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__EX PARTE NOTICE__ ***(Via Electronic Filing)***

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

BT Americas Inc. ("BT")[1] commends the Commission's recent announcement that it intends to move forward expeditiously to reform the universal service contribution rules. This letter responds to the Public Notice issued on May 2, 2008 inviting parties to refresh the record on this and related proceedings.

BT strongly supports rule changes to collect assessments for the universal service fund ("USF") and other regulatory programs (*i.e.*, TRS, LNP, and NANPA) based on telephone numbers, instead of the existing revenues-based system. We particularly appreciate Chairman Martin's leadership in developing such a plan. Such policy changes are particularly urgent in light of the recent announcement that the USF contribution rate will rise to a whopping 11.4 percent for the third quarter of 2008 and has been as high as 11.7% in the past.

Today's system of assessments on interstate and international end-user telecommunications revenues has become increasingly unwieldy, unfair, and economically inefficient. The goals of universal service and the other programs supported by assessments on telecommunications revenues are undoubtedly important. But the revenues-based assessment system harms the very consumers that the USF system is supposed to benefit, because it

[1] BT is one of the leading providers of global corporate information communications technology services, which includes providing managed virtual private network services ("VPN"), security, authentication, remote access, CRM, intranet, extranet, hosting, and presence services to global corporations headquartered in the USA, Europe and Asia Pacific. BT offers customized, seamless, integrated solutions that are sold, contracted, delivered and/or billed in over 150 countries. BT's customers include many of the largest U.S. and multinational corporations, accounting for a significant percentage of the overall economic activity in the U.S.

inefficiently represses both supply and demand for telecommunications services. Accordingly, the current revenue-based rule is contrary to the interest of telecommunications consumers and creates a drag on the U.S. economy as a whole.

The existing revenue-based assessment system is unwieldy and ultimately unsustainable. The rules (and the forms used to implement these rules, Forms 499-A and 499-Q) require telecommunications providers, USAC and the Commission staff to do the impossible: draw sustainable and rational lines between services that are subject to contributions and those that are not, which in many cases are converging and/or difficult to distinguish. The Commission is well aware of examples of this problem in the context of mass market services – *e.g.*, the difficulties with separating the interstate (assessable) from intrastate (non-assessable) components of VoIP and wireless telecommunications services; separating wireless telecommunications service charges (assessable) from equipment sales (non-assessable); and separating VoIP services (assessable) from broadband Internet access over cable or wireline networks (non-assessable). These problems are even more vexing in the context of managed global information communications services. For example, high-speed data transmission services (assessable) are difficult to separate from high-speed Internet services (non-assessable) and corporate user identity and authentication (information and hence non-assessable); extranet services that are business to business exchanges are delivered over VPNs, interstate and international telecommunications from the U.S. (assessable) are closely intertwined with foreign telecommunications with no nexus to the U.S. (non-assessable); and it sometimes may be difficult to distinguish between end-user customers (assessable) and customers who purchase service for resale (non-assessable). While it is possible to segregate revenues for assessable and non-assessable services, such an exercise is laborious at best and potentially arbitrary at worst.

The existing revenue-based assessment system causes inequities among competing service providers and creates opportunities and incentives for arbitrage and abuse. Today's rules require a service provider to report assessable service revenues separately from non-assessable service revenues, a process that often requires good-faith judgment calls about newly developed services whose status as assessable or non-assessable is unclear, and for which there are few, if any, guiding precedents. Moreover, the system creates uneconomic incentives to migrate from assessable to non-assessable services and technologies to the extent such services are substitutable – *i.e.*, uneconomic arbitrage. The current system thus distorts competition, biases technological choices, creates incentives and opportunities for abuse, and is fundamentally unfair.

The revenue-based assessment system also imposes extraordinarily burdensome record-keeping and compliance obligations on telecommunications providers. The FCC's Forms 499-A and 499-Q include estimates that the annual burden of gathering and maintaining the required data and responding to the reporting requirements are 13.5 hours on average for the annual filing and 10 hours for the quarterly filing – a total of 53.5 hours per year. These estimates are inaccurate. At least six of BT's staff are dedicated fulltime or part-time to US universal service and 499 matters. BT's staff have spent an inordinate amount of time and resource to comply with the revenue reporting requirements. The cost of compliance with just this one item of US telecommunications regulation is massive.

The lack of clarity in the rules causes unnecessary disputes between service providers and customers. The USF assessment rules are unclear and subject to constant revision – frequently implemented with no notice or opportunity for comment, via a revision of the instructions accompanying the Forms 499-A and 499-Q. As USTelecom and CTIA pointed out in an *ex parte* letter filed on December 12, 2007, "[t]he Worksheet Instructions increasingly seek to impose affirmative obligations on carriers, such as [the] new annual reseller certifications, which are unrelated to the details of completing the Form 499 itself." Global customers, particularly those represented by counsel based in civil law jurisdictions who are used to having laws and regulations codified, have great difficulty in crediting arguments that instructions on FCC forms represent binding regulations or policy on a significant matter. As a result, BT has spent inordinate time discussing and disputing USF contribution matters with prospective and existing customers.

Revenue-based assessments have an inordinate impact on providers and consumers of high-end corporate data communication services and VPNs. A substantially higher proportion of high-capacity data telecommunications is jurisdictionally interstate by comparison with other telecommunications offerings subject to USF assessments, and therefore a higher proportion of revenues from these services are subject to assessments. Moreover, global customers do not comprehend this 11-12 percent "tax" that is characterized as neither a tax nor a government-mandated assessment, but that service providers virtually always pass on to customers having U.S. sites. While the FCC has characterized this charge as one that carriers may choose to absorb, in reality it is not an option for providers to absorb such high costs or indeed to build USF costs of 11-12% into end user rates. In the downstream global ICT market which is competitive, building USF costs into one's overall ICT bid price would cause one's overall ICT bid price to be substantially higher than competitors' prices and one's proposal would be knocked out of consideration. So providers do seek to pass these USF charges on to customers as line item charges but, inevitably disputes and misunderstandings arise with existing and prospective customers.

Finally, the revenues-based assessment system is profoundly inefficient and harms the United States' economic competitiveness in the global marketplace. No other country has an explicit universal service fee that is as high as in the United States. Brazil, a socialist regime, has universal service taxes of roughly 1 percent, as do Canada and Russia. Barring the USA, India has the highest USF fee at 5%, but even this poverty-stricken country's USF rate is less than half of the USA's rate. The high level of the USA's universal service charge creates additional strong incentives for companies that make intensive use of telecommunications to locate facilities outside the U.S. They need only look north to Canada where broadband penetration is high, enterprise access prices are competitive, and USF charges and other telecommunications regulatory fees are small. Canada becomes a very conducive environment for siting call centers, for example, because not only is the labor force educated and familiar with the US cultural context, but the telecommunications factors described above trump those in the USA. U.S. workers and businesses are the ultimate losers as a result.

For all these reasons, the Commission should move expeditiously to adopt a telephone number based assessment mechanism. It would be simple to administer and simple for providers to comply. The complexities of divining what is information versus telecommunications would be avoided, as would regulatory arbitrage. Moreover, a telephone number based assessment mechanism would be more equitable and would have a less distortive effect on the economy. Corporate customers would still contribute to the USF fund and other programs – indeed, large corporations make extensive use of telephone numbering resources – but at least their payments would be directly tied to the network effects they benefit from by ensuring that all Americans are connected to affordable telecommunications services. A telephone number based system also would avoid the inequity among service providers caused by the lack of clarity on which revenues are assessable. A telephone number based assessment system also would help control the exhaustion of telephone numbers.

In sum, BT submits that a telephone number based assessment system would better serve U.S. consumers, competition within the telecom industry, and the nation's economic competitiveness than today's flawed revenue-based assessment system. The Commission has a complete record on this issue and should move expeditiously to adopt the needed rule changes.

Very truly yours,

SChacko

A. Sheba Chacko
Head, Global Operational Regulation
and Americas Regulation

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Dana Shaffer, Chief, Wireline Competition Bureau