Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF THE VON COALITION, CCIA, ITI, NET COALITION, TECHNET, AND TIA

As leading communications innovators, the VON Coalition[1], CCIA[2], ITI[3], NetCoalition[4], TechNet[5], and TIA[6] (referred to collectively herein as the "High Tech Associations") welcome the

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1 The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering communciations innovations over Internet. The coalition, which includes AT&T, BT

Commission's efforts to reform intercarrier compensation ("ICC"). The High Tech Associations were pleased with many of the proposals released by the Commission and the stated intent of the Commission to adopt Universal Service Fund ("USF") and compensation schemes that "provide efficient incentives for the investment in and use of broadband networks."[7] We urge the

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Americas, CallSmart, Cisco, CommPartners, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Microsoft, New Global Telecom, PointOne, Pulver.com, Skype, T-Mobile USA, USA Datanet, and Yahoo! works to advance regulatory policies that enable Americans to take advantage of the full promise and potential of VoIP. The Coalition believes that with the right public policies, Internet based voice advances can make talking more affordable, businesses more productive, jobs more plentiful, the Internet more valuable, and Americans more safe and secure. Since its inception, the VON Coalition has promoted pragmatic policy choices for unleashing VoIP's potential. http://www.von.org

[2] CCIA is an international, nonprofit association of technology companies dedicated to open markets, open systems, and open networks. CCIA members participate in the Internet, information and communications technology industries, ranging from the largest in the business to small entrepreneurial firms. CCIA advocates for public policy that promotes broadband deployment, competition, and innovative applications such as VoIP. CCIA members employ nearly one million people and generate annual revenues exceeding $200 billion. A complete list of CCIA's members is available online at http://www.ccianet.org/members.html.

[3] ITI represents over forty of the nation's leading information technology companies, including computer hardware and software, Internet services, and wireline and wireless networking companies. ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, protect consumer choice, and enhance global competition.

[4] NetCoalition is a public policy voice for some of the world's most innovative companies on the Internet. NetCoalition's membership includes: Google, Yahoo!, Bloomberg, eBay, Amazon, IAC, and Wikipedia.

[5] TechNet is a network of Chief Executive Officers and senior partners of approximately 200 companies in the information technology, Internet, networking, venture capital, software, and clean energy technology industries. The association is organized to promote the growth of the technology industry and the economy by building long-term relationships among technology leaders. As members and investors in the technology industries, TechNet's members represent the leading edge of developing, manufacturing, and marketing emerging technologies.

[6] Currently in its 84th year, TIA represents the global information and communications technology industry through standards development, advocacy, business opportunities, market intelligence, and world-wide environmental regulatory analysis. Thousands of companies and individuals work through TIA to enhance the business environment for telecommunications, broadband, mobile wireless, information technology, networks, cable, satellite, unified communications, emergency communications, and the greening of technology. TIA is accredited by the American National Standards Institute ("ANSI").

[7] In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services; WC Dockets No. 05-337, 03-109, 06-122, 04-36, and CC Dockets No. 99-200, 96-98, 01-92, 99-68, *Order on Remand and*

Commission to adopt reforms that encourage innovative communications services and applications and continue to foster more rapid deployment of broadband networks to unleash the benefits of evolving technologies. If successful, the FCC's intercarrier compensation reforms will eliminate artificial economic inefficiencies, empower consumers to structure their communications as they see fit, and enable the deployment of new services in response to consumer demand. Such regulations would encourage consumer purchase of broadband Internet services and the applications that make the services so compelling.

Indeed, with the right polices, VoIP technologies can deliver enormous benefits for consumers:

- At a time when consumers are struggling to make their mortgages and pay their bills, VoIP enabled competition can save consumers an astounding $110 billion over the next 5 years – putting real money back into consumers' pockets through the power of competition at a time when families really need it.[8]
- And by harnessing VoIP as a broadband driver, just a 7% increase in broadband adoption could create nearly 2.4 million more jobs per year. In fact, VoIP is now projected to be the number one job creator of any industry in the country.[9]
- Already businesses are boosting productivity by as much as 15%, and small businesses could save $16 billion over the next 5 years through VoIP enabled competition.[10]

Report and Order and Further Notice of Proposed Rulemaking (Rel. Nov. 5, 2008) (Order on Remand and Proposed Orders).

[8] MiCRA Benefits of VoIP Competition Study, Consumer Benefits from Cable-Telco Competition, By Michael D. Pelcovits, PhD, Daniel E. Haar, updated Nov. 2007.

[9] *Id.*

However, just as successful comprehensive reform can power economic growth, stimulate peer production, and enhance social well-being, a critical misstep could be highly detrimental and counter-productive to broadband deployment, new ideas and applications, and the growth of the nation's economy. For these reasons, we outline the essential elements necessary to achieve vast benefits, without which could stall, stifle or stop consumers from benefiting from innovative new Internet communication technologies.

I. THE COMMISSION SHOULD ADOPT COMPENSATION REFORMS THAT SUPPORT THE GOALS OF UBIQUITOUS BROADBAND DEPLOYMENT AND ADOPTION.

A. The Commission should continue its pro-growth, pro-innovation policies that have kept access charges off of Internet-enabled voice communications.

The Commission should specifically reaffirm that the access charge regime does not extend to Internet-enabled voice communications. The High Tech Associations are concerned that consumers will be harmed by any transition that would force Internet-enabled voice communications to jurisidictionalize traffic resulting in higher rates and reduced availability of innovative, Internet-enabled voice products. More precisely, the FCC should exclude from access charges (1) any information services that use VoIP, (2) offer one-way VoIP services, and (3) enable free VoIP services to consumers. These services should remain exempt from access charges. Such exemption helped enable the explosive growth of innovation in the U.S. tech sector, including the development of the Internet and world wide web.

If the FCC were to apply a jurisdictional-based regime for the first time to information services that use VoIP to communicate with users on the PSTN, the results would be anti-consumer and anti-growth and result in the following:

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[10] *Id.*

- Rates for innovative Internet-enabled voice applications would go up, and/or such free services would disappear from the marketplace;
- Innovation in and development of new Internet-enabled voice applications would be curtailed; and
- Consumer demand for broadband would be reduced, slowing the growth in broadband penetration, and thus stunting one of the policy objectives of Congress when it enacted the Telecommunications Act of 1996.

The FCC long ago soundly rejected regulating communications based on a voice/data distinction, and it should not resurrect that approach here now.[11] Instead, the FCC should acknowledge the exploding diversity of applications and services that serve consumers and promote efficiency by refraining from any new regulation of Internet-enabled voice services.

An amazing transformation is happening on the Internet. Internet-enabled voice services, including VoIP, are allowing people to communicate in entirely new ways – connecting friends together on MySpace, giving voice to blogs, transforming video games, enabling political discourse, integrating voice and video into instant messaging, enabling people with disabilities to access a host of new accessibility tools not previously possible, allowing one telephone number to reach all of one person's phones, enabling new privacy communication tools, ushering in a new era of voice recognition based information retrieval tools, and integrating click to dial functionality into mapping and other web sites.

These exciting technologies are emerging as a result of the Commission's pro-growth, pro-innovation policies that for 20 years have enabled enhanced and information service providers, including VoIP providers, to purchase services at cost-based rates as end-users rather than as

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[11] *See Computer I Order: Reg. and Policy Problems Presented by the Interdependence of Computer and Communications Services*, Final Decision, 28 FCC2d 267, 21 Rad. Reg.2d (P & F) 1561 (1971).

interexchange carriers under Commission rule 69.5(b).[12] This treatment of VoIP providers as end-users for compensation purposes has ensured that Internet communications are not saddled with the ill-fitting broken access charge regime that applies only to interexchange carriers. These amazing new services now just emerging simply wouldn't be possible if voice enabled Facebook applications had to charge by the minute, or charge people differently depending where on which friends they are communicating with and where they live in the country.

B. Should the Commission not adopt bill and keep, it should confirm that the appropriate compensation mechanism for for-fee VoIP-to-PSTN services traffic is a low, uniform terminating rate that more accurately reflects costs and does not require jurisdictionalization of traffic.

The High Tech Associations have urged the Commission to adopt comprehensive intercarrier compensation reform "to accommodate progress and innovation and to ensure technological and competitive neutrality."[13] Specifically, the Associations believe that given the vast improvements in network efficiency that have the potential to reduce the marginal cost for termination almost to zero, the most rational approach to reform is for the Commission to adopt a bill and keep system that requires carriers to recover their costs from end-users, or in limited circumstances, from an explicit subsidy, instead of through economically irrational intercarrier

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[12] As explained in previous VON Coalition filings, although this status as end-users for compensation purposes is often referred to as the ESP exemption, in fact ESPs do not now, nor have they ever come under the Commission's access charge rules. Rule 69.5(b) limits the class of providers subject to switched access charges to "interexchange carriers." 47 C.F.R. § 69.5(b). Specifically, the Commission should not take any action to change the existing treatment of end-users, including ESPs and ISPs, under Rule 69.5(b) and should avoid any suggestion that the adoption of new rules calls into question the applicability of current law that ESPs and ISPs are end-users not subject to switched access charges. *See, e.g.,* Reply Comments of the Voice on the Net Coalition at 7-15, WC Docket Nos. 07-256 & 08-8 (filed March 14, 2008).

[13] *See* Letter to Chmn. Martin and Commrs. Copps, McDowell, Adelstein, and Tate from AT&T, CompTIA, CTIA - The Wireless Association, Global Crossing, The Information Technology Industry Council, National Association of Manufacturers, New Global Telecom, PointOne, Sprint, The Telecommunications Industry Association, T-Mobile, Verizon, The VON Coalition, WC Docket No. 04- 36 and CC Docket No. 01-92 at pg. 2 (filed Aug. 6, 2008).

charges. The High Tech Associations understand, however, that despite the economic rationality of bill and keep, political realities make the adoption of a bill and keep mechanism a less attractive proposition. The High Tech Associations support, in the alternative, the adoption of a low terminating rate that applies to all traffic connecting to the PSTN and all providers, with no variations based on carrier type, jurisdiction, or technology. However, the Commission should continue to exclude information services that use VoIP from such new compensation regime.[14]

The Commission, state regulators, and the industry have long struggled with a patchwork of intercarrier compensation mechanisms, and "band-aids" intended to address purportedly immediate policy concerns about particular categories of "telecommunications" have largely resulted in further litigation, delay, inefficiency, and uncertainty.[15] Having now responded to the writ of mandamus with respect to its treatment of one such category, ISP-bound traffic, the Commission should use this as an opportunity to eliminate arbitrary historical distinctions and provide certainty to consumers by confirming that section 251(b)(5) is the appropriate vehicle for establishing the compensation rate for VoIP traffic delivered by one carrier to another for termination. As the FCC found in the *Order on Remand – ISP-Bound Traffic,* section 251(b)(5) is the governing statutory

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[14] Examples include online gaming services, websites with click-to-call links, interactive voice response systems, and the thousands of other information services that provide interaction with stored content, information processing, protocol conversion, or other features of "information services" but utilize VoIP as part of their offering. These information service providers should continue to be treated as end users for purposes of this new intercarrier compensation regime and exempt from such charges.

[15] Commissioner Ness may have summarized this issue best when the Commission opened its (still-pending) review of a unified intercarrier compensation seven years ago. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9677 (2001) ("*Intercarrier Compensation NPRM*") (Concurring Statement of Commissioner Ness) ("[W]e still have in place today a system under which the amounts, and even the direction, of payments vary depending on whether the carrier routes the traffic to a local carrier, a long-distance carrier, an Internet provider, or a CMRS or paging provider. In an era of convergence of markets and technologies, this patchwork of regimes no longer makes sense. What had been a historical artifact may have become an unsustainable anomaly.").

provision for the transport and termination of all traffic exchanged with LECs.[16] Indeed, the fundamental problem with any proposal that would allow the imposition of access charges on VoIP traffic during an interim period is the continuing disparate treatment for similar types of traffic (e.g., VoIP rates versus ISP-bound rates). The Commission should not perpetuate the existing inefficient intercarrier compensation framework by *moving backwards* to apply legacy access charges to VoIP traffic. This "one-step-forward or two-steps-back" approach to "reform" is nonsensical and contradictory to the Commission's goals.

C. In confirming that IP-to-PSTN and PSTN-to-IP traffic is classified as information service, the Commission should also confirm the right of carriers to interconnect for purposes of terminating VoIP traffic on the PSTN.

To address the concerns of interconnecting carriers and their non-carrier partners about the need to preserve existing 251 interconnection and unbundled network elements rights and responsibilities, the Commission should clarify that nothing in the order disturbs section 251 interconnection and unbundled network elements rights and obligations regardless of the classification of the traffic, as the Commission did in its *Time Warner Cable Interconnection Order*.[17] A telecommunications carrier's right to interconnect and obtain unbundled network elements turns *only* on whether it is providing a "telecommunications service" to the VoIP provider,[18] not on the regulatory classification of the traffic being generated by the VoIP provider (often a CLEC customer).

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[16] Order on Remand – ISP-Bound Traffic, at ¶ 15.

[17] *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007) ("*TWC Interconnection Order*").

[18] *TWC Interconnection Order* ¶ 14

Protection and affirmation of the interconnection rights of carriers and preserving the unregulated status of application and software providers is crucial to burgeoning technologies. The Commission's proposed orders take the first step by "classify[ing] as 'information services' those applications that originate calls on IP networks and terminate on circuit-switched networks, or conversely that originate on circuit-switched networks and terminate on IP networks (collectively 'IP/PSTN' services)."[19]

In addition to declaring VoIP providers to be information service providers, the High Tech Associations urge the Commission to clarify that section 251 of the Communications Act allows CLECs to obtain interconnection and unbundled network elements that enable them to provide wholesale telecommunications to third party end users such as VoIP providers that offer retail VoIP products and services. To the extent that any doubt remains about CLEC interconnection rights, the Commission should deny the pending V-Tel Petition[20] and confirm its holding in the *Time Warner Cable Interconnection Order* to ensure that IP-based services can thrive to the benefit of millions of American consumers.

In confirming the 251 rights of Title II carriers, including CLECs providing wholesale telecommunications to VoIP providers, to obtain interconnection and access to unbundled network elements, the Commission would act to clearly provide the Internet communications market a degree of regulatory certainty. Both new entrants and established incumbents seeking to offer VoIP products and services are hampered by continued regulatory uncertainty. As the VoIP industry has shown over the past few years, the impact of regulation affects whether consumers will have access

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[19] Proposed Orders, Appendix A at ¶ 209 and Appendix C at ¶ 204.

[20] *See Petition of Vermont Telephone Company for Declaratory Ruling Whether Voice over Internet Protocol Services are Entitled to the Interconnection Rights of Telecommunications Carriers*, WC 08-56, (filed Apr. 11, 2008) ("*VT Telephone Petition*").

to innovative features and functionalities offered by VoIP providers at the edge or if they will have access only to very limited VoIP products that merely mimic the circuit switched offerings of the past

By virtue of a regulatory environment free from unnecessary telecommunications regulation, VoIP providers will be able to continue investing in transformative software and applications and then partner with telecommunications carriers, who have section 251 interconnection and unbundled network element rights and obligations of Title II regulation, to bring these services to consumers. For instance, network operators are able to invest in and provide an economically efficient source for the key components required by application providers to deliver IP services to consumers. These components may include access to the PSTN, numbering resources, and other features of Title II. Focused and clearly defined regulation enables unregulated services to evolve rapidly thereby offering to consumers transformative VoIP products that may resemble telephone service only in the vaguest sense. Not only are such partnerships logical and efficient, they also enable more immediate consumer access to broadband applications and services at lower costs, thus driving many of the FCC's broadband related goals. Accordingly, the Commission should clarify that Title II carriers are entitled to interconnect and obtain unbundled network elements for purposes of terminating all forms of IP-originated traffic – without restriction - pursuant to section 251.

D. The Commission should reaffirm that all Internet-based voice services, if regulated at all, are subject to exclusive Federal jurisdiction.

The High Tech Associations strongly support the Commission's proposals to affirm exclusive Federal jurisdiction over all Internet-based voice services, including VoIP.[21] Ensuring a uniform national framework for such services helps to enable new innovations and investment. For interconnected VoIP services that substitute for a traditional phone service, it helps ensure consistent levels of 911 access, privacy protection, universal service support, from one jurisdiction to another -- without having to comply with a patchwork of potential conflicting state and local rules. For new and innovative Internet communications technologies that aren't substitutes for traditional POTS services, preventing conflicting state rules can help advance consumer benefits in a largely unregulated environment as innovation could flourish.

In the *Vonage Jursidiction Order*,[22] the Commission held that Vonage's over-the-top-VoIP service is jurisdictionally interstate and subject to the Commission's exclusive jurisdiction. The Commission further held that it would reach that same conclusion with respect to *any* VoIP service — including facilities-based VoIP service — that shares certain basic characteristics, the most important of which is the offering of a suite of integrated features and capabilities that allow customers to originate and receive voice communications and access those other features and capabilities simultaneously. In upholding the Commission's decision, the Eighth Circuit likewise noted the multiple service features that can come into play simultaneously with VoIP service.[23]

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[21] For example in paragraph 211 of Appendix A and 206 of Appendix C, the Proposed Orders would "preempt any state efforts to impose "traditional 'telephone company' regulations" as they relate to IP/PSTN information services as inconsistent with our generally unregulated treatment of information services."

[22] *Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004).

[23] *The Minnesota Public Utilities Commission v. FCC,* Case No. 05-1069, slip op. (8th Cir. Mar 2007).

Despite the Commission's clearly expressed intent to bring regulatory certainty to VoIP service through the *Vonage Order*, however, a number of states have attempted to impose traditional common carrier regulations, including licensing, tariffs, and state PUC regulation of interstate VoIP service providers.[24] Consumers and the industry both need immediate action by the Commission to ensure that Internet-based voice services – which transcend traditional notions of geography and regulation – are not subject to a patchwork of 50 different regulatory regimes.

Despite the Commission's intent to solidify federal jurisdiction for VoIP, the Proposed Orders at Appendices A and C states that "*[o]f course, neither the Vonage Order, the Pulver.com Order, nor our actions here preempt state actions that are consistent with federal policy.*" To explain this ambiguous statement, the proposed orders state: "[f]*or example, states are free to require contributions to state universal service or telecommunications relay service funds through methodologies that are consistent with federal policy.*"[25] This ambiguous language would only invite appeals, litigation, and disputes over the determination of what is "consistent with federal policy." While regulators and industry are tussling over the true extent of federal jurisdiction, consumers and economic growth will be the losers. Industry will simply not be able to further deploy and cultivate Internet-based voice services in the face of such regulatory uncertainty. Qualifying its exclusive Federal jurisdiction in the manner noted above would have other detrimental implications on the broad variety of Internet-based voice services that it would capture through references to its *Vonage Jurisdiction Order*, and the *Pulver.com Order*.

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[24] *See, e.g.* HB 1779, signed into law and effective Aug. 28, 2008 imposing full state common carrier regulation on interconnected VoIP providers.

[25] Proposed Orders, App. A, n.675 and App C., n.1816.

E. The Commission should adopt a forward-looking phantom traffic solution that does not apply the highest of rates to the most innovative of services.

While VoIP technologies may not be the primary cause of so-called phantom traffic problems, the proposed "solution" put forth by the Commission has the very real potential to stall the vast emerging benefits and limit consumer choices in the future. Specifically, the Commission's Proposed Orders indicate that all services need to populate Calling Party Number ("CPN") information in the SS7 call signaling stream.[26] In doing so, the Commission specifically rejects the VON Coalition's assertion that services that do not inherently have a telephone number should not be required to create one. While such a requirement, as well as a similar requirement to populate charge number ("CN") might be logical in a pure PSTN world, the requirement is illogical in an IP world. As argued above, the Commission should adopt, for immediate implementation, a compensation regime for IP-originated traffic that does not depend on the geographic location of the originating end of the call. In such a regime, the CPN or CN is irrelevant.

The Commission should not so quickly close the door on our Internet future by preventing broadband users from talking with their analog counterparts using innovative new technologies. Many new technologies, like some VoIP services, do not necessarily utilize North American Numbering Plan ("NANP") numbers and have no business reason to track such numbers in the traditional way that certain rural LECs have suggested. For example, many VoIP products or services are not tied inextricably to NANP numbers. Further, NANP numbers are not a good proxy for location in an IP world. For the Commission to require the insertion of a number where the software or network does not organically generate a number or the service does not assign one

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[26] Proposed Orders, App. A, ¶¶ 330-332 and App. C, ¶¶ 327-329.

could require extensive network modifications simply to generate artificial information. These modifications could be economically infeasible for many burgeoning services and technologies.

Also regarding "phantom traffic," the Commission must not permit the terminating carrier to impose the highest applicable rate.[27] To eliminate the concerns that terminating carriers have with regard to what rate should apply, the High Tech Associations urge the Commission to follow in its phantom traffic solution the same principles underlying comprehensive reform -- *i.e.,* to ensure that rates reflect the economic cost of termination and to eliminate the disparity between the rates to exchange various types of traffic. So long as interconnecting carriers accurately identify themselves to terminating carriers, VoIP traffic must be billed at no higher than the state established reciprocal compensation rate, ratcheting down to the new rate established according to the forward looking cost formula established by the Commission in this proposed order.

The High Tech Associations are mindful, however of the need for terminating carriers to have sufficient information in order to bill the appropriate interconnecting carrier. For this reason, the High Tech Associations support requirements that the carrier partner of the VoIP provider be identified, either by carrier identification code ("CIC") or operating company number ("OCN"), however, there is no need to require the generation of an artificial CPN or CN as the number is entirely irrelevant. Any phantom traffic solution should focus solely on identifying the carrier to be billed and should resolve the compensation component by affirming that terminating carriers are not permitted to impose access charges on any VoIP traffic. Thus, appropriate phantom traffic rules should reflect the following principles:

- Call Signaling Protections for Terminating Carriers
    - All providers in call stream must pass, without modification, call signaling details that the carrier receives, with two exceptions:

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[27] Proposed Orders, App. A, ¶ 337 and App. C ¶ 333.

    - If the call originates with a VoIP provider or other information service provider, the telecommunications carriers that transmits the call is required to insert valid carrier identification information for billing purposes;
    - VoIP providers and carrier partners are not required to insert calling party number where not organically generated by originating party and where not feasible with network technology deployed at the time the call was originated.

- Compensation
  - VoIP providers are entitled to purchase PSTN access as end users rather than pursuant to Commission Rule 69.5(b) which applies only to interexchange carriers;
  - Applicable Terminating rate to be paid by interconnecting carrier: one-way decrease:
    - Year 1: current state established reciprocal compensation rate; and
    - Next transition year: state 251(b)(5) rate established using FCC revised forward-looking methodology.

II. THE COMMISSION SHOULD REFORM THE UNIVERSAL SERVICE SYSTEM TO INCREASE THE NUMBER OF AFFORDABLE BROADBAND CONNECTIONS TO ALL AMERICANS

The High Tech Associations applaud the Commission for proposing that receipt of high cost support be conditioned on broadband build out requirements. The new regulatory regime must provide all carriers with the proper incentive to invest in more efficient technologies. The current USF and compensation systems discourage consumer adoption of broadband by keeping the price for PSTN services artificially low. Moreover, the current system fails to account for potential efficiencies that could be gained if carriers were to adopt newer technologies. Reforms such as the reverse auction proposal that would be used where high cost carriers are unwilling or unable to meet the broadband build-out requirements begin to move the USF towards a subsidy system that encourages deployment of the most efficient technologies because, as recognized by the

Commission, "the winning bid should approach the minimum level of subsidy required to achieve our universal service goals."[28]

But these reforms are just the beginning. To bring the USF subsidy scheme into the broadband world, the Commission must follow the mandates of section 254, and, in addition to ensuring that consumers all over the country have access to communications services, including advanced services, at affordable rates, the contribution system must be equitable and nondiscriminatory, and specific and predictable.[29]

A. The Commission should move directly to an appropriately defined numbers-based contribution mechanism.

While the High Tech Associations support efforts to create a more equitable and efficient telephone numbers-based USF contribution mechanism, the Associations are concerned about the proposals in the Commission's Proposed Orders suggesting a hybrid approach for contributions.[30] The suggested staggered approach to collecting USF contributions is convoluted and confusing and therefore violates the mandates of section 254 that require a specific and predictable contribution methodology.[31] Also, requiring separate treatment of residential and business numbers and/or revenues would create a host of difficulties. As the communications world becomes more diverse and the boundaries between different categories of service become more blurred, the "residential/business" distinction appears less and less descriptive of the marketplace. Contributions based on these old-world distinctions will create confusion for consumers and VoIP

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[28] Proposed Orders, Appendix C at ¶ 33.

[29] 47 U.S.C. § 254.

[30] Proposed Orders, App. A at ¶¶131-134 and App. C at ¶¶ 128-130.

[31] 47 U.S.C. § 254.

providers alike. Instead, as delineated below, the Commission should swiftly adopt an appropriately defined numbers-based contribution mechanism that applies to fee-based services that allow the user to make and receive calls from the PSTN.

B. The Commission's USF rules should continue to foster innovative and free services that do not replace plain old telephone service.

Contrary to the Commission's proposals, any move to a numbers-based contribution methodology for universal service should not include telephone numbers that are used to foster free and/or innovative services, including free Internet-based voice services. The definition of working numbers should be appropriately crafted so that it does not capture information services such as like voice blogs, information look-up services, web-based forwarding services, avatars, and community voicemail that have never had to previously contribute. The Commission can help ameliorate certain legal and policy issues with such proposals by clarifying that an "Assessable Number" is a "North American Numbering Plan ("NANP") telephone number used for a telephone access service that enables a final consumer of service to make and receive calls and for which the contributor charges a fee to a final consumer of service."

For example, a web-based application that does not provide users with dial tone or an underlying access arrangement, but is instead a web-driven set of "Unified Messaging" software applications that allows consumers to integrate and control their existing phone numbers and voice mailboxes through a separate telephone number, should not be captured. Likewise, information services that enable users to receive stored information – such as interactive voice response systems or information retrieval services – should not be subject to USF if they use VoIP technology. The Commission should preserve its traditional protection of innovative information services and not subject them to USF fees.

C. The Commission should not apply USF to the "functional equivalent identifier" of a NANP telephone number.

The proposals in the Commission's USF contribution mechanism would capture services that use a NANP telephone number or its "functional equivalent identifier."[32] The Commission does not define the term "functional equivalent" other than to generically suggest that it is something used in place of a NANP number to access the PSTN. Moreover, there is no rationale included in the Proposed Orders that attempts to support the need for the FCC to adopt such a broad sweeping requirement that has the potential to regulate a host of broadband Internet services. By attempting to sweep in Internet-based identifiers, the Commission runs afoul of its statutory mandates. Even under its "ancillary" Title I authority, the FCC does not have lawful jurisdiction over all services and providers that utilize functional equivalents to NANP numbers. Moreover, in contrast to the Commission's assertion that section 251(e) "plenary authority" over NANP numbering provides it with authority to establish a NANP number-based USF collection requirement,[33] the Commission has no similar Congressional mandate for imposing USF contribution on IP identifiers simply because they may be perceived by end users as substitutes for NANP numbers.

Moreover, adopting a contribution methodology that leaps so far into the future could hamper innovation and stall investment. "Functional equivalents" could potentially invoke a host of broadband-enabled features that bring consumers the affordable communications services that section 254 contemplates. Rushing to impose a USF fee on these services, without a determination as to whether the services contribute to the goal of ubiquitous broadband deployment, is a

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[32] Proposed Orders, App. A at ¶¶ 116, 129 and n.427; App. B at ¶¶ 64, 77, and n.1199; and App. C at ¶¶ 112, 125, and n.1569.

[33] Proposed Orders, App. A, ¶¶102-103; App. B, ¶¶ 49-50; and App. C ¶¶ 98-99.

precipitous move. If the Commission intends to expand from a numbers-based mechanism in the future, it should do so only after drawing a definitive legal conclusion based on clear statutory interpretation that it has jurisdiction to do so and only after seeking comment through a further notice of proposed rulemaking that considers connection-based contribution mechanisms in addition to exploring what a successor mechanism might be that is functionally equivalent and whether such a broad sweeping move is consistent with the goals of universal service.

III. CONCLUSION

For these reasons, the VON Coalition, CCIA, ITI, NetCoalition, TechNet, and TIA respectfully request the FCC to adopt comprehensive intercarrier compensation and universal service reforms that bring these regulatory regimes into the broadband world. By implementing the changes to the FCC's various proposals supported herein, the Commission will encourage innovative communications services and applications and continue to foster more rapid deployment of broadband networks to unleash the benefits of evolving technologies for all Americans.

Respectfully submitted,

/s/

The VON Coalition, CCIA, ITI, NetCoalition,

TechNet, and TIA

Dated: November 26, 2008