

**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
)	

REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to the Public Notice² 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.

As an initial matter, NTCA joins the many commenters who have rightly raised the point that nothing short of comprehensive reform of the universal service contributions system can truly address long-standing and longer-term concerns about equity within and sustainability of the program.³ NTCA has long been strong proponent of just this kind of change, filing detailed studies indicating how the Federal Communications Commission (the “Commission”) could

¹ 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.

² *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).

³ See, e.g., Comments of USTelecom, WC Docket No. 06-122, *et al.* (filed July 13, 2020), at 2; Comments of the Ad Hoc Telecom Users Committee (“Ad Hoc Committee”), WC Docket No. 06-122, *et al.* (filed July 13, 2020), at 5-9; Comments of INCOMPAS, WC Docket No. 06-122, *et al.* (filed July 13, 2020), at 2-3.

undertake reform without disrupting consumers⁴ and suggesting repeatedly over the past decade-plus that reform and “broadening of the base” of USF contributors is necessary, appropriate, and even compelled by law.⁵ Thus, USTelecom is correct when it argues that “it is clear that the time has come for the Commission to consider ways to flatten the curve of the growing contribution factor.”⁶ Similarly, the Ad Hoc Committee hits the mark in stating “the current USF contribution methodology is built on a weak and unstable foundation of disappearing carrier revenues for certain telecommunications services which, absent comprehensive reform, simply cannot support the programmed disbursements for USF.”⁷ Like these parties, NTCA would welcome comprehensive reform as soon as possible, leveraging any of the same basic options that have been floated since at least 2006. In fact, nearly fifteen years later, it should be more than clear that no mythical “white knight” will be riding to the rescue as a new contributions reform option,⁸ and it is time for the Commission to take up itself the cause and finish the job using the statutory authority it already has consistent with the statutory obligations it already bears.

⁴ See *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122 (filed May 11, 2020) (attaching an economic analysis of demand elasticity for broadband and the implications of including broadband connections with the base of assessable services for purposes of USF contributions).

⁵ See, e.g., *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122, *et al.* (filed Feb. 28, 2018), at 2; *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122, *et al.* (filed Apr. 9, 2015), at 1; *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122, *et al.* (filed Feb. 13, 2015), at 2; *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122, *et al.* (filed Jan. 8, 2015), at 2 and Attachment; Comments of NTCA, *et al.*, WC Docket No. 06-122, *et al.* (filed July 9, 2012).

⁶ USTelecom Comments at 2.

⁷ Ad Hoc Committee Comments at 2.

⁸ See *id.* at 8-9.

This being said, the Commission should not let “the perfect become the enemy of the good enough” as it seeks to carry out its statutory obligations to ensure equitable and nondiscriminatory contributions to the USF programs and to promote and advance universal service atop a stable foundation of contributions. Bypassing needed and justifiable “incremental” reform simply because it may not have a “material impact”⁹ on the contributions factor would represent a failure to carry out the congressional mandates set forth in the Act.

To this end, the Commission should assess one-way VoIP just as it has two-way VoIP for years. In the first instance, arguments by magicJack VocalTec Ltd. (“magicJack”) that the Commission lacks authority to assess one-way VoIP miss the mark.¹⁰ There is no logical basis after having determined in long-settled precedent that two-way VoIP services include the provision of telecommunications – and even expressly noting in 2012 that this precedent confirmed that one-way VoIP itself includes telecommunications – that the Commission could or should now find that the mere act of call initiation renders an otherwise identical transmission something materially different.¹¹ Indeed, the same kinds of arguments that magicJack raises to contend that one-way VoIP cannot be assessed fly in the face of the Commission’s prior determination that two-way interconnected VoIP could and should be subjected to a contributions duty,¹² and magicJack’s footnoted admission that its arguments are based upon cases that looked at the distinction *between information services and telecommunications*

⁹ *Id.* at 3-5.

¹⁰ Comments of magicJack, WC Docket No. 06-122, *et al.* (filed July 13, 2020), at 7-17.

¹¹ See NTCA Comments at 2-4; USTelecom Comments at 3-4; see also *Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122, *et al.*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5387 (2012), at n. 170.

¹² See *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, 7539-41 (2006), at ¶¶ 39-42. This decision was upheld upon appeal by the United States Court of Appeals for the District of Columbia Circuit. *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

*services – rather than considering specifically the definition of telecommunications – is telling.*¹³ Similarly, the Commission should reject magicJack’s stretched reading of the Twenty-First Century Communications and Video Accessibility Act of 2010 which argues that, simply because interconnected and non-interconnected VoIP were defined separately for purposes of that statute, Congress must have meant that those two services could *never* be treated the same in any way for any purpose whatsoever under *any law*.¹⁴ The same is true of magicJack’s strained argument that the passage of the Broadband Data Improvement Act of 2008 – a bill that amended *a different* subsection of Section 254 (related to Internet access in schools) and contains neither any impact on nor even any mention of USF contributions – somehow ensconced the Commission’s then-current interpretation and application of subsection (d) of Section 254 in perpetuity.¹⁵ magicJack’s legal arguments thus ring hollow and, as described in NTCA’s initial comments, the very same authority that the Commission has exercised to require interconnected VoIP providers to contribute can be applied with equal force to one-way VoIP services as well.

Arguments that the Commission should not attach contribution obligations to one-way VoIP because the public interest would somehow suffer likewise fall short. To the contrary, the public interest is harmed through discriminatory contributions obligations that skew marketplace decisions by providers and consumers alike – and also by asymmetric contribution obligations that place the responsibility for supporting mandatory universal service objectives on only some services while others that make identical (or even greater) use of the underlying networks that universal service aims to promote skirt such shared responsibility. For the contribution

¹³ magicJack Comments at n. 10

¹⁴ *Id.* at 13 (internal citations omitted).

¹⁵ *Id.* at 15-16 (internal citations omitted).

mechanism to be equitable as required by law, similar services must be treated in similar ways from a regulatory perspective, rather than drawing fine lines based upon in this instance literally nothing more than which party to a call can initiate the call.

For the foregoing reasons, the Commission should include revenues derived from the provision of one-way VoIP services within the USF contribution base – followed promptly by a renewed effort to reform the contributions mechanisms more comprehensively to promote and sustain essential universal service objectives as modernized by the Commission in recent years.

Respectfully submitted,



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July 27, 2020