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

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

REPLY COMMENTS OF THE
SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association ("SIA") hereby submits these reply comments in response to the Federal Communications Commission's Further Notice of Proposed Rulemaking considering reforms to the Universal Service Fund ("USF") contribution system.[1]

I. THE COMMISSION SHOULD CONTINUE TO MAKE CASE-BY-CASE DETERMINATIONS AS TO WHICH SERVICES ARE ASSESSABLE

The Commission asks in the Further Notice whether it should abandon its current permissive authority approach, under which it determines the applicability of contribution requirements on a service-by-service basis, and instead should "craft a general rule that would specify which [providers] . . . must contribute, without enumerating the specific services subject to assessment."[2] For the reasons stated below, SIA agrees with those commenters who believe that a service-by-service approach to contribution obligations is preferable to the broad definitional approach.

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1 *In the Matter of Universal Service Contribution Methodology, A National Broadband Plan For Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GC Docket No. 09-51, FCC 12-46 (rel. Apr. 30, 2012) ("Further Notice").

2 *Id.* at ¶ 74.

The Commission seeks comment in the Further Notice on the relative merits of two approaches. Under one approach, which is the approach it takes at present, the Commission would continue to determine on a service-by-service basis whether universal service contributions should be assessed.[3] Under a second approach, which is definitional, the Commission would make interstate information services and interstate telecommunications assessable whenever the service provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users.[4]

SIA opposes the broad definitional approach. Such an approach to defining the USF contribution base is precluded by Section 254(d) of the Communications Act, which SIA believes requires the Commission to engage in a service- and market-specific public interest inquiry before exercising its permissive authority to add any particular class of providers to the USF contribution base. Moreover, applying contribution requirements to all information services and interstate telecommunications that are provided with a transmission component, without regard to the particular characteristics of those services and telecommunications, would conflict with the Commission's objective of ensuring that similar services are treated in a comparable manner regardless of technology or type of provider.[5] The Commission cannot treat similar services in a comparable manner if it never even considers whether the services are similar.

SIA also agrees with the deficiencies in the broad definitional approach that have been identified by other commenters. A broad definition, NTCA observed, "cannot on its own

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3 Further Notice at ¶ 74.

4 *Id.* at ¶ 75.

5 *Id.* at ¶ 24.

establish the specific cases in which contribution obligations vest," because "the Commission would still need to provide clear guidance as to whether particular services involve the provision of interstate 'telecommunications' and thus fall within the rule … ."[6] Given that a broad definition would "offer[] carriers virtually no guidance to predict the magnitude of their USF-related obligations," moreover, OnStar notes that the definition "would give rise to substantial marketplace uncertainty," which would "invariably lead to differing interpretations and ultimately litigation" and would "frustrate the development of emerging wireless services."[7] Similarly, Google opposes employing a broad definition because it would be "likely to dampen investment and innovation," which would "run the risk of sidetracking all stakeholders from the important job of providing consumers newer, better and cheaper communications offerings."[8]

Level 3 and AT&T find the definitional approach to be overbroad. Level 3 is troubled because "[t]he Commission's proposed definitional change is so broad as to encompass practically any Internet-based service including those that are not close substitutes with PSTN services," thereby "overturn[ing] the careful balance Congress struck with respect to universal service assessments."[9] This broad definition, AT&T states, "would raise more questions than it

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[6] Comments of the National Telecommunications Cooperative Association *et al.* (July 9, 2012) at 31.

[7] Comments of OnStar, LLC (July 6, 2012) at 27-28.

[8] Comments of Google Inc. (July 9, 2012) at 12. *See also* Comments of Microsoft Corporation (July 9, 2012) at 3 ("During this period of rapid change, we caution the Commission against extending USF liability to new communications applications without carefully considering the effect of such changes on innovative products with communications features and the complexities of trying to apply USF contribution rules to such products.").

[9] Comments of Level 3 Communications, LLC (July 9, 2012) at 6.

would answer" and "would sweep in a vast range of … services … that the Commission gave no indication that it intends [to cover]."[10]

SIA concurs with these points, which dictate that the service-by-service approach the Commission has been taking should be maintained.

II. THE COMMISSION SHOULD REDUCE THE ADMINISTRATIVE BURDENS OF USF COMPLIANCE

SIA supports the many commenters that have urged the Commission to reduce the administrative burdens of complying with USF contribution and cost recovery requirements.[11] Reducing such burdens on service providers is vital if the Commission wishes to accomplish its goal of simplifying the USF.

Regarding the Commission's specific proposals for administrative reform, SIA comments as follows:

- <u>Updates to the Telecommunications Reporting Worksheet</u>: Any updates to the Telecommunications Reporting Worksheet should provide fair notice to contributors of any changes in the Bureau's application or interpretation of the rules that may affect their contribution obligations. Any substantive rule changes must, of course, go through a notice-and-comment rulemaking. Updates to the Worksheet that do not require a rulemaking should be summarized so that all contributors have notice of the change. In addition, such changes should apply prospectively to the reporting of the following year's revenues, rather than for the immediate past year.

- <u>Annual Contribution Factors</u>: SIA supports the adoption of a single USF contribution factor each year, rather than the system of quarterly factors currently in place. Adoption of a single, annual contribution factor would both ease the administrative burden on contributors, as well as reduce any customer confusion that may arise from a USF rate that fluctuates throughout the year.

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[10] Comments of AT&T (July 9, 2012) at 5.

[11] *See, e.g.*, Comments of American Cable Association (Jul. 9, 2012) at 2-4; Comments of AT&T (Jul. 9, 2012) at 41-49; Comments of CTIA – The Wireless Association (Jul. 9, 2012) at 13-22; Comments of Earthlink (Jul. 9, 2012) at 20; Comments of Level 3 Communications LLC (Jul. 9, 2012) at 22-25; Comments of Time Warner Cable, Inc. (Jul. 9, 2012) at 11-13; Comments of T-Mobile USA, Inc. (Jul. 9. 2012) at 9-12; Comments of Verizon (Jul. 9, 2012) at 6-12; Comments of U.S. Cellular Corp. (Jul. 9. 2012) at 40-44; Comments of XO Communications Services, LLC (Jul. 9, 2012) at 4-12.

- Electronic Filing, Invoicing and Payment: SIA encourages the Commission to ease the burdens of compliance by investing in and improving USAC's electronic systems. While USAC's system already allows electronic filing, additional investments in that system to (a) enable electronic invoicing, (b) make electronic payments easier, and (c) improve system stability and ease-of-use, would go a long way towards encouraging timely filing and payments.

- Paper Filings as a Backup Alternative: At the same time, SIA urges the Commission to retain paper filing as a backup alternative for the times when electronic filing is not available for some reason, *e.g.* network congestion, filers with non-U.S. addresses. A fee for making paper filings, however, is unnecessary to encourage electronic filings. Making electronic systems more functional, robust, and easy-to-use will automatically drive contributors to choose that method of interacting with USAC. SIA suspects that most contributors resort to paper filings only when the electronic system for some reason will not accept their filing. Such contributors should not be penalized for being forced to file by paper.

- Registration and De-registration: USAC already has mechanisms in place for contributors to register and de-register as their circumstances change.[12] It is unclear whether any change in Commission rules is required in this regard. SIA encourages USAC to develop more flexible de-registration forms to account for the various reasons why a contributor may cease to be required to be registered.

- No Verification of Customer Registration: SIA opposes a requirement on contributors to verify with USAC that their customers are properly registered for USF purposes. Such a requirement would be inconsistent with the Commission's goal of simplifying the USF regime. No provider should be held responsible for another provider's compliance with the Commission's USF rules. It is unreasonable to burden service providers with a requirement to verify and "second-guess" a customer's determination of its own registration status.

Regarding the Commission's specific proposals regarding cost recovery, SIA comments as follows:

- USF Line Item Pass-Through: SIA agrees with the vast majority of commenters that USF contributors must retain the option to pass-through USF contributions to customers as a separate line item. The line item pass-through will have a particularly large impact in the satellite industry where long-term, multi-year satellite capacity contracts are common. Without the ability to pass-through USF contributions as a specific line item, a satellite operator will not be able to predict how much of its revenues it can expect to

[12] *See* http://www.usac.org/cont/499/registration-req.aspx (registration requirements); http://www.usac.org/cont/tools/merger.aspx (filer ID deactivation instructions).

keep as the USF rate fluctuates from quarter-to-quarter (or year-to-year). In turn, this will make it difficult for a satellite operator to set prices or give accurate guidance to the investment community.

- Advertising Rules: The Commission's proposal to require advertised prices to include USF contributions is likely to mislead customers because the USF rate will keep changing. The proposal is also impractical to the extent it forces the advertising campaigns of contributors to be constrained by the dates on which a new USF contribution factor may be published.

- Segregation of USF Pass-through Charges: SIA opposes a requirement on contributors to segregate USF pass-through charges that they collect in order to ensure that such funds can be collected by USAC even when a contributor is in bankruptcy. First of all, debts to the United States government (including USF debts) already enjoy priority in bankruptcy. Second, a segregation requirement would create unnecessary complexity and impose substantial burdens on all contributors, most of which are not at any risk of bankruptcy. These burdens on the many outweigh any additional benefit that segregation may provide to the USF in the few cases in which a contributor goes bankrupt.

III. CONCLUSION

For the foregoing reasons, the Commission should continue to make case-by-case determinations as to which services are assessable and reduce the administrative burdens of USF compliance.

Respectfully submitted,

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