

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Contributions to the Telecommunications Relay ) CG Docket No. 11-47  
Services Fund )  
 )

**COMMENTS OF THE VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON Coalition”)<sup>1</sup> hereby submits these comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>2</sup> The VON Coalition believes that the Commission should narrowly define the types of non-interconnected VoIP services required to contribute to the TRS fund, and clarify reporting requirements for non-interconnected VoIP services using the existing 499-A will appropriately implement Congress’s extension of TRS Fund participation to the new class of providers and ensure equitable and consistent contribution obligations.

**BACKGROUND**

Non-interconnected Voice over Internet Protocol (“VoIP”) is an evolving technology that continues to forge innovative paths for real-time voice communications, often integrating different modes of communication and a variety of functions onto a single platform. Members of

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<sup>1</sup> The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. VON Coalition members include AT&T, Broadvox, BT, Google, iBasis, Microsoft, Skype, T-Mobile, Vonage and Yahoo.

<sup>2</sup> See *In the Matter of Contributions to the Telecommunications Relay Services Fund*; Notice of Proposed Rulemaking, 26 FCC Rcd 3285 (Mar. 3, 2011) (“*NPRM*”); *Contributions to the Telecommunications Relay Service Fund*, 76 Fed Reg. 18,490 (Apr. 4, 2011).

the VON Coalition have been at the forefront of these innovations, many making their non-interconnected VoIP services available to the public for free.<sup>3</sup>

Under the Twenty First Century Communications and Video Accessibility Act of 2010 (“CVAA”), non-interconnected VoIP service providers are required to contribute to the Telecommunications Relay Services Fund (“TRS Fund”).<sup>4</sup> Congress has directed the Commission to enact rules “ensur[ing] that contributions are made on an equitable basis” and “are consistent with and comparable to” those of other contributors.<sup>5</sup>

With these goals in mind, in the *NPRM* the Commission seeks comment on whether TRS Fund contributions should be based on end-user revenues, whether there should be any contribution obligation when services are offered for free, whether non-interconnected VoIP services offered in conjunction with other paid-for services should be the basis of TRS Fund contributions, and how revenues for non-interconnected VoIP should be reported.<sup>6</sup>

## DISCUSSION

To ensure that non-interconnected VoIP service providers’ contributions to the TRS Fund are made on a consistent and equitable basis, and to clarify that contribution obligations, though applicable to non-interconnected VoIP services, do not envelope non-interconnected VoIP into other telecommunications services, the Commission should (1) narrowly define non-

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<sup>3</sup> For example, Yahoo, Google, and Skype all have voice features that they offer to the public at no cost. See <http://messenger.yahoo.com/features/voice>; <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115063>; <http://www.skype.com/intl/en-us/features/allfeatures/skype-to-skype-calls/>.

<sup>4</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751; 47 U.S.C. § 715. Non-interconnected VoIP is defined in the statute as a service that “enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and requires Internet protocol compatible customer premises equipment; and does not include any service that is an interconnected VoIP service.” Id.

<sup>5</sup> S. Rep. No. 111-386, at 6-7 (2010).

<sup>6</sup> *NPRM*, at ¶¶ 19, 21-23.

interconnected VoIP services, (2) create a new class of providers that report their revenues on Block 5 of FCC Form 499-A, and (3) conclude work on reforming the program prior to assess a fee on new contributors.

**I. The Commission Should Narrowly Define the Category of Non-Interconnected VoIP Providers Which are Subject to the TRS Contribution Obligation**

Many services, products and applications today include an incidental voice communications feature that may be categorized as non-interconnected VoIP, but that alone does not mean all such services, products and applications share the same market segment referred to in the statutory definition. The FCC must narrowly tailor its requirement to ensure that it does not undermine the availability of non-interconnected VoIP services and the evolution of other services that may seek to include a non-interconnected VoIP feature. Importantly, although these services may be required to pay a TRS fee, they receive no benefit from paying such fee.

In deciding which non-interconnected VoIP providers must be subject to the TRS contribution obligation to ensure contributions on a consistent and equitable basis, the Commission should consider a number of factors, including the primary purpose for which the service, product or application is designed and marketed, and whether the non-interconnected VoIP product is intended to be used as a VoIP communication service. If not, it should not be subject to the new assessment. For example, end-user revenue should not include revenue from Internet-based services, video games, or other non-VoIP services to which VoIP is an “add-on.” The administrative costs of disaggregating the VoIP service from these non-VoIP services is disproportionately high, and assessing contributions based on aggregated services would likely undermine their evolution and availability and would be inconsistent with the requirement that contributions be made on a consistent and equitable basis.

Furthermore, a complication of focusing on the interstate end-user revenue of a non-interconnected VoIP service provider<sup>7</sup> is that it is difficult to define "interstate" VoIP revenue because VoIP calls cannot be jurisdictionally separated. This could be even more difficult for non-interconnected VoIP providers who may not even have registered addresses for their customers, may not bill for those services, and when they do, may not know the geographic locations of the calling or called parties. If the FCC focuses on these revenues, presumably, in these circumstances, the Commission should permit non-interconnected VoIP providers to make good faith estimates of interstate and international revenue.<sup>8</sup>

Non-interconnected VoIP services that do not collect any interstate end-user revenues should not owe a contribution to the TRS Fund.<sup>9</sup> This result is consistent with Congress's direction that contributions should be made on an equitable basis, taking into account whether the services are offered to the public for free and the administrative costs to the service provider. A zero contribution in this scenario is also consistent with and comparable to the contributions of other similarly situated service providers.

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<sup>7</sup> See 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B). Assessing contributions based on other revenues is inconsistent with the administration of TRS Fund contribution rules and inappropriate here.

<sup>8</sup> See *Instructions to the Telecommunications Reporting Worksheet, Form 499-A*, at page 14, found at <http://www.fcc.gov/Forms/Form499-A/499a-2010.pdf>. (stating that if interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures).

<sup>9</sup> This includes freedom from a \$25 minimum contribution which, as the Commission notes, has only been applied to "telecommunications carriers that have end-user revenues...". See *NPRM*, at ¶ 23 (quoting *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration, Fund Size Estimate, and payment Formula, July 2001 Through June 2002)*, Order, 16 FCC Rcd 12895, ¶ 7 (2001)).

## **II. Non-Interconnected VoIP Service Providers Should Be A New Category of Provider That Reports Revenues on Block 5 of FCC Form 499-A**

To the extent that non-interconnected VoIP service providers have interstate end-user revenues to report, the Commission should create a new category of provider called “non-interconnected VoIP TRS” on Block 1, Line 105 of FCC Form 499-A and should require these providers to report their revenues in Block 5 (rather than Block 4). These changes would not substantially alter FCC Form 499-A, and thus would not interfere with the timely implementation of the TRS provisions of the CVAA.

Adding a new category and reporting revenues as “other revenues” in Block 5 instead of as “telecommunications revenues” in Block 4, however, prevents confusion as to whether VoIP has been classified as a telecommunications service in other contexts such as state Universal Service Fund requirements and telecommunications taxes. Congress did not designate non-interconnected VoIP services as telecommunications services in the CVAA; it extended TRS Fund contribution requirements to a new class of services. The Commission should be careful to preserve that distinction in this proceeding, and to ensure that contribution requirements are equitable and consistent, as envisioned by Congress.

## **III. The FCC Should Not Implement New Rules to Expand the Contribution Base Until the TRS Program Has Been Reformed**

The FCC is in the process of making changes to the TRS program that would eliminate waste and fraud following revelations of significant abuse.<sup>10</sup> For example, in November 2010, the Department of Justice indicted 26 people for allegedly stealing tens of millions of dollars from the TRS fund. To date, eleven of these individuals have pled guilty to their roles in defrauding

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<sup>10</sup> *In the Matter of Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 10-51, FCC 11-54, rel. April 6, 2011.

the FCC and the American public, and have been imprisoned. Indeed, Joseph Persichini, Jr., Assistant Director of the FBI's Washington Field Office described the TRS fund as a "growth opportunity for criminal activity."<sup>11</sup>

The TRS program also has been marked by waste and abuse. The fund is bloated and has a history of overcompensating providers. In recent years, the fund has realized "explosive growth." The TRS Fund administrator reported that minutes of use increased more than 350 percent in the past 5 years. Further, providers have been over-compensated out of this fund, which is a problem that the FCC is now trying to address. In 2008, Congressional staff issued a report on the program, suggesting it was at best a source of terrible waste, and at worst the biggest example of fraud in the history of the FCC.<sup>12</sup>

Accordingly, before the Commission requires more companies to contribute to this program, it should complete its efforts at reform to eliminate fraud, waste and abuse. Until then, the Commission should not require more contributors to add even more money into the program.

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<sup>11</sup> United States Department of Justice (DOJ), *Twenty-six Charged in Nationwide Scheme to Defraud the FCC's Video Relay Service Program* (Nov. 19, 2009), available at <http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>.

<sup>12</sup> Majority Staff Report Prepared for the use of the Committee on Energy and Commerce, U.S. House of Representatives, 111th Cong. *Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin* (Dec. 2008), available at <http://energycommerce.house.gov/images/stories/Documents/PDF/Newsroom/fcc%20majority%20staff%20report%20081209.pdf> (quoting Thomas Chandler, the Chief of the Disability Rights Office).

## **CONCLUSION**

The FCC should act in accordance with the recommendations herein.

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