

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

In the Matter of

*Universal Service Contribution
Methodology*

*A National Broadband Plan For Our
Future*

WC Docket No. 06-122

GN Docket No. 09-51

COMMENTS OF VONAGE HOLDINGS CORP.

Brendan Kasper
Senior Regulatory Counsel
Vonage Holdings Corp.
23 Main Street
Holmdel, NJ 07733
(732) 444-2216

Brita D. Strandberg
Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, D.C. 20036
(202) 730-1300

Counsel to Vonage Holdings Corp.

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Introduction and Summary

Vonage supports the Commission’s effort to reform the method by which providers contribute to the Universal Service Fund. The Commission’s Notice of Proposed Rulemaking notes example after example of problems with the existing system, from unreasonably high contribution factors to market-distorting inequities between providers to the challenges of allocating revenues among various categories.¹ This litany of concerns demonstrates that it is time for the Commission to move to a new method of assessing contributions—one that offers greater certainty, sustainability, and equity to consumers and providers alike. For that reason, Vonage supports adoption of a contribution method based on the capacity of physical network access connections.

¹ *Universal Service Contribution Methodology, A National Broadband Plan for Our Future, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. Apr. 30, 2012) (“USF Contribution FNPRM”).*

While Vonage believes the Commission should move away from the existing revenue-based model, Vonage explains two areas where reform is needed if the Commission retains the revenue-based system. *First*, the Commission should ensure that prepaid calling card providers are required to contribute on all retail revenue derived from their telecommunications services. *Second*, the Commission's bundling rules should recognize that many providers do not unbundle their services and, at minimum, include safe harbors based on market or tariff pricing. These approaches each reflect the reality of how services are sold today and are necessary to ensure equitable contributions among competing providers.

I. The Commission Should Adopt a Capacity-Based Contribution Method.

Vonage supports a move from the existing revenue-based USF contribution model to one based on the capacity of physical network access connections. The Commission's FNPRM details the challenges faced by the revenue-based approach, including increasing complexity, competitive distortions, and a shrinking base of assessable communications.² While the Commission has proposed specific reforms to address these concerns, the law of unintended consequences suggests that modifications to the existing system will merely heighten its complexity and create new distortions. Rather than attempting to reform a system that is a poor fit for the modern and ever-evolving communications marketplace, the Commission should move to a capacity-based system that focuses on physical connections to the network. This approach holds the best prospect of ensuring efficient and equitable contributions while promoting the sustainability of the Fund.³

² *USF Contribution FNPRM*, ¶ 4.

³ Vonage is working with other interested parties to develop a broadly supported capacity-based model that meets the Commission's policy goals for contribution reform.

II. Reforms to the Existing Revenue-Based Model

As explained above, the Commission should enact a capacity-based USF contribution model in order to ensure the sustainability of the fund and provide for equitable and efficient contributions. If, however, the Commission retains the existing revenue-based model, it must enact reforms to address existing inequities and better tailor that model to today's communications marketplace. Specifically, the Commission should ensure equitable contributions by prepaid calling card providers and create bundling safe harbors that reflect the broad variety of bundled service offerings in the market today.

A. Prepaid Calling Card Revenue

Vonage agrees that prepaid calling card users should “report and contribute on all end-user revenues.”⁴ Further, Vonage believes this obligation should continue to be measured at the actual end of the distribution chain, not at a mid-point such as a sale to an intermediate distributor or retailer. Absent such an approach, there is a risk that retail revenues attributable to prepaid calling card services will be excluded from the contribution base, increasing contribution obligations for other providers and creating competitive distortions between providers that collect and pay USF on all retail revenue and those that do not. Similarly, the mid-point exclusion could create opportunities to evade USF obligations by shifting revenues from prepaid calling card providers to exempt intermediaries.

The Commission has noted concerns about the difficulty of applying its existing “face-value” rule in certain circumstances, such as where cards do not have a face value or the provider does not know the final price paid by the end user.⁵ If the Commission wishes to move away

⁴ *USF Contribution FNPRM*, ¶ 181.

⁵ *Id.*, ¶ 184.

from the face-value rule in order to address these concerns, Vonage suggests that the Commission adopt a bright-line standard such as the 35 or 50 percent mark-ups over the price paid by intermediaries, as suggested by Verizon and AT&T, respectively.⁶

B. Allocating Bundled Revenue

The Commission should not adopt bundling rules that favor providers offering their services on both a stand-alone and a bundled basis. Many providers, including Vonage, offer information services (such as voicemail) in conjunction with assessable telecommunications but have no business reason to unbundle and offer these services separately. The Commission's proposed apportionment rule⁷ would force providers like Vonage that do not offer their services on a stand-alone basis to treat all revenues from those services as assessable, while permitting other providers to use stand-alone pricing to treat some of their services as non-assessable. This will distort the market, impose inequitable contribution requirements, and potentially force providers like Vonage to offer services on a stand-alone basis regardless of actual consumer demand.

The Commission should instead permit carriers that do not offer bundled products on a stand-alone basis to rely on alternative methods to calculate their USF liability. At minimum, the Commission must permit providers to rely on market analyses or tariff pricing as an alternative safe harbor. Public tariff offerings and market studies each offer objective and reasonable proxies that can easily be verified in the audit or enforcement context. Indeed, reliance on third-party pricing removes the risk of gaming stand-alone offerings identified by the Commission.⁸ For all of these reasons, the Commission should not adopt its proposed

⁶ *Id.*, ¶¶ 188-89.

⁷ *Id.*, ¶ 106.

⁸ *Id.*, ¶ 108.

modification to the bundling rules and should instead permit providers to rely on objective and verifiable third-party pricing to allocate bundled revenues.

Conclusion

Vonage urges the Commission to move forward quickly with comprehensive reform of the USF contribution system by adopting a contributions method based on the capacity of physical network access connections.

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