



August 24, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Letter in CG Docket No. 11-47; CG Docket No. 10-213*

Dear Ms. Dortch:

As the Commission considers final rules concerning the application of Telecommunications Relay Service Fund (“TRS”) fees to non-interconnected VoIP services, it is important that it adopt targeted and narrowly crafted rules and definitions consistent with the statutory provisions and legislative history of the Communications and Video Accessibility Act of 2010 (“CVAA”). In the CVAA, Congress directed the Commission to meet the statutory goal of establishing a TRS contribution amount that is “*consistent with and comparable to the obligations of other [TRS] contributors.*” (Emphasis added.) Thus, the Commission must ensure that the rules it adopts, including the fees and services it assesses, are consistent and comparable to the existing TRS framework.

Congress recognized that non-interconnected VoIP services are rooted in new technologies and business models, and that VoIP offerings may not generate any marginal revenues. Consequently, in elaborating on the consistent and comparable requirements, Congress stated that the Commission should consider whether such



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services are offered free to the public when establishing contribution requirements for non-interconnected VoIP service providers. The House Committee Report directs the Commission to “ensure that contributions are made on an equitable basis, taking into account whether such services are offered free to the public.” H.R. Rep. No. 111-563 at 23 (2010). The Senate Committee Report echoes the language of the House Committee Report, and sharpens the point by allowing the Commission to “consider administrative costs to the provider when calculating contributions” and specifically states that the Commission “*may determine that an obligation for any one provider could be zero or a de minimis amount.*” S. Rep. No. 111-386 at 6 (2010)(emphasis added).

The Commission Must Narrowly Define the Contribution Obligation for Non-Interconnected VoIP Providers to Ensure it is Comparable to the Current System

Based on this framework, the Voice on the Net Coalition (“VON”) believes that the FCC’s authority to impose TRS contribution obligations is limited to revenues directly attributable to **interstate, end user, non-interconnected VoIP revenues**. The Commission must not capture international revenues of non-interconnected VoIP services. Many non-interconnected VoIP services are offered as a portion of a bundle and are offered internationally. Moreover, non-interconnected VoIP services offered to the consumer for free, such as services supported by advertising revenues or other business models, should not be subject to a TRS fee.



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To date, limitation of the TRS fee to interstate, end user revenue has adequately funded TRS at reasonable contribution levels. There is no statutory mandate or supported public policy reason for the Commission to treat non-interconnected VoIP providers disparately by expanding the base beyond interstate, end user, non-interconnected VoIP revenue. Any expansive TRS contribution obligation would be inconsistent with Congress' "consistent and comparable" clause.

Moreover, TRS funding requirements should not be imposed on non-interconnected VoIP services that otherwise obtain waivers from other requirements under the CVAA where VoIP is not the primary purpose and is only incidental to the service. Voice communications are a primary feature of all the services (telephone service, interconnected VoIP service) currently required to pay into TRS. Thus, requiring services that incorporate non-interconnected VoIP as a feature that is incidental or supplementary to the primary purpose of the service is not "consistent or comparable" with the FCC's existing implementation of its TRS rules.

Finally, non-interconnected VoIP providers should not have to contribute if the cost of implementation and administration exceeds the TRS fee. To do otherwise would disincentivize companies to innovate or to include IP communications capabilities into products and services. This would hurt consumers, including those disabled consumers who would otherwise benefit from the increased communications capabilities.



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The Commission Must Create A Contribution System that Does Not Create An Undue Burden on Non-Interconnected VoIP Providers

In those instances in which the Commission assesses a TRS fee, the VON Coalition recommends the following:

- The TRS fee should be easily calculable (either as a percent of interstate revenue or a flat fee).
- There should be a de minimis non-interconnected VoIP revenue threshold for paying the TRS fee, or, in the alternative, a relatively small flat fee if such providers charge end users for non-interconnected VoIP – such as \$25.
- The rules should avoid double payment. If an underlying VoIP provider is reporting the revenue on its 499A or 499Q, the non-interconnected VoIP provider should not also have to pay, similar to the reseller exemption available for USF contributors generally.
- The Commission should not require contributions for at least 24 months following the effective date of the rule to allow non-interconnected VoIP providers adequate time to implement compliance programs.
- Revenues should be reported annually on a new Block 1, Line 105 on the FCC 499-A.
- TRS funding should end with the sunset of the PSTN, when it is likely that new, far less expensive, IP-based technologies will be available to facilitate communications



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for hearing-, speech-, and visually-impaired individuals, obviating the need for expensive, PSTN-based equipment.

With regard to establishing an appropriate reporting process, the Commission should allow providers of non-interconnected VoIP services to rely on good faith estimates in determining what portion of their total revenues of a bundled service is related to non-interconnected VoIP service and evaluate provider filings on a case-by-case basis, in an audit or enforcement context. For example, if a bundle includes several services -- e.g., e-mail, instant messaging, and document collaboration -- falling outside the TRS contribution regime as well as non-interconnected VoIP, the provider should be able to report which portion of that bundled service fee is attributable to non-interconnected VoIP service and pay TRS on only such portion of the fee.

In addition, the FCC should not require providers to disaggregate revenues associated with bundled services that include other information services. Non-interconnected VoIP providers often do not have back office billing systems in place to disaggregate the costs associated with various bundled products and services. To impose a disaggregation obligation would impose administrative and technical costs solely for the purpose of a specific regulatory scheme.

Moreover, the Commission should not require providers to submit a traffic study to support their good faith estimates. Non-interconnected VoIP providers do not generate



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traffic studies in the regular course of business, and unlike traditional landline or mobile carriers where users endpoints can be identified, non-interconnected VoIP providers may have little or no capability to identify the location of users. For example, many non-interconnected VoIP offerings are computer to computer (peer-to-peer) offerings, it is often impossible for the provider to track the traffic.

The Commission should also permit non-interconnected VoIP providers the option of filing pursuant to a safe harbor that would allow non-interconnected VoIP providers to pay TRS fees on a predetermined portion of their non-interconnected VoIP revenues. The Commission should not use the same safe harbor that it has established for interconnected VoIP contributions to the universal service fund. In the interconnected VoIP USF Contribution Order, the FCC set the VoIP safe harbor at 64.9% because it determined that interconnected VoIP service is predominantly used for interstate and international service, like wireline toll service. *Report and Order*, 21 FCC Rcd 7518, 7544-45 (2006). The percentage of interstate revenues reported to the FCC by wireline toll providers is 64.9%, therefore the FCC established the same percentage as a safe harbor for interconnected VoIP providers. The Commission cannot make the same assumptions with regard to the relationship between non-interconnected VoIP and wireline toll traffic. Non-interconnected VoIP provider business models and revenues are not a mirror of interconnected VoIP provider revenues or of wireline toll traffic. Instead, non-interconnected products are used to meet a variety of consumer needs, including



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international calling, gaming, video calling, group calls, etc., making the 64.9% safe harbor insupportable and highly speculative.

Finally, before requiring non-interconnected VoIP providers to contribute, the Commission should define the size of the expanded TRS Fund it plans to create with these additional TRS revenues as well as the intended use for these new dollars. This will help ensure the new revenues raised can be measured against specific deliverables that would enhance accountability of the program. Overfunding of the program could lead to waste and abuse, while burdening industry and hampering innovation.

Please contact me directly if you have any questions.

Sincerely,

/s/

Glenn S. Richards
Executive Director

Cc: Rosaline Crawford
Eliot Greenwald
Vicki Robinson