the support of universal service. There were other options available to us that would have been more in keeping, I believe, with Section 254 of the Communications Act which charges the Commission with implementing policies that promote the "preservation and advancement of universal service." And more in keeping, I would add, with Section 706 of the Telecommunications Act which charges the FCC to encourage the deployment of advanced telecommunications capability to all Americans.

In the century just past, we got universal service about right for plain old telephone service. Those who were serving the more affluent and profitable markets were charged with the responsibility to contribute towards the provision of reasonably comparable service in more difficult telecom markets. It worked. Now, as we march blithely into the twenty-first century with all its wonderful new telecommunications technologies and services, we reverse course. DSL and cable broadband—which are surely going to be the backbone of our nation's telecom infrastructure for years to come—can build where they choose and profit as they can without contributing towards making these services available to harder-to-reach people. It's like taking the broadband out of a broadband strategy—except that the country lacks such a strategy.

In reviewing the record, I noted with interest the National Telecommunications Cooperative Association letter stating that the elimination of broadband providers' contributions to the fund "will undermine the . . . goal of providing affordable broadband services to all Americans by 2007, and conflict directly with . . . Telecom Rewrite legislation . . . which ties the future of universal service to broadband deployment throughout the United States."

At a somewhat more granular level, I think the jury may still be out on whether today's action actually puts enough additional funds into the universal service fund as DSL's non-participation takes out. By some accounts DSL providers contribute \$350 million a year to the fund, perhaps more. Recall that last summer, when the Commission announced its broadband recusal approach, we pledged to "take *whatever action is necessary* to preserve existing funding levels" (emphasis added) before releasing providers from their contribution obligations. I don't see with slam-dunk certainty that contributions from interconnected VoIP (which is, for all its impressive growth, still a relatively nascent industry) and from wireless carriers (whose possibly increased use of traffic studies could lead to unforeseen consequences) offset the funds lost by DSL's non-participation. Surely it would be an intolerable result to end up with the fund having less revenue, not more, for the foreseeable future. Last summer we pledged this result would not happen. Nine months later we seem to accept the possibility of a diminished fund.

Finally I would note that concerns have been expressed by wireless and VoIP providers that their respective safe harbors were not appropriately set. We all know the importance of well-developed, analytical fact-gathering, research and study, and to the extent that comments to today's Notice of Proposed Rulemaking support adjustments to these safe harbors or provide better ways to calculate them, the Commission should conform its policies expeditiously.

In sum, I approve in part and concur in part for the reasons discussed above, and I remain hopeful that a universal service system for the twenty-first century will yet emerge from the dialogues that currently attend not only our proceedings but also the deliberations of Congress as the people's representatives contemplate our nation's needs in the years ahead.

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
Approving in Part, Concurring in Part**

*Re: Universal Service Contribution Methodology; 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; Numbering Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services; WC Docket No. 06-122, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking (June 21, 2006).*

My commitment to universal service is based on the fundamental belief that a chain is only as strong as its weakest link. Our universal service programs strengthen the links in our communications network. The Commission is charged under Section 254 of the Act with establishing “specific, predictable, and sufficient” support mechanisms to preserve and advance universal service. I support this Order because we take steps here, by increasing the safe harbor for wireless carriers and including interconnected VoIP providers in the contribution base, that are consistent with our obligation to keep universal service on solid footing.

I concur in part to this Order, however, because I am concerned that we leave unanswered important questions about our long-term approach for the foundation of these vital programs. Congress clearly contemplated that our universal service programs would evolve as technology evolves, and it is paramount that the Commission not undercut the role that universal service and our communications systems will play in the future of Rural Americans, low income citizens, and our nation’s schools and libraries.

Universal service has been the bedrock telecommunications policy of the past seventy years. Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. Universal service has played an important role in stimulating and maintaining the high levels of penetration that our country now enjoys, with benefits for all users of the network, no matter where they live.

Given these benefits, it is not surprising that Congress enshrined the principles of keeping our communities connected and ensuring that the latest advanced communications services reach all Americans in the Telecommunications Act of 1996. In the 1996 Act, Congress reaffirmed its commitment to connectivity for rural America and for low income consumers, but also made important additions to our universal service framework. Through the addition of the Schools and Libraries program, we have opened a world of new learning and opportunity for millions of school children and library patrons. In addition, the funding made possible through our Rural Health Care program has been crucial to the sustainability of many telemedicine programs and this program holds enormous potential to improve the quality of life in rural America.

To ensure continued success, we must remain committed to providing specific, predictable and sufficient support mechanisms based on equitable and non-discriminatory contributions. For that reason, I support our decision to increase the wireless carrier safe harbor so that it may better reflect the industry’s level of interstate revenues. I also support the inclusion of interconnected VoIP services which

are increasingly viewed by consumers as a replacement for traditional analog voice services.

To their credit, many wireless carriers and interconnected VoIP providers have acknowledged the need to contribute to the universal service support mechanisms. At the same time, I have heard concerns about how the Commission implements its specific contribution provisions. So, I was pleased that this Order continues to allow carriers a choice by preserving their ability to calculate their actual interstate revenues, use traffic studies, or use a safe harbor mechanism. I also support our decision to adopt a simultaneous NPRM, through which we seek comment on whether to further refine several technical issues related to the use of safe harbors and traffic studies, if changes are appropriate.

One overarching question that is largely unaddressed in this Order, however, is how our universal service contribution policies should evolve as we move into the broadband age. As we upgrade our nation's communications networks to provide broadband functionality and advanced communications services, our children will rely on and integrate communications tools into their lives in ways that we are only beginning to see. Last August, the Commission embarked on an uncharted path by reclassifying broadband Internet access services as information services, outside the framework of our traditional Title II authority. Nowhere is this path more murky than in the case of universal service, where reclassifying these services removes their revenues from the mandatory contribution requirements of section 254. At the time of the reclassification, the Commission adopted a transitional mechanism to stabilize funding for universal service support and made an extraordinary commitment to preserve and advance universal service. Those provisions in the Broadband Reclassification Order were critical to my support of the item.

I fully support the efforts to expand the contribution base in today's Order but, as we edge toward the close of the Commission's interim contribution plan, there remain important unanswered questions. Despite the best efforts of our talented staff, it is difficult to forecast the precise impact of the measures we adopt today on overall contributions. Indeed, this Order makes no definitive findings about what level of contributions will be recovered through these changes. This Order also does not attempt to analyze the extent of the Commission's decision last August on the overall revenues available for universal service purposes. It is clear, however, that exempting broadband Internet access revenues would remove a sizable and rapidly-growing segment of the telecommunications sector from the contribution base. That Congress contemplated that our universal service mechanisms would evolve as technology evolves is certainly evidenced in the broad permissive authority it gave the Commission to expand the contribution base. As I said at the time of the reclassification, I would have preferred to exercise our permissive contribution authority to address this potential decline in the contribution base permanently. For these same reasons, I concur in part to this item, which preserves a status quo with respect to universal service that strikes me as inconsistent with the intent of Congress and an evolving level of universal service.

Although the Commission has not yet reached a decision on this larger issue, I remain committed to universal service and look forward to working with my colleagues to ensure that we take the appropriate steps to ensure that universal service remains on solid footing and that contributions are made on an equitable and nondiscriminatory basis. Working together, we can further strengthen the program and ensure that it continues the positive strides that it has already made.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Universal Service Contribution Methodology, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking.*

In 1996, to ensure the long-standing Commission policies of universal service, Congress required that every telecommunications carrier that provides interstate telecommunications service to contribute to universal service on an equitable and non-discriminatory basis. Congress also permitted the Commission to require contributions from other providers of telecommunications for the advancement and preservation of universal service. Even today, as Congress contemplates revisions to the Act, universal service goals remain integral to their discussions. Today's item takes a positive step toward realizing the universal service goals in the Act by ensuring that services are treated in a technology-neutral manner under the Commission's contribution rules.

In today's item, we clarify our rules to ensure that universal service obligations are shared fairly across similar services. It was not long ago that discussions of VoIP in the marketplace were mostly hypothetical. However, with current estimates showing residential VoIP serving over 4 million subscribers and growing rapidly, the marketplace reality is knocking at our door. Given the rapid marketplace adoption of VoIP, I am pleased that we make universal service obligations clear at an early stage so that we avoid unnecessary market distortion. While I continue to advocate a light regulatory touch for nascent services like VoIP, it is essential that important goals like universal service are implemented in an equitable and non-discriminatory manner.

The Commission currently assesses universal service contribution obligations based on a percentage of a provider's interstate revenues. While the Commission has consistently made clear that it continues to prefer actual revenues, the Commission has made available other means to estimate interstate revenues, like safe harbors, to reduce burdens on providers. Underneath all of the details of today's interim decision is a core principle that all providers subject to universal service contribution obligations contribute fairly based on an account of their interstate revenues. I look forward to evaluating comments from consumers, industry, and other interested parties as we further develop a record on this issue.

Finally, we must remember that we are taking these actions because all consumers should be able to access services at reasonable rates and I remain committed to encouraging the deployment of new services to Americans in underserved regions. That is important to all consumers because, from the bustling streets of our biggest cities to the most remote native villages in Alaska, hundreds of miles from the nearest paved road, we all rely on a common communications network to keep our families, friends, and businesses connected as a nation. Through our collective support, we will continue to stay connected and moving forward as a nation.

**STATEMENT OF COMMISSIONER ROBERT M. MCDOWELL**

Re: *Universal Service Contribution Methodology, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking.*

Universal Service is premised upon the noble concept that every American, whether low-income, or in rural, insular, or high cost areas, should have access to the same kinds of affordable telecommunications services as those available in urban America.<sup>1</sup> From generations of Americans living on family farms, to Native Alaskans in subsistence villages, to school children in small towns along America's gulf coast, the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life.

However, this system is in dire need of comprehensive reform. Today's action is simply an interim measure that will help bridge the gap between the deteriorating status quo and a fairer and more sustainable system for the future. I look forward to working with my colleagues as we move forward quickly on a more comprehensive reform effort.

Today, we adopt interim changes to the Universal Service contribution methodology that are fair and reasonable. By setting appropriate safe harbors and allowing wireless carriers and VoIP providers, in determining their USF contribution, the option of either using such safe harbor, utilizing traffic studies, or reporting actual interstate revenues, we provide the right balance of administrative ease and incentive to contribute based on actual interstate and international revenues. These interim measures also ensure that the fund remains solvent for the near term and serve as an important first step toward broadening the fund's contribution base to ensure equitable and nondiscriminatory support<sup>2</sup> of the Fund in an increasingly digital world.

I thank Tom Navin and the Wireline Competition Bureau staff for their hard work and the Chairman for his leadership in this matter. I look forward to working with my colleagues to follow the Chairman's lead as he drives the process of comprehensive reform to ensure long term sustainability of Universal Service.

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<sup>1</sup> 47 U.S.C. § 254(b)(3).

<sup>2</sup> See 47 U.S.C. § 254(b)(4).