State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date: **September 15, 2006**

To: **The Commission**
(Meeting of September 21, 2006)

From: **Gretchen Dumas, Legal Division**
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Subject: **Staff Seeks Authority to File Comments in the FCC's Notice of Proposed Rulemaking Regarding the Contribution Methodology for Wireless and VoIP Carrier's Contributions to Universal Service Funds (WC Docket No. 06-122, released June 2, 2006)**

RECOMMENDATION

The CPUC should submit late-filed comments in the FCC's Notice of Proposed Rulemaking ("NPRM") and Interim Order Regarding Universal Service Contributions by Wireless and VoIP Carriers in WC Docket No. 06-122 (hereafter, "Order"). In the NPRM, the FCC seeks comment regarding the contribution methodology for wireless and VoIP carrier's contributions to Universal Service Funds.

BACKGROUND

In this "Order", the FCC makes interim changes to current Federal Universal Service contribution methodologies for the wireless safe harbor and establishes a safe harbor for VoIP service. The FCC "Order" includes an NPRM, which seeks comments on whether, in a final order, the FCC should eliminate or raise the interim safe harbor for wireless carriers[1] and for interconnected VoIP providers.[2]

1. WIRELESS SAFE HARBOR: The safe harbor percentage for wireless providers was last increased in 2002, and it is appropriate to review and update the data. However, the FCC's "Order" increases the wireless safe harbor from 28.5 % to 37.1 %. This increase to 37.1 % represents the highest percentage of interstate and international usage by a wireless company supported in the record. The lowest percentage of interstate minutes found in the record was

[1] "Order" at ¶ 66.
[2] "Order" at ¶ 68

11.9%. Further, an FCC staff analysis notes that an aggregate wireless service providers' interstate minutes-of-use to have grown to approximately 29 %. Thus, the 37.1 % does not reflect average interstate usage, and in a state as large as California, it is likely that the interstate calling patterns are even less. California's Universal Service programs will face a revenue shortfall of 8.6% using current numbers. This number could increase in the future as more customers migrate from wire line to wireless services.

2. VoIP SAFE HARBOR:

The "Order" requires interconnected VoIP providers to begin contributing to the federal Universal Service Fund. The FCC sets an interstate safe harbor amount of 64.9 %, which is the same "percentage of interstate revenues reported to the FCC by wire line toll providers."[3] Interconnected VoIP providers may utilize traffic studies, the safe harbor, or "the actual percentage of interstate calls" to determine their federal USF contributions. In addition "an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would be subject to state regulation."[4]

DISCUSSION

1. WIRELESS SAFE HARBOR: California's draft comments should emphasize that the FCC's "Order" was mistaken when it gave wireless carriers the highest possible safe harbor percentage supported by the record, a change from 28.5 percent to 37.1 percent. This increase in the wireless safe harbor would reduce the assessable intrastate revenues from wireless providers for California universal service programs from 71.5 percent to 62.9 percent (an 8.6 percent decrease). Currently, wireless contributions to the billing base against which California's public program surcharges are assessed accounts for over 50% of the total billing base. The table below contains billing base breakdowns for each of the categories for the last four fiscal years.

	Wireless	**Local Exchange**	**Inter-Exchange**	**Total**
FY 02-03	9,721,452,489	6,472,032,334	3,249,657,229	19,443,142,052
FY 03-04	10,447,132,941	5,676,797,458	3,258,854,171	19,382,784,570
FY 04-05	11,762,668,766	5,263,755,442	3,383,742,935	20,410,167,143
FY 05-06*	12,953,540,237	5,308,357,634	3,148,581,992	21,370,479,863

*FY 05-06 figures represent 8 months of annualized revenue.

An 8.6% decrease in the fiscal year 05-06 wireless billing base revenue represents a loss of over $1 billon dollars. It is expected that given the migration from wire line to wireless that the $1 billion sum could increase in the near future.

As this table illustrates, the public program billing base has remained stable and has in fact increased in the face of declining landline contributions, because the increase in wireless contributions has more than made up for the decline. However, the erosion of future wireless

[3] "Order" at ¶ 53.
[4] "Order" at ¶ 56.

contributions will create a gap between public program revenue and budgets. If such a decrease were to occur in the billing base for public purpose programs, this Commission would face the possible need to increase current intrastate surcharges, to decrease program costs, or to assess universal service surcharges on additional intrastate services.

2. VoIP SAFE HARBOR: Similarly, a safe harbor for interconnected VoIP providers should be based on analogous services rather than interstate toll. California's comments should also note that the FCC's reliance on the data in the iLocus Weekly Newsletter to assess Universal Services charges for interconnected VoIP providers by the federal or state governments[5] is not a valid proxy.

The FCC utilizes data from the iLocus Weekly Newsletter to substantiate its claim that VoIP traffic is "predominantly long distance or international."[6] However, this newsletter is using data for subscribers in 25 different countries,[7] and the figures derived from this worldwide sample are not a valid proxy for United States service. More importantly, it is incorrect that wire line toll service usage should be used as the sole proxy for interconnected VoIP service usage. In reaching the conclusion that wire line toll service and interconnected VoIP services follow similar calling patterns; the FCC relies on various advertisements from VoIP providers marketing discounted long-distance and international rates. However, there are also numerous marketing efforts by VoIP providers extolling the interconnected VoIP consumers' potential savings on residential rates.[8] Utilizing these examples, the FCC could easily have found that interconnected VoIP service calling patterns most closely resemble the calling patterns of wireless or POTS telephone service. While this might understate the interstate portion of VoIP calls, it also underscores the need to view VoIP as it is: a substitute for local, long-distance, and international traffic, and increasingly a replacement for POTS. Given this, relying on international VoIP calling patterns and interstate toll service calling patterns may provide an unreliable estimate for the new safe harbor.

3. JURISDICTION: The CPUC should seek clarification of whether the FCC's "Order" intended to allow states to use the intrastate portion of VoIP revenues to access VoIP providers for State Universal Service Funds. The "Order" is silent on this issue but implies by setting a safe harbor for both interstate and intrastate funds that such an intrastate assessment was intended. This is an important issue for states with state Universal Service programs. It is expected that California's Universal Service programs will face a revenue shortfall as the number of domestic VoIP users' increases, and the number of wire line users continues to decrease, unless the California Commission is able to assess a Universal Service surcharge on

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[5] The creation of any safe harbor for VoIP necessarily implies that some portion of VoIP traffic is determined to be intrastate, and therefore may be included in the contribution base for state universal service programs.

[6] "Order" at ¶ 53.

[7] *See iLocus Weekly Newsletter*, March 21, 2006, *available at* www.ilocus.com

[8] See www.vonage.com, "local and long distance calls" (viewed: September 06, 2006); www.att.com/voip "unlimited local and long distance calling" (viewed: September 06, 2006); www.broadvoice.com "unlimited in-state" (viewed: September 06, 2006).

some portion of VoIP revenues. As a result, it is imperative that California's comments seek clarification of this issue.

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