

supports important public policy goals and minimizes disparities among providers of like services. Local exchange carriers, wireless carriers, and VoIP providers all provide voice services to customers. Moreover, local exchange carriers, wireless providers, and VoIP providers all offer “any distance” calling plans which include a bundle of local and long distance calling for a flat monthly rate.

There is no evidence in the record showing that there are in fact vast differences in the ratios of intrastate, interstate and international calling among customers to these bundled services. However, in its Report and Order, the Commission established a safe harbor allocation for interconnected VoIP providers that presumes such differences.

The Report and Order relies principally on a 2004 newsletter suggesting that the calling patterns of wireline, wireless, and VoIP customers may be different. The Commission, in turn, set the safe harbor at a level that matched “[t]he percentage of interstate revenues reported to the Commission by wireline toll providers.”² There is nothing to establish that those data are representative of bundled calling packages that encompass local and long distance calling. To the contrary, it is reasonable to conclude that data collected from wireline toll (only) providers is skewed more heavily toward interstate calling than data collected from providers of wireline local and toll services.

Local exchange carriers that offer bundled local and long distance service are already estimating and reporting the jurisdictional distribution of traffic from such bundled offerings. To the extent that the Commission wants to base the safe harbor for VoIP on wireline usage, NCTA supports using the data provided by local exchange carriers who offer bundled “any distance”

before the House Energy and Commerce Committee, <http://www.ncta.com/DocumentBinary.aspx?id=454> (June 21, 2006).

² *Id.*

calling packages rather than data collected from toll providers.³ A safe harbor based on local exchange carrier contribution data would preserve competitive equality and thereby promote rather than distort competition during the interim period while the Commission seeks to revise its revenue-based approach.

We recognize, of course, that VoIP providers may instead calculate their contributions on the basis of traffic studies or actual revenues. But if the Commission intends for the safe harbor to be a meaningful choice for VoIP providers, it is imperative that the safe harbor threshold established by the Commission reasonably reflect the actual calling patterns of customers of like services. That would eliminate unnecessary and excessive costs for VoIP providers of identifying interstate and intrastate traffic during the interim period while a revenue-based contribution methodology remains in effect. In addition, it would promote the continued growth of telephone competition by ensuring that providers of competing services do not pay widely varying regulatory fees.

II. THE COMMISSION SHOULD ELIMINATE ITS REQUIREMENT THAT TRAFFIC STUDIES BE PRE-APPROVED

In its Report and Order, the Commission cites discrepancies in the data provided by wireless carriers to support requiring VoIP providers to obtain pre-approval for the use of a traffic study to determine its universal service contribution obligation. This approach is inconsistent with the Commission's general approach to information reported on USF

³ Although most of the data submitted by telecommunications providers on the contribution forms is proprietary, the Commission does report aggregate information based on the type of provider. In its most recent Universal Service Monitoring Report, the Commission reported that in 2004, roughly 25 percent of revenue was jurisdictionally interstate and international for fixed local service providers. *See* Universal Service Monitoring Report, CC Docket No. 98-202, Table 1.9 at 1-32 (2005). The figure for different categories of fixed local service providers ranged from 22.6 percent for the Regional Bell Operating Companies up to almost 36 percent for competitive LECs, and a safe harbor in that range would be more accurate than the 64.9 percent safe harbor adopted by the Commission.

contribution forms, which is to accept the reported numbers and seek the underlying information from the provider only if questions arise.

This decision is arbitrary because it places the added burden of prior approval on a class of providers whose reporting practices have not given the Commission any cause for concern, while permitting those providers in whose data the Commission has detected anomalies to continue to rely on traffic studies without the need for prior approval.⁴ And this decision is discriminatory because it places a higher burden on one class of provider than another without a demonstration that the affected class warrants disparate treatment. In light of the non-geographic specificity of wireless and VoIP numbers, it is increasingly difficult for *any* carrier to conclusively identify traffic as interstate or intrastate,⁵ and VoIP providers should not be held to higher standard of accuracy than other providers. To do so would violate the “competitive neutrality” requirement of Section 254.

If the Commission is concerned about its ability to judge the reasonableness of the jurisdictional allocation used by a VoIP provider, NCTA proposes instead that the Commission compare the reported figures with the jurisdictional allocations reported by local exchange carriers with respect to their “any distance” calling plans. If this comparison suggests that a particular VoIP provider is under-reporting its interstate revenue, further investigation may be appropriate.

To the extent that the Commission chooses to retain the pre-approval requirement, NCTA requests that the Commission provide guidance regarding the procedures – and expedite the time

⁴ Report and Order, ¶ 29. Even though the Commission expressed concern that wireless revenues were not being properly reported on FCC Form 499-A, it did not require wireless providers to obtain pre-approval for their traffic studies.

⁵ Because LEC customers increasingly call customers of wireless and VoIP providers, even “actual” data reported by LECs may not accurately reflect the geographic end points of such calls.

frame – for approving these traffic studies. Otherwise, the pre-approval requirement essentially forces VoIP providers to rely on the safe harbor for an indefinite and potentially lengthy period of time.

III. A NUMBER-BASED APPROACH SHOULD REPLACE THE INTERIM METHODOLOGY AS SOON AS POSSIBLE

In the long term, the best way to eliminate the unnecessary costs, burdens and inequalities of an interstate-intrastate revenue-based system is to adopt an approach that assesses a flat fee on each telephone number provided to customers. Using telephone numbers would be a relatively simple means of determining who should contribute as well as when contributions were owed and in what amount. There would be no need to apportion provider revenues into interstate versus intrastate or to determine which portion of a bundled offering represents interstate telecommunications. It would also make no difference whether a service was defined as a telecommunications service or as an information service.

Under a telephone number-based system, all that matters is whether or not the service uses a phone number. Adopting this approach would also promote competitive neutrality among all voice telephone providers – those who offer their services as a replacement for plain old telephone service (POTS), while avoiding assessments on services that only include a voice component but are not a substitute for POTS.

The Commission has emphasized that the revisions to the revenue-based approach that it has adopted in the Report and Order are interim measures and that it is “committed to examining more fundamental reform in this proceeding.”⁶ NCTA fully endorses such reform and, because it will promote the growth of competition among telephone service providers, urges the

⁶ Report and Order, ¶ 4.

Commission to complete its proceeding and move to a number-based approach as soon as possible.

CONCLUSION

The Commission's revenue-based methodology is already outmoded and not suitable for a competitive marketplace in which interstate and intrastate calls are offered to customers at a single rate. If USF contributions are to be required of interconnected VoIP providers – as they should – the Commission should, as quickly as possible, replace that methodology with a number-based approach. Meanwhile, the interim safe harbor adopted for VoIP providers should immediately be revised to reflect the fact that cable VoIP service is more like bundled local and long distance wireline telephone service than like wireline toll service. In addition, the pre-approval requirement for traffic studies should be eliminated.

Respectfully submitted,

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