

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

In the Matter of)
)
Universal Service Contribution Methodology) WC Docket No. 06-122
)

Comments of The VON Coalition

The VON Coalition fully supports the goal of ensuring the long-term sustainability of the Universal Service Fund – which has been vital to our country’s economic prosperity. Specifically, we support the Commission’s effort to move away from yesterday’s revenue-based contribution system, to a broader working telephone number based mechanism that is competitively and technologically neutral. We urge the Commission to move promptly to adopt comprehensive Universal Service reform measures – *i.e.*, within the next 270 days – based upon a numbers or blended numbers and capacity methodology that ensures the sustainability of the fund, meets the statutory requirements of section 254, and prevents the application of a patchwork of potentially conflicting state regulatory frameworks. A competitively neutral Universal Service policy will loosen the Gordian knot in the current subsidy regime and help achieve the President’s important goal of universal broadband availability.

In this submission, the VON Coalition responds to the *Notice of Proposed Rulemaking* (“*Notice*”) and outlines steps to enable broadband voice innovation to dramatically improve broadband adoption rates, bring competition to rural communications, and put cutting edge

digital communications technologies in the hands of all Americans.¹ To do this, we urge the Commission to:

- Move immediately to comprehensively reform Universal Service;
- Replace the broken revenue-based contribution system with a numbers-based contribution system;
- Clarify that providers of non-interconnected VoIP services are not required to contribute to the Universal Service Fund (“USF”);
- Confirm the continued validity of the *Vonage* decision;
- Develop policies that fuel, not stifle, engines of innovation and economic growth, and;
- Ensure that its regulations, whether interim or permanent, do not disproportionately harm small businesses.

I. The Interim Measures Applied to Interconnected VoIP Should Be Just That.

The *Notice* emphasizes that the Commission “seek[s] to further refine the record concerning the interim requirements . . . while [it] continue[s] to examine more fundamental contribution methodology reform.”² The VON Coalition emphasizes that the Commission’s current interim rules imposing Universal Service obligations on VoIP carriers should be of *very limited duration* as the Commission completes comprehensive Universal Service reform.³ We

¹ *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518 (2006) (“*Notice*” or “*USF VoIP Order*” as appropriate).

² *Notice* at ¶ 35. See also Statement of Commissioner Robert M. McDowell (“Today’s action is simply an interim measure that will help bridge the gap between the deteriorating status quo and a fairer and more sustainable system for the future. I look forward to working with my colleagues as we move forward quickly on a more comprehensive reform effort.”)

³ The VON Coalition has long been on the record in support of broad-based Universal Service contribution reform based upon a numbers- or connections-based contribution methodology. See, e.g., *VON Coalition Ex Parte*, CC Docket No. 96-45, WC Docket No. 04-36 (June 5, 2006); *VON Coalition Ex Parte*, WC Docket No. 04-36 (Aug. 19, 2004). Under a flexible numbers based methodology, federal Lifeline customers could be completely exempt from USF surcharges, unlike the existing system under which providers can pass on USF charges

are concerned that the very act of seeking further comment on the interim requirements undercuts the Commission's commitment to comprehensive Universal Service reform. The VON Coalition hopes that the Commission will take "interim" to mean, *at a maximum*, what it meant in the context of the *Wireline Broadband Order*—270 days.⁴ Extended application of the interim USF requirements to interconnected VoIP would undercut the full promise and potential of Internet voice technologies; such benefits include increasing rural broadband demand and deployment, accelerating completion of the President's goal of universal broadband, and enhancing the lives of Americans by ensuring that residential and business consumers can benefit from the lower prices, new services, and competition that VoIP can deliver.

The VON Coalition fundamentally disagrees with NASUCA's post-*USF VoIP Order* claims that no additional near-term Universal Service reform away from a revenues-based model is needed.⁵ At the outset, shifting Universal Service to a numbers (or connections) based

to these users based on interstate usage. Care should also be taken to protect low-volume users from inequitable impacts that potentially follow from a numbers based contribution methodology. If, in the future, the Commission finds that a numbers-based approach is challenged by technological evolution, we suggest that the Commission consider pursuing a connections-based approach to funding Universal Service. A connections-based approach may also be a useful means of determining USF obligations with respect to high capacity lines.

⁴ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 ¶ 113 (2005) ("*Wireline Broadband Order*"). We note that ITTA, OPASTCO, and the Western Telecommunications Alliance recently requested that the Commission re-impose Universal Service requirements on wireline broadband Internet access providers where that requirement is lapsing due to the *Wireline Broadband Order*. See *Written Ex Parte Presentation of ITTA, OPASTCO, and Western Wireless Alliance*, WC Docket No. 06-122, CC Docket No. 02-33 (Aug. 4, 2006). In the event that the Commission acts on this request, we urge the Commission to take extreme care to ensure that VoIP customers are not potentially subjected to contributing to the USF *three times* for the same service (*i.e.*, paying twice under the interim removal of the carrier's carrier exemption for VoIP providers, and then again for their underlying broadband Internet access service).

⁵ *Ex Parte Letter of the National Association of State Utility Commission Advocates*, CC Docket No. 96-45 *et al.*, at 1 (June 29, 2006).

approach could remedy the current legal infirmities associated with shoe-horning VoIP into a revenues-based system.⁶ The passage of time, the possible Commission adjustment of the current interim regime by potentially eliminating or raising the VoIP safe harbor, or its extension of the double payment requirements to wholesale carriers only exacerbate these legal problems.⁷ Also, comprehensive reform to a numbers- or connections-based system is needed to alleviate the Universal Service administrative compliance challenges that are unique to VoIP services. Under the interim regime, VoIP providers are essentially required to apply guesswork as to which aspects of often complex, varied services that converge CPE, voice, and data are interstate, and which aspects of international traffic are subject to Universal Service requirements. Also, the Commission's application of the highest of all safe harbors to VoIP, or being subjected to state-level regulation, is no consolation. The recent *ex parte* submission of NTCA challenging 8x8's proposed traffic study further punctuates this point and makes it more difficult for VoIP providers to comply with the order.⁸ Therefore, it is vital that the Commission immediately address the larger issue of comprehensively reforming the Universal Service program, of which VoIP is now a part.

⁶ The *USF VoIP Order* is currently pending appeal. See *Vonage Holdings, Corp. v. FCC*, Docket No. 06-1276 (D.C. Cir. filed July 18, 2006).

⁷ At this time, the VON Coalition will abstain from providing further comment on the VoIP safe harbor as requested in the *Notice* with the hope that the Commission will soon make the issue moot by adopting comprehensive Universal Service reform..

⁸ See *Ex Parte Letter of NTCA*, WC Docket No. 06-122 (July 25, 2006) (discouraging expedited review of proposed traffic study and requesting disclosure of confidential details of proposed study).

II. The Commission Should Rapidly Transition to a Numbers-Based USF Contribution Mechanism.

The VON Coalition urges the Commission to reform the Universal Service contribution methodology by adopting expeditiously a flexible telephone number-based assessment. A numbers-based assessment will remedy the systemic deficiencies of the current revenue-based methodology and ensures equity, non-discrimination and competitive neutrality in the dramatically changing telecommunications and information services marketplace. A connection or numbers-based assessment is more economically efficient because it does not distort customer purchasing decisions and does not add significant administrative costs. Finally, a connection or numbers-based assessment ensures that the universal service contribution base will continue to grow, creating a stable and sustainable fund.

Equitable, Non-Discriminatory and Competitively Neutral. First, a number-based contribution mechanism ensures that all providers of telecommunications services contribute to the USF in a non-discriminatory manner. All providers whose services connect to the PSTN assign telephone numbers to their customers and will therefore all be required to contribute to the USF under a number-based contribution mechanism, regardless of the technology utilized to place the PSTN call. Thus, a number-based contribution mechanism will be “equitable and nondiscriminatory” as required by sections 254(b)(5) and 254(d) of the Communications Act.⁹

Economic Efficiency. Second, a telephone number-based assessment will ensure that USF contributions are assessed in an economically efficient manner, eliminating the distorting impact on demand for telecommunications services that plagues the current revenue-based assessment methodology whereby non-traffic sensitive costs are recovered on a usage-sensitive basis. A telephone number-based methodology will also simplify the current USF regime both

⁹ See 47 U.S.C. §§ 254(b)(5); 254(d).

for consumers, by eliminating the need to pay USF fees to both their local and long distance carriers, and for carriers, by avoiding the administrative costs of identifying which revenues are subject to a USF assessment.

Sustainability. Third, the deployment of IP-enabled services as well as other technological changes are erasing the distinctions between intrastate and interstate services, between telecommunications services, information services and cable services, and between network services and customer premise equipment (“CPE”). This blurring of jurisdictional boundaries and technological distinctions makes it difficult to define and audit today's contribution base of interstate telecommunications revenue. The contribution base is increasingly subject to erosion as carriers bundle and integrate services without regard for regulatory classifications or jurisdictional boundaries. A flexible telephone number-based methodology will avoid the need for the Commission to continue adopting emergency patches to temporarily fix the irretrievably broken revenue-based methodology.

Finally, in addition to the foregoing, a telephone number-based contribution mechanism does not implicate the exclusive state jurisdiction over intrastate telephone service provided in Section 2(b) of the Communications Act. A number-based contribution mechanism avoids the potential issue of an illegal assessment on intrastate revenues in violation of Section 2(b) because the Commission’s exclusive jurisdiction over the North American Numbering Plan (“NANP”) provides it with plenary authority to adopt a number-based contribution mechanism.¹⁰

There is a growing, industry-wide consensus that a flexible number-based approach will help ensure a sustainable fund so that rural and low income Americans have access to a vast array of exciting communications choices at economically reasonable prices. The VON Coalition

¹⁰ 47 U.S.C. § 251(e)(1) (“The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”).

urges the Commission to transition to a numbers-based contribution methodology without further delay.

III. Definitional Underpinnings Are Critical To The Appropriate Universal Service Requirements.

The *Notice* seeks comment on “ways in which [the] new requirements for interconnected VoIP providers could be improved.”¹¹ The Commission could improve upon its interim Universal Service requirements for VoIP providers by putting a more refined filter on which VoIP services are required to pay into the Universal Service Fund beyond just grouping together all providers potentially meeting or with the mere capability of meeting the broad four-point definition of “interconnected VoIP.” The Commission’s delay in earnestly addressing the regulatory classification(s) of VoIP is doing a grave disservice to competition, innovation and, ultimately, the public interest. The Commission’s efforts to contort the long-standing regulatory and legal framework underpinning advanced services to avoid the baseline issue and support interim decisions applying discriminatory regulatory requirements on VoIP providers (or removing regulations from network owners) have caused significant regulatory uncertainty, caused delay, undermined business operations and innovation, and have caused competitive carriers significant legal costs.

The interim Universal Service requirements placed on VoIP could be improved if the Commission acknowledges that, at least in certain instances, VoIP service is merely an application, just like web surfing, riding on top of a broadband network. In such cases, it is end users that are “using” telecommunications to facilitate their communications; these VoIP companies in no way “provide” interstate telecommunications to those end users. The

¹¹ *Notice* at ¶ 68.

Commission hints at this issue in the *Order*, and should take the next step now to improve upon its makeshift Universal Service requirements for interconnected VoIP providers.¹²

IV. The Commission Should Clarify That Providers of Non-Interconnected VoIP Services Are Not Required to Contribute to USF.

In order to facilitate the implementation of the *USF VoIP Order* – by identifying its appropriate limits – the Commission should: (1) clarify that a provider’s non-interconnected VoIP offerings, where bundled with interconnected VoIP services, are not subject to USF contribution obligations; and (2) not expand its definition of interconnected VoIP service beyond services that can both place and receive PSTN connected calls..

The Commission has limited its regulation of IP services to interconnected VoIP service that allows a user to terminate and originate a call on the PSTN. We commend the Commission for limiting the scope of regulation and believe the public interest, whose analysis is required by section 254(d), weighs heavily against imposing USF contribution obligations on non-interconnected VoIP services even where they are bundled with an interconnected VoIP service.¹³ Driving USF obligations beyond two-way PSTN interconnected services as defined by the Commission’s interconnected VoIP definition will stifle innovation, adversely affect productivity, and undermine the availability of valuable new services to consumers.

¹² See *USF VoIP Order* at ¶ 137. The VON Coalition has provided ample legal basis for finding that VoIP is an unregulated information service. In the event that the Commission continues its refusal to find that VoIP (whether over-the-top or facilities-based or both) services are information services and, at the same time, imposes legacy Title II regulation on VoIP providers, the Commission should extend Title II rights to VoIP providers as well. Failing to address the issue, the Commission is perpetuating a regulatory regime where VoIP providers suffer the “worst of both worlds” – onerous Title II legacy regulations (*e.g.*, CALEA, 911, and USF) imposed with unprecedented lack of guidance and on impossibly expedited timeframes, without the accompanying rights and benefits (*e.g.*, interconnection rights universally needed for ubiquitous voice communications by end users, anti-discrimination protections).

¹³ 47 U.S.C. § 254(d).

The specific language at issue can be found in paragraph 36 of the *USF VoIP Order* where the Commission stated:

We emphasize that interconnected VoIP service offers the capability for users to receive calls and terminate calls to the PSTN; ***the obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN.***¹⁴

Under this potentially ambiguous sentence, VoIP services that never touch the PSTN – including software enabling users to have PC-to-PC VoIP communications that are bundled with interconnected VoIP services may be required to contribute to the USF. These communications do not traverse the PSTN, and in many instances are carried by the users’ ISPs and then over the public Internet. They are often times offered for free to the public and on a non-subscription basis. Moreover, VoIP providers may offer other voice-enabled features with their software including web video conferencing that includes IP voice capabilities. Under the *USF VoIP Order*, such non-PSTN interconnected services – if offered with an interconnected VoIP service – may be required to contribute to the USF. Such an outcome would place a large financial burden on new, innovative non-interconnected VoIP services, often provided by new or small businesses, and make it cost prohibitive or impossible for companies to make such offerings to the public.

The public interest weighs heavily against the Commission expanding Universal Service to non-interconnected VoIP services. Such a public interest analysis is required by section 254(d) before the Commission can subject non-carriers to Universal Service contribution obligations under its permissive authority. Specifically, under section 254(d), the Commission

¹⁴ *USF VoIP Order* at ¶ 36 (emphasis added).

may only require USF contributions for “the preservation and advancement of universal service *if the public interest so requires.*”¹⁵

In the case of non-interconnected VoIP where bundled with interconnected VoIP, expanding Universal Service to cover such services would not serve the public interest, and in fact, is contrary to the Commission’s rationale in prior USF decisions. Specifically, unlike the payphone aggregators the Commission refers to in the *USF VoIP Order*, non-interconnected VoIP services do not touch or utilize the PSTN, so they place no burden or cost on the existing PSTN infrastructure.¹⁶ Thus, non-interconnected VoIP providers do not benefit from any connection to the PSTN, and it would be unfair (and contrary to past Commission practice) to subject them to USF contributions intended to maintain the PSTN.¹⁷

¹⁵ 47 U.S.C. § 254(d) (emphasis added).

¹⁶ See *USF VoIP Order* at ¶ 37. The Commission stated that it “found it appropriate to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection to the PSTN.” *Id.* (citing payphone aggregator holding in *Universal Service First Report and Order*, 12 FCC Rcd 8776, 9184 at ¶797 (1997)).

¹⁷ In addition, where bundled with interconnected VOIP service and when non-interconnected VOIP service providers do not provide telecommunications, the application of USF to such non-interconnected VoIP services would run contrary to the Commission’s own analysis to impose USF obligations on providers of “interstate telecommunications” *USF VoIP Order* at ¶ 39. The Commission stated “[w]e find that interconnected VoIP providers are ‘providers of interstate telecommunications’ as required for the use of the permissive authority pursuant to section 254(d).” *Id.* Users of many non-interconnected VoIP services typically obtain telecommunications through their broadband ISPs which allows them to connect to the public Internet to make VoIP communications. Thus, providers of many non-interconnected VoIP communications do not furnish or provide any transmission. Furthermore, the Commission’s suggestion that non-interconnected VoIP services that do not include telecommunications may be subject to USF is inconsistent with its prior holding in *pulver.com*. In that proceeding, the Commission declared that *pulver.com*’s Free World Dialup is neither “telecommunications” nor “telecommunications service” as defined in the Act. *In re Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Mem. Op. and Order, 19 FCC Rcd 3307 ¶8 (2004) (“*pulver.com Order*”). Just as FWD, many PC-to-PC VoIP communications do not provide “telecommunications” or telecommunications service.” Nonetheless, regardless of whether a

Moreover, imposing USF requirements on these services would stifle innovation and limit the availability of VoIP communications to American consumers. Since many non-interconnected VoIP offerings -- such as PC-to-PC VoIP -- are offered on a free, non-subscription basis, many companies would be able to afford to continue delivering their service and would likely limit or stop offering such free VoIP communications if they suddenly were forced to pay into the USF. Such USF fees may also make it more cost-prohibitive for small, start-up companies to offer new innovative VoIP features to the public. Such outcome would be contrary to the public interest, and the purpose of the Telecommunications Act of 1996 which is “[t]o promote competition and reduce regulation . . . and encourage the rapid deployment of new telecommunications technologies.”¹⁸

Thus, the Commission should not expand the scope of USF contribution obligations beyond VoIP providers’ interconnected VoIP services that serve as substitutes for traditional PSTN-based telecommunications services – *i.e.*, offering real-time voice services to the public, for a fee, that enable users to make calls to and receive calls from the PSTN. An expansion of Universal Service to non-interconnected VoIP services would only undermine the introduction of valuable and innovative services. In contrast, the Commission’s rapid reform of the USF contribution methodology would facilitate the continued viability of the USF while preserving innovation by ensuring that USF obligations are not imposed on providers of non-interconnected VoIP communications.

PC-to-PC service includes “telecommunications,” it should not be subject to USF obligations since it does not connect to the PSTN and is not a substitute for existing telephone service.

¹⁸ See preamble S. 652 (Telecommunications Act of 1996) available at <http://www.fcc.gov/Reports/Tcom1996.pdf>.

V. The Commission Should Reaffirm its Commitment to Federal Jurisdiction for VoIP.

Consumers nationwide have already begun to reap the benefits of the regulatory certainty and elimination of outmoded economic barriers to market entry provided by the *Vonage Order*. The Commission has recognized that in various other contexts regulatory certainty paves the way for increased investment in innovative applications and services. The rapid availability of these applications and services spur demand for broadband connectivity which continues a virtuous cycle of investment and consumer benefit. In this context, the Commission should maintain its commitment to a single national policy for Internet communications and not undermine this policy as it suggests may be the case in the *USF VoIP Order*.¹⁹

The *Vonage Order* wisely recognized the importance of adopting a single national regulatory framework for VoIP, rather than a patchwork of potentially conflicting state regulation, “clear[ing] the way for increased investment and innovation . . . to the benefit of the American consumers”²⁰ Abandoning a unified, federal approach to Internet communications will undermine this certainty and distort the principle of competitive neutrality. Even if were feasible or reasonable for VoIP providers to determine whether traffic is interstate or intrastate, the Commission should not unsettle the market by applying a potential patchwork of state regulations. Accordingly, the Commission should not stray from its VoIP conclusions that “[d]ivergent state rules, regulations and licensing requirements could impede the rollout of such

¹⁹ *USF VoIP Order* at ¶ 56.

²⁰ *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶ 2 (2004) (“*Vonage Order*”).

services that benefit consumers by providing them with more choice, competition and innovation.”²¹

The Commission has recognized that other industries, such as the wireless industry, have benefited from a national policy framework. Divergence from a national policy framework for VoIP services will have competitive significance. For example, the wireless industry is not required to surrender to state regulation if it reports its actual traffic revenues for USF purposes, and to impose state mandates on VoIP providers who provide actual traffic revenues would unfairly discriminate against this nascent industry and impose unnecessary regulatory costs on adjacent industries.

Moreover, the very nature of the Internet counsels against the use of any approach that relies on traditional geographic distinctions. As the Commission has recognized, “new networks based on the Internet Protocol are, both technically and administratively, different from the PSTN.”²² These networks “challenge[] the key assumptions on which communications networks, and regulation of those networks, are predicated: Packets routed across a global network with multiple access points defy jurisdictional boundaries.”²³ In this technical environment, the question of whether traffic is intra or interstate becomes irrelevant or rather – relevant only for potentially artificial regulatory purposes. The Commission must move away from regimes based on old geographic boundaries, which may no longer make sense.

Indeed, the traditional notion of an “end point” has been forever altered by new services. Under the Commission’s “end-to-end” jurisdictional analysis, VoIP and other IP-enabled services

²¹ FCC release, November 9, 2004, citing rationale for *Vonage Order*.

²² *IP-Enabled Services NPRM* at ¶ 4.

²³ *Id.*

defy geography-based jurisdictional classification, because “IP-based services . . . enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications separately.”²⁴ Internet communications services in general and VoIP services in particular are likewise capable of directing a single “call” to multiple devices located at multiple geographic endpoints, some of which may be interstate and some of which may characterize the call as intrastate. Either way, the technology operates in a manner that is fundamentally inconsistent with the notion that a communication has two, and only two, ends. This is a feature of new VoIP services and empowers users to structure communications in any manner they see fit. Forcing state jurisdiction over such things as intrastate access charges in this context would be impractical and at odds with technological realities.

Just as the indeterminacy of end points augers for federal jurisdiction, the market definitions upon which those end points are based have decreasing relevance even for regulators. A consequence of the assertion of state jurisdiction is the notion that traffic must be segregated into local calling areas or long-distance buckets – but those market definitions are being erased by bundled calling plans and VoIP services. Instead of using out-moded market classifications and regulatory distinctions, the Commission should instead continue to rest its Universal Service policy on clear, bright line rules for federal contributions.

Interconnected VoIP services are but one manifestation of the trend away from jurisdictionally definable services. Future services will certainly test further the limits of any jurisdictional geography. For this reason, applying today’s geographical distinctions to VoIP and similar services is likely to have significant unintended consequences, and may undermine the

²⁴ *Vonage Order* at ¶ 25.

very investment and innovation that have enabled the Internet to flourish. It would be particularly unwise to impose traditional geographic distinctions for the sake of interim USF solutions, as there is already broad recognition that the existing geography-based revenue assessment scheme is broken and must be reformed. Instead, the Commission should provide continued regulatory certainty by reaffirming the reasoning of its *Vonage Order* and making clear its commitment to a single national regulatory regime for VoIP.

VI. The Commission Should Fuel, Not Stifle, Engines of Innovation and Economic Growth.

Some of the interim requirements in the *USF VoIP Order* disproportionately put small businesses and broadband innovators at a disadvantage – hurting the engines of economic growth and innovation upon which the nation’s future prosperity depends. These requirements do not embody the basic spirit of section 254(d), which requires contributions to the Universal Service Fund to be made on “on an equitable and nondiscriminatory basis.”²⁵ Interconnected VoIP providers, generally small innovators on the cutting edge of developing and delivering new broadband innovations, are required to make substantially higher Universal Service payments and jump through higher regulatory hoops than similarly-situated companies not providing VoIP services. The Commission should modify the interim regime accordingly.

One example is the *USF VoIP Order*’s requirement that some VoIP providers submit double payments into the Universal Service Fund.²⁶ This requirement does not apply to any other class of contributors to the Fund, and essentially requires double payments only for those consumers who are helping to increase America’s broadband penetration by using broadband and

²⁵ 47 U.S.C. § 254(d).

²⁶ See *USF VoIP Order* at ¶ 58-59 (waiving the “carrier’s carrier” rule, thereby requiring both interconnected VoIP providers and the telecommunications carriers that provide their telecommunications inputs to contribute for the next two quarters).

VoIP to communicate. Another example is the *VoIP USF Order's* imposition of the highest of all safe harbors on VoIP and its resulting effects.²⁷ If this interim measure is left in place long-term, it could stifle broadband deployment and the very applications that are driving demand for broadband. This high safe harbor further impedes America's ability to gain ground in terms of broadband penetration. The Commission has data concerning the relative proportion of interstate calling for wireline and wireless carriers that are more analogous to VoIP than the current safe harbor. For example, NECA's most recent reported percentage of interstate Dial Equipment Minutes ("DEM") is 12.76%.²⁸ Wireless carriers, who similarly sell a mobile all-distance service, report that approximately 23% of their revenue is interstate.²⁹ These would be more defensible, less discriminatory, and more equitable proxies for VoIP interstate minutes.

The Commission could also improve the current Universal Service regime for VoIP providers by eliminating case-by-case pre-approval of traffic studies.³⁰ For providers that cannot distinguish actual revenues, the pre-approval requirement essentially forces the use of the safe harbor for an indefinite period. Pre-approval is especially harmful to the small VoIP providers that are least likely to have the resources to seek and obtain pre-approval of a traffic study. At the very least, VoIP provider should be subject to the same traffic study requirements as other carriers. Even better, the Commission can remedy each of these issues by moving swiftly and

²⁷ *Id.* at ¶ 53. See also *Ex Parte Comments of Vonage*, CC Docket No. 96-45, WC Docket No. 04-36 at 3 (June 14, 2006) (showing how the VoIP safe harbor results in VoIP customers paying substantially more than equivalent wireless and wireline customers).

²⁸ Federal Communications Commission, *Trends in Telephone Service*, Table 10.1 (rel. Aug. 7, 2003).

²⁹ See Federal Communications Commission, *Telecommunications Industry Revenues*, Table 8 (2004) (23% represents the proportion of wireless telephony combined interstate and international revenues to total revenues less international-to-international revenues).

³⁰ See *USF VoIP Order* at ¶ 57.

expeditiously on broad-based Universal Service contribution reform using a numbers- or connections-based approach.

VII. The Commission Should Not Allow the Interim Regime to Discourage Broadband Use.

The Commission should proceed with the knowledge that the decisions made in this proceeding are critically linked to other vital public policy goals. The President has laid out an ambitious and important goal of achieving universal broadband by the end of the year.³¹ The VON Coalition supports that goal. However, as the Commission's recent broadband access report found, while America is making important broadband progress, there are only 50.2 million broadband lines.³² Broadband growth is being driven not by a need for wires or fiber, but for what it enables consumers to do. Boosting the price for broadband-enabled services decreases the value consumers receive from broadband. Broadband voice services that save consumers and businesses money and empower them to do things never before possible, are important broadband drivers that are critical for advancing broadband take up. As Fortune magazine puts it, "[s]o more broadband means more VOIP, which means more broadband, and so on. It's this virtuous cycle that's creating so much excitement in the telecom industry."³³ The Los Angeles Times editorial board put it this way, "[w]ith luck, VOIP will drive up the demand for broadband and hasten its spread, diminishing the need to subsidize plain old telephone lines."³⁴ At a time

³¹ White House, "Promoting Innovation and Economic Security Through Broadband Technology," available at www.whitehouse.gov/infocus/technology/economic_policy200404/chap4.html.

³² Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *High Speed Services for Internet Access: Status as of December 31, 2005*, at 2 (July 2006).

³³ Fortune Magazine, July 2004 (emphasis added).

³⁴ Los Angeles Times editorial, June 20, 2006 (emphasis added).

when encouraging broadband adoption and enabling more affordable phone service are top policy priorities, VoIP adoption should be encouraged and its consumers should not bear disproportionate regulatory burdens.

A closer look at the report used by the Commission as support for establishing the 64.9% safe harbor rate highlights the precarious nature of U.S. leadership in VoIP policy.³⁵ The report finds that the United States, the cradle of VoIP invention, is rapidly falling behind other nations in the race for global VoIP adoption. Japan, for example, with only half the population of the United States, has policies focused on fostering nascent VoIP competition and, as a result, has nearly *three times* the number of VoIP subscribers.³⁶ Imposition of the interim Universal Service requirements on VoIP neither increases VoIP adoption, or broadband subscriber rates, nor allows the U.S. to regain our international competitiveness in broadband enabled services. In fact, quite the contrary is likely.

VIII. Conclusion

For the foregoing reasons, the VON Coalition urges the Commission to immediately adopt comprehensive Universal Service reform and otherwise improve upon its interim regime for VoIP providers as indicated herein.

Respectfully submitted,

THE VON COALITION

/s/ Staci L. Pies

Staci L. Pies
President

August 9, 2006

³⁵ *USF VoIP Order* at ¶ 53, n. 181 (citing an iLocus newsletter which highlights the “Global VoIP Market 2005 (6th annual industry update and Forecasts)” Sept, 2005).

³⁶ According to the iLocus report, Japan leads the U.S. with 6.43 million voice over broadband subscribers, compared to only 2.24 million in the U.S.