

*Firm Advisory*

June 27, 2006

**FCC ORDERS INTERCONNECTED VOIP  
PROVIDERS TO MAKE USF CONTRIBUTIONS**

*COMMENT REQUESTED ON NEW INTERIM MEASURES WHILE  
“FUNDAMENTAL REFORM” EFFORT CONTINUES*

*WIRELESS CARRIER SAFE HARBOR INCREASED*

The Federal Communications Commission (“FCC”) today issued its Report and Order and Notice of Proposed Rulemaking (“Order and NPRM”) making significant changes to the universal service fund (“USF” or “Fund”) requirements. Included among the interim USF modifications are the following:

- USF contribution obligations are extended to include interconnected VoIP providers.
  - VoIP providers are now required to contribute a percentage of their interstate service revenue, utilizing one of the following options:
    - Assume that 64.9 percent of the VoIP provider’s revenue – the “safe harbor” percentage – is interstate for purposes of imposing USF assessments, or
    - Calculate interstate revenue figures using actual revenue data or traffic studies.
  - Providers must account for fourth quarter 2006 contribution requirements.
- Wireless safe harbor is raised from the current 28.5 percent, to 37.1 percent.

**→ Comments on these ostensibly interim measures are due, pursuant to the NPRM, by August 9, 2006.**

The Order

*A. Why the FCC is Acting Now*

The FCC states that the actions being taken are necessary to ensure the stability of the Fund while the Commission continues to evaluate more fundamental reform, as a result of the changing dynamics in the communications industry. The FCC notes that while stand-alone long distance revenues have been declining, wireless and interconnected VoIP services (which typically include bundled long distance) have been “growing dramatically.” Thus, the FCC concludes, urgent action is necessary to reinforce and preserve the Fund.

*B. USF Contributions and Technological Advances*

The purpose of the USF is to advance the availability of telecommunications services for low income, rural, insular, and high-cost areas at rates comparable to those in urban areas. The FCC continually reassesses how changes in technology impact contribution to the USF and updates contribution rules accordingly to stabilize the USF contribution base and minimize the impact of changes in technology on affected parties. The contribution rules are also continually updated so as not to unfairly favor one technology over another in furtherance of the principle of competitive neutrality. In response to the growth of VoIP as a competitive telecommunications technology, the FCC maintains that it must update the USF contribution rules to reflect this change in the telecommunications marketplace.

*C. The Methodology*

To facilitate the imposition of these rules, the FCC defines “interconnected VoIP services” as those VoIP services that (1) enable real-time, two-way voice communications, (2) require a broadband connection from the user’s location, (3) require IP-compatible customer premises equipment, and (4) permit users to receive calls from *and* terminate calls to the PSTN. While VoIP remains unclassified as either a “telecommunications service” or an “information service” under the 1996 Telecommunications Act (“Act”), the FCC now determines that interconnected VoIP providers are “providers of telecommunications services” for the purposes of §254(d) of the Act (which imposes mandatory contribution obligations on providers of interstate telecommunications services).

In light of these determinations, interconnected VoIP providers are now required to contribute a percentage of their interstate service revenue to the Fund. In calculating the safe harbor percentage of 64.9 percent, the FCC relies on interstate revenue reports from wireline toll providers, analogizing VoIP to the more traditional wireline service. Acknowledging the desirability of a contribution system based on actual interstate revenues, the FCC creates the safe-harbor percentage to facilitate administration for the near-term. If, however, the safe harbor percentage is higher than a VoIP provider’s particular interstate service ratio, that provider may utilize actual revenues or traffic studies to calculate its contribution.

## The Opportunity for Further Input

In the NPRM released with the Order, the FCC specifically seeks comments on the following items:

- Proposals to improve the new requirements for interconnected VoIP providers;
- Whether the interim safe harbor established for interconnected VoIP providers should be modified or eliminated;
- Whether providers of interconnected VoIP service can identify the precise amount of interstate and international service they provide, and
  - if so, whether they should be required to report actual data, or
  - if not, whether 64.9 percent is the most appropriate level (and if it should be adjusted, how), and
- Suggestions for a permanent approach to USF contributions from interconnected VoIP providers.

For further information regarding these important issues,<sup>1</sup> or to take advantage of the comment filing opportunity, please contact any of the following attorneys:

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<sup>1</sup> Klein Law Group, PLLC, and the regulatory consulting firm of Miller Isar, Inc., have prepared an extensive overview of the current status of VoIP regulation. This VoIP Overview is a compendium of detailed information on specific regulatory obligations applicable to “interconnected VoIP” providers at the federal level, as well as potential state requirements. Complete with extensive background, citations, hyperlinks to source documents, and “VoIP Regulation at a Glance,” the VoIP Overview is the definitive VoIP regulatory document for both new and existing VoIP providers. Please contact us for additional information regarding this resource.