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March 31, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **WC Docket No. 96-45**
WC Docket No. 06-122
GN Docket No. 09-51
Written Ex Parte Presentation

Dear Ms. Dortch:

The Wireless Internet Service Providers Association (“WISPA”), by counsel, writes to express its strong support for an exemption for small broadband Internet access service providers from any new Universal Service Fund (“USF”) contributions the Commission may impose on broadband services.¹ As WISPA has previously advocated, imposing new costs and burdens on *unsubsidized* small broadband providers “will make broadband less affordable for customers, including many in those areas most in need of access services.”²

On April 30, 2012, the Commission adopted a Further Notice of Proposed Rulemaking to consider changes to its USF contribution methodology.³ The Commission was rightfully concerned about the increasing contributions that existing providers of telecommunications

¹ WISPA is a trade association of more than 850 members representing the interests of fixed wireless Internet service providers (“WISPs”) that provide service to small and rural communities that might otherwise lack access to fixed broadband. Although some WISPs provide interconnected VoIP services, most WISPs provide standalone broadband service that, until the effective date of the Commission’s new open Internet rules, are “information” service providers ineligible to receive USF support. *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (rel. March 12, 2015) (“*Open Internet Order*”).

² Comments of WISPA, WC Docket No. 06-122 and GN Docket No. 09-51 (filed July 9, 2012) (“WISPA Comments”), at 12. *See also* Reply Comments of WISPA, WC Docket No. 06-122 and GN Docket No. 09-51 (filed Aug. 6, 2012) (“WISPA Reply Comments”), at 11-12.

³ *Universal Service Contribution Methodology: A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012).



service were being required to make.⁴ WISPA and others questioned the Commission's authority to impose USF fees on unsubsidized providers of "information" services and noted the inherent unfairness in requiring small, unsubsidized standalone broadband providers to contribute to large, subsidized providers of telecommunications.⁵

On March 12, 2015, the Commission adopted the *Open Internet Order* which, among other things, reclassified broadband Internet access service as a "telecommunications service" under Title II of the Communications Act of 1934, as amended.⁶ The Commission also concluded that it would forbear from imposing USF contribution obligations on broadband providers newly classified as providers of "telecommunications service," stating that:

newly applying universal service contribution requirements on broadband Internet access service potentially could spread the base of contributions to the universal service fund, providing at least some benefit to customers of other services that contribute, and potentially also to the stability of the universal service fund through the broadening of the contribution base. We note, however, that the Commission has sought comment on a wide range of issues regarding how contributions should be assessed, including whether to continue to assess contributions based on revenues or to adopt alternative methodologies for determining contribution obligations. We therefore conclude that limited forbearance is warranted *at the present time* in order to allow the Commission to consider the issues presented based on a full record in that docket.⁷

The Commission noted that recommendations on modifications to the USF contribution methodology from the Federal-State Joint Board on Universal Service were requested by April 7, 2015, but that "a short extension . . . may be necessary in light of the action we take today."⁸

WISPA reiterates its strong support for an exemption from any new requirements that would require small broadband providers to make contributions to USF based on their interstate

⁴ See, e.g., Letter from S. Derek Turner, Free Press, to Marlene H. Dortch, FCC Secretary, WC Docket No. 06-122 (filed Aug. 10, 2010), at 1 ("steady increases in the contribution factor are driven not by a declining base, but almost entirely by growth of the USF itself").

⁵ See WISPA Comments at 8. See also Reply Comments of the American Cable Association, WC Docket No. 06-122 and GN Docket No. 09-51 (filed Aug. 6, 2012), at 3-4; Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122 and GN Docket No. 09-51 (July 9, 2012) ("ITTA Comments"), at 15-16.

⁶ See *Open Internet Order* at 157-165.

⁷ *Id.* at 235-236 (footnotes omitted) (emphasis added).

⁸ *Id.* at 236 n.1471, citing *Federal State Joint Board on Universal Service*, 29 FCC Rcd 9784 (2014).



broadband revenue.⁹ First, small broadband providers typically serve the Nation's smallest and most rural communities where income levels are lower. Consumers in these areas – which may not have any broadband service but for the WISP or smaller provider – may simply lack the financial ability to pay for the monthly contribution pass-through that would be required on 100 percent of broadband revenue.¹⁰ Imposing USF contribution obligations on low-income Americans would deter adoption and cause existing subscribers to drop service, results that contravene the public interest and statutory mandates under Section 706 of the Telecommunications Act of 1996.

Second, many small providers have only a handful of employees and do not have the resources to take on new administrative burdens. As WISPA previously stated in this proceeding, “[l]arge telecommunications carriers can easily absorb the incremental cost of regulatory compliance, but small *unsubsidized* broadband companies that have never been required to participate in the USF program would be forced to pay for the expertise and time it would take to comply with the new regulations.”¹¹ Other parties also noted the disproportionate economic burden that small broadband providers would incur if they were required to contribute to USF. For example, the Universal Service for America Coalition stated that:

According to USAC’s own estimates, the current USF contribution mechanism is too complex and imposes unnecessarily high administrative costs on contributors. . . . It will take a contributor almost a week-and-a-half’s worth of work hours to comply with its annual reporting obligations. . . . Even the slightest change in either a contributor’s revenue sources or in USAC’s Form 499-A or 499-Q instructions can dramatically increase the cost associated with compliance. Indeed, as a result of the complexities of the system, *smaller contributors with limited staffs are often required to seek the service of outside counsel or consultants to determine their obligations.*¹²

⁹ In the *Open Internet Order*, the Commission exempted from new transparency requirements providers of broadband Internet access service with 100,000 or fewer broadband subscribers as reported on the most recent Form 477, aggregated over the providers’ affiliates. *See Open Internet Order* at 78. This same standard would be acceptable for the contribution exemption given that it would rely on the same source data (Form 477).

¹⁰ *See id.* at 9 (“imposing a contribution requirement on standalone fixed broadband providers would raise their costs of providing services as well as the costs to potential subscribers, thereby discouraging broadband adoption and chilling broadband investment”). *See also* Comments of Clearwire Corporation, WC Docket No. 06-122 and GN Docket No. 09-51 (filed July 9, 2012), at 4-5.

¹¹ WISPA Comments at 12 (emphasis in original).

¹² Comments of the Universal Service for America Coalition, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012), at 3-4 (emphasis added). *See also* ITTA Comments at 15-16 (“The Commission...should endeavor to limit the compliance burden on small and medium-sized carriers as much as possible”); Reply Comments of the Texas Statewide Telephone Cooperative, Inc., WC Docket No. 06-122 and GN Docket No. 09-51 (filed Aug. 6, 2012), at 6 (“economic burdens would be felt most acutely by smaller companies who would have to revamp billing systems and reports and retrain staff to comply with more changing regulatory requirements”).



Third, requiring small providers to contribute to USF will chill investment, innovation and network expansion as small broadband providers are forced to use scarce resources to comply with new regulatory burdens. In advocating against imposing USF contributions on standalone broadband providers of any size, Google stated that “broadly requiring revenues-based contributions for all services with an interstate telecommunications component (perhaps even including all retail information service revenues) or expanding assessments to services never before deemed assessable, are likely to dampen investment and innovation.”¹³ This statement applies with greater force to those small providers that have limited budgets and limited staff, and that serve the Nation’s poorest communities.¹⁴

Fourth, there is an inherent unfairness in requiring small, unsubsidized broadband providers to contribute to a subsidy system that funds their competitors. The Bureau has worked diligently to ensure that areas served by “unsubsidized competitors” are not eligible for CAF support,¹⁵ but the large price cap carriers eligible for that support often compete with WISPs and other small providers. By accepting CAF support, price cap carriers can free up capital to compete in areas where “unsubsidized competitors” offer service. Exempting small broadband providers from contributing to their competitors’ financial well-being would help alleviate this inequity.

Fifth, as noted above, recently the Commission temporarily exempted small broadband providers from new open Internet disclosure obligations.¹⁶ The Commission observed that the exemption should “[c]learly include those providers likely to be disproportionately affected by new disclosure requirements.”¹⁷ The same reasoning applies here. Small broadband providers will be least able to handle the costs of contributing to USF and the administrative burdens associated with reporting obligations, and their subscribers will be least able to absorb the costs that small providers would be forced pass through. The “virtuous cycle” of innovation, investment and adoption will be adversely impacted by this chain of events.

The public interest compels exempting small broadband Internet access service providers from any new USF contribution rules the Commission may adopt. WISPA requests that the Commission grant such an exemption if it determines that broadband providers should be required to contribute to USF.

¹³ Comments of Google Inc., WC Docket No. 06-122 and GN Docket No. 09-51 (filed July 9, 2012), at 12.

¹⁴ See WISPA Reply Comments at 11.

¹⁵ See, e.g., *Order*, WC Docket Nos. 10-90 and 14-93, DA 15-383 (rel. March 30, 2015) (resolving CAF Phase II challenges).

¹⁶ See *Open Internet Order* at 78.

¹⁷ *Id.*



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Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceedings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', written in a cursive style.

Stephen E. Coran

Counsel to WISPA

cc: Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Julie Veach
Carol Matthey
Greg Vadas