

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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	

**COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Public Notice<sup>2</sup> issued by the Wireline Competition Bureau in the above-captioned proceeding seeking refreshed comment on the exercise of permissive authority under Section 254(d) of the Communications Act of 1934, as amended, (the “Act”) to require contributions to the universal service fund (“USF”) based upon revenues derived from the provision of “one-way” voice over Internet Protocol (“VoIP”) services.

Just as was the case eight years ago, the Commission still has ample authority and good cause consistent with the public interest to expand the list of assessable services to include the provision of one-way VoIP services. As a threshold matter, Section 254(d) confers upon the Commission permissive authority to require any provider of interstate telecommunications “to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>3</sup> Approximately 15 years ago, the Commission determined that interconnected – *i.e.*,

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<sup>1</sup> NTCA represents approximately 850 rural local exchange carriers. All of NTCA’s members are voice and broadband providers, and many of its members provide wireless, video, and other competitive services to their communities.

<sup>2</sup> *Comments Sought to Refresh the Record in the 2012 Contribution Methodology Reform Proceeding With Regard to One-Way VoIP Service Providers*, WC Docket No. 06-122, Public Notice (rel. June 11, 2020).

<sup>3</sup> 47 U.S.C. § 254(d).

two-way – VoIP providers offer interstate telecommunications because “the heart of ‘telecommunications’ is transmission” and interconnected VoIP services “involve ‘transmission of [voice] by aid of wire, cable, or other like connection’ and/or ‘transmission by radio’ of voice.”<sup>4</sup> Even as the Commission chose not to resolve at the time (and still has not resolved) whether VoIP constituted an information service or telecommunications service, it concluded that this classification was irrelevant for purposes of exercising the permissive authority granted by the last sentence of Section 254(d).<sup>5</sup> The Commission’s interpretation of section 254(d) and its application to interconnected VoIP was ultimately upheld upon appeal,<sup>6</sup> and the Commission’s ability to exercise permissive authority to require services that incorporate telecommunications to contribute to the USF is therefore well-settled.

There is no logical basis to view one-way VoIP differently from interconnected VoIP under this precedent. Just like “two-way” VoIP, and just as it did eight years ago when the Commission looked at this last, one-way VoIP service without question offers the capability for “transmission,” and thus “telecommunications.” The mere fact that the transmission may only be initiated by a party calling in one direction, and just because more platforms may be using one-way VoIP now than eight years ago to establish transmission paths between parties, does not change the nature of the transmission once the session is established, nor does it result in any lesser burden on underlying networks than “two-way” VoIP simply because only one party can start the call. On a “per session” basis, the fact that a session may only be initiated from, or

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<sup>4</sup> *Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122, *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7540 (2006) (“*Interconnected VoIP USF Order*”), at ¶ 41 (internal citations omitted).

<sup>5</sup> *Id.* at 7537, ¶ 35.

<sup>6</sup> *Vonage Holdings Corporation v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

received by, a given station is irrelevant to the burden placed on underlying networks by the session or on the benefit derived by end users once communication is initiated. In 2006, the Commission found that interconnected VoIP providers should contribute to the USF because, like other contributors, VoIP providers “are dependent on the wide spread telecommunications network for the maintenance and expansion of their business” and they “directly benefit[] from a larger and larger network.”<sup>7</sup> The very same is true of one-way VoIP, and nothing about the fact that only one party can initiate a given session alters that analysis of network burden and realized benefit in the slightest.

Indeed, the public interest weighs heavily in favor of an exercise of permissive authority. The Commission is charged by law with preserving and advancing universal service pursuant to certain principles that include the establishment and maintenance of an equitable and nondiscriminatory contributions mechanism.<sup>8</sup> At a time when the contribution factor has soared to 26.5% and there is no end to the increase in sight, broadening the base of contributors to include all those that make use of networks for transmission is not only consistent with, but is compelled by, this statutory mandate. Moreover, when a particular category of voice provider is exempt from contribution obligations that other voice providers bear, this is a patently inequitable, discriminatory, and illogical result. In fact, the current system encourages regulatory gamesmanship with respect to one-way VoIP services. Providers can structure functionally equivalent offerings (e.g., two one-way services vs. a single two-way service) for the purpose of evading contribution obligations. Any lingering inequity and arbitrage opportunity is nothing more than the product of an arbitrary historic regulatory distinction that skews the marketplace by imposing disparate obligations.

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<sup>7</sup> *Interconnected VoIP USF Order*, 21 FCC Rcd at 7540-7541, ¶43.

<sup>8</sup> 47 U.S.C. § 254(b)(4).

The Commission also can exercise – and has in the past exercised – ancillary authority to assess USF contributions on certain services. Ancillary authority may be employed, in the Commission’s discretion, when Title I of the Act gives the Commission “subject matter jurisdiction” over a service and an assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.”<sup>9</sup> The Commission has previously established subject matter jurisdiction over VoIP services based upon the fact that they fall within the statutory definitions of “wire communication” and/or “radio communication.”<sup>10</sup> Moreover, as to whether an assertion of jurisdiction is “reasonably ancillary” to the Commission’s duties, preservation and advancement of universal service is clearly laid out as a statutory mandate. Prior to Section 254 becoming law, the United States Court of Appeals for the District of Columbia Circuit confirmed that the Commission could use Title I and Section 1 in the first place to create a universal service program.<sup>11</sup> The Court, looking to the language of Section 1 of the Act, held that “[a]s the Universal Service Fund was proposed in order to further the objective of making communication service available to all Americans at reasonable charges, the proposal was within the Commission’s statutory authority.”<sup>12</sup> Indeed, the Commission exercised its ancillary authority for just this very reason in finding that interconnected VoIP should be required to contribute to the USF.<sup>13</sup>

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<sup>9</sup> See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968)/

<sup>10</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, 10261-62 (2005), at ¶ 28 (internal citations omitted).

<sup>11</sup> *Rural Telephone Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988).

<sup>12</sup> *Id.* at 1315.

<sup>13</sup> *Interconnected VoIP USF Order*, 21 FCC Rcd at 7542, ¶46.

There is nothing unique about one-way VoIP services that would or should preclude application of the same statutory interpretation or exercise of authority as between one-way or “two-way” VoIP services. For these reasons, just as it has with interconnected VoIP services, the Commission should exercise its permissive authority and ancillary authority to require USF contributions from providers of one-way VoIP services.

Respectfully submitted,



By: /s/ Michael R. Romano

Michael R. Romano

4121 Wilson Boulevard, 10<sup>th</sup> Floor

Arlington, VA 22203

703-351-2016 (Tel)

[mromano@ntca.org](mailto:mromano@ntca.org)

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