

**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

**REPLY 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.*

August 6, 2012

## Table of Contents

Introduction and Summary.....	1
I. Commenters Support a Capacity-Based Contribution Method.....	2
II. If it Retains a Revenue-Based System, the Commission Should Expand the Contribution Base.....	3
A. Broadband Internet Access.....	3
B. One-Way VoIP.....	4
III. The Commission Should Revise the VoIP Safe Harbor Downward.....	5
IV. The Record Supports Vonage’s Proposed Reforms to the Existing Revenue-Based Model.....	6
A. Prepaid Calling Card Revenue.....	7
B. Allocating Bundled Revenue.....	7
Conclusion.....	9

**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

**REPLY COMMENTS OF VONAGE HOLDINGS CORP.**

**Introduction and Summary**

Vonage supports the Commission's effort to reform the Universal Service contribution method. As the Commission's own FNPRM makes clear, the existing system is not fulfilling the statutory mandate that USF contributions be equitable and nondiscriminatory.<sup>1</sup> The Commission should move away from the existing revenue-based system and adopt, instead, a contribution method based on the capacity of physical network access connections.

While the Commission should not retain the existing revenue-based model, the Commission should take several steps to reform this system if it does adopt broader reforms. *First*, the Commission should broaden the contribution base by extending contribution obligations to broadband Internet access providers and one-way VoIP providers. *Second*, the Commission should revise the VoIP safe harbor downward to more accurately reflect actual

---

<sup>1</sup> *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd. 5357, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. Apr. 30, 2012) ("USF Contribution FNPRM").

interstate VoIP revenues. *Third*, the Commission should ensure that prepaid calling card providers are required to contribute on all retail revenue derived from their telecommunications services. *Finally*, the Commission’s bundling rules should not eliminate alternatives to the existing safe harbors for bundled revenues, as doing so will unnecessarily constrain bundling practices and limit consumer choice.

## **I. Commenters Support a Capacity-Based Contribution Method.**

Vonage agrees with the numerous commenters that support a capacity-based contribution method. As Google cogently argues, a connection-based approach “will best reflect the FCC’s policies promoting network modernization and directly serve the goals delineated in the FNPRM and the mandates of Section 254 of the Communications Act (‘Act’).”<sup>2</sup> Sprint likewise notes that “[t]he fundamental advantage of a connections-based system over a numbers-based approach is that use of connections as the unit to assess contributions better matches the purpose of the USF – namely, to expand the number of broadband connections throughout the country.”<sup>3</sup> The Information Technology Industry Council echoes these conclusions, explaining that “a connections-based approach would be competitively neutral, and less susceptible to changes and evolution of specific services or the broader marketplace.”<sup>4</sup>

The Commission has already identified the challenges faced by the current revenue based system.<sup>5</sup> Commenters agree with these concerns. AT&T, for example, observes that “any

---

<sup>2</sup> Comments of Google Inc., WC Docket No. 06-122 and GN Docket No. 09-51 at 1-2 (filed July 9, 2012) (“Google Comments”).

<sup>3</sup> Comments of Sprint Nextel Corporation, WC Docket No. 06-122 and GN Docket No. 09-51 at 26 (filed July 9, 2012).

<sup>4</sup> Comments of the Information Technology Industry Council, WC Docket No. 06-122 and GN Docket No. 09-51 at 3-4 (filed July 9, 2012).

<sup>5</sup> *USF Contribution FNPRM* at 5359 ¶ 4.

Commission ‘fixes’ to its revenues methodology will be short-lived” and argues that the Commission must therefore adopt a new approach.<sup>6</sup> Level 3 similarly notes “the difficulties presented by a revenue-based system” and encourages the Commission to “explore . . . [a] connection-based assessment.”<sup>7</sup> The myriad issues with the existing system as well as the lack of consensus among commenters on how to address these issues demonstrate the need to replace the revenue-based system with forward-looking, equitably applied, and competitively neutral connections-based contribution system.<sup>8</sup>

## **II. If it Retains a Revenue-Based System, the Commission Should Expand the Contribution Base.**

Many commenters note the importance of expanding the contribution base in the event the Commission retains the revenue-based model. Vonage agrees, and supports extending USF contribution obligations to broadband Internet access service and one-way VoIP.

### **A. Broadband Internet Access**

A wide variety of commenters recognize the need to expand the contribution base by including broadband Internet access providers. Competitive carriers, represented by COMPTTEL, point out that with the Commission’s recent reform of Universal Service Fund distributions to include explicit support for broadband access, it is appropriate to assess broadband Internet access providers.<sup>9</sup> U.S. Cellular likewise “favors a policy that provides that, to the extent that the Commission makes USF funding available to support broadband services, these broadband

---

<sup>6</sup> Comments of AT&T, WC Docket No. 06-122 and GN Docket No. 09-51 at 17 (filed July 9, 2012) (“AT&T Comments”).

<sup>7</sup> Comments of Level 3 Communications, LLC, WC Docket No. 06-122 and GN Docket No. 09-51 at 21 (filed July 9, 2012).

<sup>8</sup> 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.

<sup>9</sup> Comments of COMPTTEL, WC Docket No. 06-122 and GN Docket No. 09-51 at 15-16 (filed July 9, 2012) (“COMPTTEL Comments”).

services also should be subject to a contribution requirement.”<sup>10</sup> The Rural Telecommunications Group agrees.<sup>11</sup> NASUCA argues that it would be both “unreasonable” and “unsustainable” to exempt broadband service from contribution obligations.<sup>12</sup> Google explains that the Commission undoubtedly has the authority to take this step.<sup>13</sup>

## **B. One-Way VoIP**

With respect to one-way VoIP, as the Commission notes, it may be “in the public interest to extend universal service contribution obligations” where providers both compete with assessable providers and benefit from their interconnection with the PSTN.<sup>14</sup> With respect to one-way VoIP services, these conditions are met.

Vonage faces increasing competition from one-way VoIP services. While Vonage welcomes this competition, and believes the consumers are best served by a marketplace that offers a wide range of communications choices, those choices should not be distorted by the significant cost advantages that follow from the existing exclusion of one-way VoIP providers from the USF assessment base. Given the recent size of the USF contribution factor, consumers may choose a one-way VoIP service rather than Vonage simply to avoid the additional cost of USF assessments, even though the consumer might otherwise prefer the benefits of Vonage’s interconnected VoIP service—benefits that include 911 calling, number portability, and

---

<sup>10</sup> Comments of United States Cellular Corporation, WC Docket No. 06-122 and GN Docket No. 09-51 at 22 (filed July 9, 2012).

<sup>11</sup> Comments of the Rural Telecommunications Group, Inc., WC Docket No. 06-122 and GN Docket No. 09-51 at 5 (filed July 9, 2012).

<sup>12</sup> Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking, WC Docket No. 06-122 and GN Docket No. 09-51 at 3-4 (filed July 9, 2012) (“NASUCA Comments”).

<sup>13</sup> Google Comments at 8-9.

<sup>14</sup> *USF Contribution FNPRM* at 5387 ¶ 59.

protection of CPNI. Assessing one-way VoIP services will remove a significant distortion from the market and enable competition based on price and features, not on USF contribution status. The record strongly supports this approach.<sup>15</sup>

The Commission should not, however, classify one-way VoIP (or interconnected VoIP) as a telecommunications service.<sup>16</sup> These services meet the statutory definition of an information service, which includes services that offer users “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”<sup>17</sup> One-way and interconnected VoIP undoubtedly fall within that definition, as each transforms information by permitting communications sent from IP-based devices to reach the PSTN and allowing users to receive PSTN communications on their IP-based devices. This transformation brings both interconnected and one-way VoIP information services squarely within the statutory definition of information services, and the Commission may not depart from these clear statutory definitions.<sup>18</sup>

### **III. The Commission Should Revise the VoIP Safe Harbor Downward.**

Vonage supports those Commenters that argue for a downward revision of the VoIP safe harbor. It is imperative that the FCC revise the existing VoIP safe harbor in light of the data in the FNPRM, which demonstrates that the existing VoIP safe harbor significantly overstates interstate VoIP revenue.<sup>19</sup> USTelecom recommends that the Commission “reset” safe harbors at

---

<sup>15</sup> COMPTTEL Comments at 13-14; AT&T Comments at 15; Comments of Time Warner Cable Inc., WC Docket No. 06-122 and GN Docket No. 09-51 at 7-8 (filed July 9, 2012).

<sup>16</sup> NASUCA Comments at 9 n.38.

<sup>17</sup> 47 U.S.C. § 153(24).

<sup>18</sup> See also Comments of Vonage Holdings Corp., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92, 96-45 at 2-6 (filed Apr. 18, 2011).

<sup>19</sup> *USF Contribution FNPRM* at 5406-07 ¶ 125 and Chart 4.

a “realistic level” and extend safe harbors to wireline services.<sup>20</sup> Verizon concurs, arguing for safe harbor percentages that “better reflect market realities.”<sup>21</sup> Commission data shows that “the average percentage for VoIP traffic studies is 22.1 percent interstate/international, with the median study reporting 14.7 percent interstate/international.”<sup>22</sup> A realistic VoIP safe harbor would therefore be no greater than 22.1 percent.<sup>23</sup>

Vonage believes the Commission should go a step farther, and adopt a single uniform safe harbor across all mass market voice services—VoIP, wireline, and wireless. This approach would not only reduce administrative complexity as USTelecom notes,<sup>24</sup> it would ensure that contributions are equitable and consistent regardless of voice service platform.

#### **IV. The Record Supports Vonage’s Proposed Reforms to the Existing Revenue-Based Model.**

Vonage and others have shown that the Commission should promptly adopt a capacity-based USF contribution model. The existing revenue-based model is simply not sustainable, and does not provide for equitable and efficient USF contributions. If the Commission nonetheless retains the revenue-based model, it should require prepaid calling card providers to contribute based on end-user revenues and permit providers to use reasonable alternatives to the existing bundling safe harbors.

---

<sup>20</sup> Comments of the United States Telecom Association, WC Docket No. 06-122 and GN Docket No. 09-51 at 12 (filed July 9, 2012) (“USTelecom Comments”).

<sup>21</sup> Comments of Verizon, WC Docket No. 06-122 and GN Docket No. 09-51 at 21 (filed July 9, 2012) (“Verizon Comments”).

<sup>22</sup> *USF Contribution FNPRM* at 5406 ¶ 125.

<sup>23</sup> See also Further Notice of Proposed Rulemaking Comments of the American Cable Association, WC Docket No. 06-122 and GN Docket No. 09-51 at 5 (filed July 9, 2012).

<sup>24</sup> USTelecom Comments at 12.

#### A. **Prepaid Calling Card Revenue**

Vonage reiterates its support for the Commission’s proposal that that prepaid calling card users should “report and contribute on all end-user revenues.”<sup>25</sup> Unsurprisingly, the entities opposing this approach are providers of prepaid calling cards. Vonage competes directly with prepaid calling card providers that offer low-cost calling services. These prepaid calling card providers should be required to pay USF based on the price end users pay for their services, just as Vonage pays USF on the retail price of its services. The Commission should not exempt prepaid calling card providers alone from the general rule that providers must contribute on the basis of end-user telecommunications revenue. If it is administratively burdensome for prepaid calling card providers to fulfill this fundamental obligation, the Commission may, as Vonage and others have suggested, adopt a safe harbor mark-up for prepaid calling card providers to apply to their revenues. Specifically, the Commission should adopt a bright-line standard such as a 35 or 50 percent mark-up over the price paid by intermediaries.<sup>26</sup>

#### B. **Allocating Bundled Revenue**

A wide range of commenters agree that the Commission should not adopt its proposed modification to the bundling rules, which would eliminate the option to use reasonable alternatives to assessing 100 percent of bundled revenue or relying on stand-alone pricing. As Comcast explains, the Commission’s proposal “could hamper the ability of providers to offer service packages that consumers prefer and create competitive inequities without solving the problems they are intended to rectify.”<sup>27</sup> The Satellite Industry Association agrees: “adoption of

---

<sup>25</sup> *USF Contribution FNPRM* at 5423 ¶181.

<sup>26</sup> *Id.* at 5425-27 ¶¶ 188-89.

<sup>27</sup> Comments of Comcast Corporation, WC Docket No. 06-122 and GN Docket No. 09-51 at 10 (filed July 9, 2012).

the modified rule would . . . artificially discourage or limit businesses from offering bundled discounts that would otherwise benefit consumers.”<sup>28</sup> Providers continue to offer services in new and innovative ways. As these commenters demonstrate, eliminating the existing flexibility under the bundling rules is likely to distort incentives and may discourage consumer-friendly bundling practices.

Commenters also raise very practical objections to the Commission’s proposal. Verizon notes that modifications to the existing rules could cause conflicts with GAAP requirements.<sup>29</sup> NCTA concurs, explaining that “[t]he manner in which providers choose to allocate revenues across services or jurisdictions may be affected by a variety of factors, including traffic patterns, tax considerations, state and local laws, and administrative costs” and, for that reason, “mandatory presumptions may not reflect the reality of a provider’s circumstances and may have inadvertent consequences in other areas, such as taxes.”<sup>30</sup>

Commenters that support the Commission’s effort to reform bundling rules nonetheless agree with Vonage that the Commission should adopt reasonable alternatives for providers that do not offer bundled services on a stand-alone basis. AT&T, for example, proposes that contributors “be permitted to rely on objectively verifiable stand-alone prices of other providers.”<sup>31</sup> The Commission should ensure that these and other alternatives remain available to providers, as unduly restrictive treatment of bundled services may cause market distortions and artificially limit consumer choice.

---

<sup>28</sup> Comments of the Satellite Industry Association, WC Docket No. 06-122 and GN Docket No. 09-51 at 19 (filed July 9, 2012).

<sup>29</sup> Verizon Comments at 22-23.

<sup>30</sup> Comments of the National Cable & Telecommunications Association, WC Docket No. 06-122 and GN Docket No. 09-51 at 8 (filed July 9, 2012).

<sup>31</sup> AT&T Comments at 25.

## **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.

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.*