

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054**

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 THE VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON”)<sup>1</sup> respectfully files these comments in response to the Commission’s Public Notice asking whether it should exercise its permissive authority to include one-way VoIP revenue in the contribution base for the federal Universal Service Fund.<sup>2</sup> VON opposes<sup>3</sup> the inclusion of one-way VoIP revenues in the USF contribution base and recommends instead that the Commission finally undertake a comprehensive review of USF contributions and attempt to fix what is clearly a broken system. The day after the Public Notice was released the Commission announced that the proposed third quarter 2020 USF contribution factor would be 26.5%,<sup>4</sup> the highest in program history. The inclusion of one-way

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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, including interconnected Voice over Internet Protocol (“VoIP”). For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> Public Notice, *Comments Sought to Refresh the Record in the 2012 Contribution Reform Proceeding with Regard to One-Way VoIP Service Providers*, Docket Nos. 06-122 and 09-51, DA 20-614 (rel. June 11, 2020). The Public Notice also seeks comment on whether one-way VoIP services should be required to pay other fees applicable to interconnected VoIP services, such as regulatory fees.

<sup>3</sup> AT&T does not join in these comments.

<sup>4</sup> Public Notice, *Proposed Third Quarter 2020 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 20-617 (rel. June 12, 2020).

VoIP revenues would likely have minimal impact on the escalating contribution factor, suggesting more ambitious reform is needed to sustain the fund in the years ahead.

**What's changed since 2012?**

Not much and a lot. The comments VON filed in this proceeding in 2012 similarly asked the Commission to rethink the methodology for assessing and collecting Universal Service contributions.<sup>5</sup> At that time (as we are today), VON was working with other interested parties to develop a more sustainable approach that has broad support and that is both equitable and efficient. We added:

From a contribution methodology perspective, there is almost unanimous agreement that reliance on interstate revenues to fund USF will not be sustainable as consumers utilize new forms of communications that do not align with existing definitions for telecommunications. Carriers continue to struggle with a Form 499 that does not adequately account for service bundles that include what were once called local and long distance services (but today do not recognize geographic boundaries), software, account management features, and information services. There is also continued confusion as to the responsibility of payment by wholesale and retail providers, service providers to the government, international service providers and providers of managed services. (emphasis added)<sup>6</sup>

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<sup>5</sup> Comments of the Voice on the Net Coalition, WC Docket No. 06-122, at 1 (June 9, 2012).

<sup>6</sup> Id. at 2.

The contribution factor in the third quarter of 2012 was 15.7 percent, or 10.8 percent lower than the third quarter of 2020.<sup>7</sup> What's driving the increase is not program expenses, which were \$2.238 billion in 2012 and \$2.117 billion in 2020; but lower projected revenues - - \$16.697 billion in 2012 and \$10.219 billion in 2020; a whopping \$6.5 billion decrease.

Are individuals, businesses and governments using less communications services in 2012 than in 2020? Of course not. But a combination of factors have likely reduced reported revenues: reduced prices for wireless services; a shift from private lines to broadband, SIP trunking and other access technologies that may not be required to contribute; the ubiquity of text, chat and email has reduced demand for traditional voice services; and the increased availability of mobile and fixed broadband has made it easier for users to access voice and video communications applications and collaboration tools that are either free or otherwise not required to contribute.<sup>8</sup> Finally, the Commission has issued a number of decisions since 2012 that have classified certain of these growing services as information services; confirming that revenues from those services will not be included in the contribution base.<sup>9</sup>

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<sup>7</sup> Public Notice, *Proposed Third Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 12-917 (rel. June 11, 2012).

<sup>8</sup> See, e.g., Toby Bargar, *Federal Universal Service contribution increased by 30 percent*, AVALARA (July 8, 2019), <https://www.avalara.com/us/en/blog/2019/07/federal-universal-service-fund-contribution-increased-by-30-percent.html> (noting that over the last 15 years, the contribution base has been shrinking as people are spending less money on interstate and international calls in favor of more data-intensive communications methods).

<sup>9</sup> See *Declaratory Ruling, Report and Order, And Order*, 33 FCC Rcd 311 (2018) (classifying broadband internet access as an information service); *Declaratory Ruling*, 33 FCC Rcd 12075 (2018) (classifying SMS and MMS wireless messaging services as an information service); *Order*, 31 FCC Rcd 13220 (2016) (finding that PSTN minutes when used in conjunction with Cisco WebEx desktop and document sharing applications are integrated into a single information service that is not subject to universal service contribution). VON is not passing on the merits of these decisions, but rather simply noting the practical implications. It's also worth noting that that the Further Notice of Proposed Rulemaking that we are now revisiting, asked for comments on whether to include both text messaging and broadband Internet access in the contribution base. *Further Notice of Proposed Rulemaking*, 27 FCC Rcd 5357, para. 38 (2012) ("Further NPRM").

None of this will change if the Commission now assesses revenues from one-way VoIP.<sup>10</sup> What will? Hard to say. There does not appear to be a lot of data on one-way VoIP revenues. One source, the most recent Federal-State Joint Board Monitoring Report, released February 4, 2020, and showing data for 2018, shows total annual revenue of \$806 million for *non-interconnected VoIP* (broken out as \$246 million for (non-assessable for USF purposes) intrastate revenue and \$563 million for assessable interstate and international revenue), as reported on Line 418.4 of the FCC Form 499-A. In contrast, reported information services revenues totaled \$292 billion.<sup>11</sup>

While \$563 million is not a small number, it's also likely more than will be captured because the definition of "*non-interconnected VoIP*" includes, as the Commission notes, one-way VoIP.<sup>12</sup> But, even assuming all of that is assessable one-way VoIP revenue, which it is not, adding the \$140.75 million (representing one-fourth of the annual total) to the third quarter revenue base of \$10.2 billion, reduces the estimated contribution by, at most, .055%, or from 26.5% to 25.95%. Yes, the Commission found some coins in the couch; but not enough to buy lunch.<sup>13</sup>

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<sup>10</sup> The FCC sought comment on the following potential definition of "one-way VoIP": A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network or terminate calls to the public switched telephone network. Id. at para. 58. The only difference with the definition of interconnected VoIP, is the use of the word "or" rather than "and" in the fourth criteria. Id.

<sup>11</sup> The monitoring reports can be found here <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports> (last visited June 27, 2020); and the specific revenue data is in an Excel file referenced as 2019 S.1.1 Revenue Details – 2018.xlsx.

<sup>12</sup> *Further NPRM* at para. 64.

<sup>13</sup> At a time when there is such great need in part driven by the COVID-19 pandemic, it is critical that the Commission take serious steps to stabilize the fund versus targeting perceived solutions that won't make much of a difference. For example, a recent BroadBand Now Research study suggests that 42 million Americans do not have the ability to purchase broadband Internet, see <https://broadbandnow.com/research/fcc-underestimates-unerved-by-50-percent> (last visited July 7, 2020); and, according to Common Sense, 15-16 million students are

Should the Commission choose to assess one-way VoIP revenues, VON recommends that the Commission delay the effective date of such decision by 24 months to allow one-way VoIP providers time to implement the necessary changes in billing systems, invoicing software to permit the recovery of these charges from end users and provide any required notice to consumers resulting from changes to existing calling subscriptions. That type of structural change takes planning, engineering, and testing (and often working with third party vendors) and will likely require the full 24 months. Also, while some one-way VoIP services may be provided by companies providing other assessable services, it's likely that there will be new USF contributors that will not only need to implement the necessary software and billing changes but will also be required to socialize and inform customers about the significant rate increases that will soon be appearing on their invoices. VON further recommends that the new requirement begin at the start of a calendar quarter, consistent with the changes to the contribution factor, such that providers can gain three full months of billing, collecting and remitting the new charges before the next quarterly revision.

### **What's next?**

Once again, hard to say. The Commission does not need to be reminded that USF fees, while collected and remitted by telecommunications and interconnected VoIP providers, are in almost all cases ultimately paid by end user customers. When you also include state and local taxes, other service provider regulatory fees and surcharges, customers in some cases face a 40% upcharge on a typical invoice. That number will further inspire residential and enterprise

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unable to participate in distance learning because of the lack of an internet connection or a device. See <https://www.common sense media.org/kids-action/publications/closing-the-k-12-digital-divide-in-the-age-of-distance-learning> (last visited July 7, 2020).

customers to transition to services that are either free or avoid those additional taxes, fees and surcharges. Moreover, the current economy suggests that service providers – many of whom accepted the pledge to keep Americans connected during the pandemic,<sup>14</sup> are likely to face lower revenues from companies disconnecting services at abandoned office locations and higher write-offs for bad debt; all of which will be borne out when service providers file their 2021 Form 499-A, which will true-up the revenues estimates made during 2020. Finally, the stubbornly high unemployment numbers may result in a surge of new Lifeline subscribers, many of whom were previously purchasing services that contributed to the revenue base. With all of these considerations, the contribution factor may be more than 30 percent in 2021.

Options appear to be limited. The Commission in the Further NPRM considered transitioning to a numbers-based or connections-based contribution methodology.<sup>15</sup> Both of those systems have benefits and detriments. The Commission can turn over a few more cushions and try to determine if there are other services that it might have the authority to assess. Congress can pass legislation to fund these important public purpose programs, rather than imposing a regressive tax on vital communications services – services which are even more critical now when so many people are required to work from home and are not together in offices, schools or shops.<sup>16</sup> Unlike cigarettes and alcohol, you would think good public policy

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<sup>14</sup> *FCC's Keep Americans Connected Pledge Surpasses 500 Signers*, released March 25, 2020, and found at <https://docs.fcc.gov/public/attachments/DOC-363288A1.pdf> (last visited July 3, 2020).

<sup>15</sup> *Further NPRM* at paras. 219-341.

<sup>16</sup> Order, *In the Matter of Petition of Onvoy d/b/a Inteliquent, Inc. for Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules*, WC Docket No. 18-155 (rel. March 27, 2020) at para. 1 (recognizing that the COVID-19 pandemic has led to a “massive increase in the number of people teleworking and attending online classes” which has led to exponentially increased use of “conference calling services while dramatically decreasing the number of telephone calls originating from the premises of business customers.”)

should encourage, not discourage, the use and expansion of communications services. This proceeding undermines that goal.

**Conclusion**

VON looks forward to working with the Commission and all stakeholders on figuring out a better way to pay for universal service programs. The current system is not sustainable, and the inclusion of one-way VoIP revenues is no more than a token, inconsequential gesture that will have no beneficial impact on the fund or end users of those services.

Respectfully submitted,

**VOICE ON THE NET COALITION**

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