

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

In the Matter of)	
)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization	)	CC Docket No. 99-200
)	
Telephone Number Portability	)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
)	
IP-Enabled Services	)	WC Docket No. 04-36

REPORT AND ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: June 21, 2006

Released: June 27, 2006

Comment Date: 30 days from publication in the Federal Register

Reply Comment Date: 60 days from publication in the Federal Register

By the Commission: Chairman Martin and Commissioner Tate and Commissioner McDowell issuing
separate statements; Commissioner Copps and Commissioner Adelstein concurring
in part and issuing separate statements.

Exhibit No. 2

Appendix A

55. We do not believe that the percentage used as the wireless safe harbor would serve as a reasonable safe harbor for interconnected VoIP.¹⁸⁶ Indeed, the record reflects that interconnected VoIP service is often marketed as an economical way to make interstate and international calls, as a lower-cost substitute for wireline toll service.¹⁸⁷ For purposes of a safe harbor, it is reasonable to account for the many customers who purchase these services to place a high volume of interstate and international calls, and benefit from the pricing plans the providers offer for such services. We believe that these characteristics differentiate it from wireless service. Accordingly, we find that the interconnection VoIP safe harbor should be substantially higher than the wireless safe harbor in order to properly capture interstate revenues.

56. While, as stated above, interconnected VoIP providers may report their actual interstate telecommunications revenues, we recognize that some interconnected VoIP providers do not currently have the ability to identify whether customer calls are interstate and therefore subject to the section 254(d) contribution requirement. Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries.¹⁸⁸ Therefore, an interconnected VoIP provider may rely on traffic studies or the safe harbor described above in calculating its federal universal service contributions. Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls.¹⁸⁹ Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider.

¹⁸⁶ But see Letter from Tina M. Pidgeon, Vice President, Federal Regulatory Affairs, General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed June 9, 2006) (*GCI June 9, 2006 Ex Parte Letter*); Letter from Neal M. Goldberg, General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed June 13, 2006); Vonage June 14, 2006 *Ex Parte* Comments at 2-5 (all arguing that a safe harbor for VoIP providers should be applied in a manner consistent with the safe harbor for wireless carriers).

¹⁸⁷ See, e.g., Global Crossing Announces New VoIP LDS Service Offering Enterprises Extended Local Presence, <http://www.globalcrossing.com/xml/news/2005/march/07.xml> (last visited June 20, 2006); Broadvoice Rate Plans, <http://www.broadvoice.com/rateplans.html> (last visited June 15, 2006); NetZeroVoice Long Distance, <http://www.netzero.net/voip/rates.html?sep=voip> (last visited June 15, 2006); Sunrocket, *All-Inclusive Service*, <http://www.sunrocket.com/advantages/all-inclusive/> (last visited June 15, 2006); Vonage, <http://www.vonage.com/index.php?ic=1> (last visited June 15, 2006) (all promoting VoIP rate plans that save customers money on interstate and/or international calls); see also Robert Poe, "Telegeography Projects 38 Percent Jump in International VoIP Traffic," *VoIP Magazine*, Nov. 14, 2005, http://www.voip-magazine.com/index.php?option=com_content&task=view&id=586 (reporting that international telephone traffic is increasing generally, and that the VoIP portion of that international traffic is increasing faster than conventional TDM-based international traffic).

¹⁸⁸ See *Vonage Order*, 19 FCC Red at 22418-23, paras. 23-31.

¹⁸⁹ Because we permit interconnected VoIP providers to report on actual interstate revenues, this Order does not require interconnected VoIP providers that are currently contributing based on actual revenues to revise their current practices. Cf. *GCI June 9, 2006 Ex Parte Letter* at 1. Interconnected VoIP providers must maintain – and must provide to the Commission or to USAC upon request – documentation to support the percentage of interstate telecommunications revenues that they report. Cf. *Second Wireless Safe Harbor Order*, 17 FCC Red at 24966, para. 24. We remind providers that the Commission has the authority to investigate compliance with these requirements and to take appropriate enforcement action upon discovery of noncompliance.