

Russell M. Blau  
Direct Phone: 202.373.6033  
Direct Fax: 202.373.6001  
andrew.lipman@bingham.com  
russell.blau@bingham.com

October 28, 2008

**Via ECFS**

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

**Re: Notice of Ex Parte Communication, Dockets 96-45, 99-68, 01-92, 04-36,  
05-337, & 06-122**

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission's Rules, this is to notify you that, on October 27, 2008, Tony Hansel, assistant general counsel of Covad Communications, and William Haas, assistant general counsel of PaeTec Communications, along with the undersigned, spoke by telephone with Scott Deutchman, Legal Advisor to Commissioner Copps, concerning the above-referenced dockets.

The attached written materials summarize the topics discussed during the conversation.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

*/s/ electronically signed*

Russell M. Blau

cc (by e-mail): Scott Deutchman

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC  
20006-1806

T 202.373.6000  
F 202.373.6001  
bingham.com

A/72726482.1

# Covad Communications Company

*Ex parte* presentation:

Universal Service,  
CC Docket 96-45

# Verizon-AT&T

## “Numbers/Connections” Proposal

- \$0.85/month per number (resi & bus, incl. wireless)
- \$5.00/month per Business Connection, up to 64 kbps
- \$35.00/month per Business Connection, above 64 kbps
- Mobile services are not Assessable Connections
- Source: AT&T and Verizon Oct. 20, 2008 *ex parte*

# Connections Proposal would be catastrophic for small businesses

- Example: Small business that uses one DSL line at \$70.00/month
- Today: USF contribution =  
 $11.5\% \times \$70 = \$8.05$
- Under Connections Proposal = \$35.00
- Contribution Increase: 335%
- Total Cost Increase: 34.5%
  - from \$78.05 to \$105.00
- Effective Contribution Rate: 50%
  - from \$70.00 to \$105.00

# Connections Proposal is Unlawful

- Section 254(d) requires “equitable and nondiscriminatory basis” for contributions
- Connections Proposal is discriminatory:
  - Wireline and fixed wireless connections pay contributions
  - Mobile wireless, including broadband, pay nothing

# Connections Proposal is Unlawful (2)

- Connections Proposal is not Equitable:
  - A small business purchasing one DSL connection pays the same as an enterprise using a DS3 Internet connection

# Connections Proposal is Bad Policy

- Massive rate increases for small business would be a bad idea at any time
- But especially bad in today's economic conditions
- A 35% price increase for DSL will force many small businesses off the Internet
- Estimated impact: 4.8 million business broadband users = **\$1-1.5 billion per year increase**

Source data for impact on business broadband customers:

<u>Technology</u>	<u>Total Lines</u>	<u>Residential Lines</u>	<u>Business Lines</u>
ADSL	23,381,289	20,835,274	2,546,015
SDSL	1,027,937	116,881	911,056
Cable Modem	33,939,919	32,920,397	1,019,522
Fiber	1,400,565	1,150,246	250,319
Fixed Wireless	553,919	494,144	59,775
Power Line and other	5,420	5,347	73
			<hr/>
TOTAL			4,786,760

Source: *Trends in Telephone Service*, August 2008, Table 2.2 (Total Advanced Service Lines) and Table 2.4 (Residential Advanced Service Lines), data as of June, 2007

### **Classification of Interconnected VoIP Services**

Regardless of how Commission classifies Interconnected VoIP services it should re-affirm the Order in *Time Warner Cable Request for Declaratory Ruling*, 22 FCC Rcd 3513 (2007)

- Absence of such re-affirmation may permit ILECs to unreasonably challenge CLEC ability to use rights under 251/252 in providing service to Interconnected VoIP Providers.
- *Time Warner Order* emphasized that “the statutory classification of a third-party provider’s VoIP service as an information service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection under § 251(a) and (b)” ¶ 15
- Reiterated long line of cases holding that § 251 does not differentiate between the provision of retail or wholesale service. ¶ 9.

Nothing in the contemplated classification of Interconnected VoIP Service changes the legal analysis

- The Act’s definition of Telecommunications Service “offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public.” 47 U.S.C. § 153(46)
- *Non Accounting Safeguards Order* - term “telecommunications service” was “not intended to create a retail/wholesale distinction” ¶¶ 263, 265
- *Non Accounting Safeguards Reconsideration Order* – “no basis in the statute, legislative history or FCC precedent” to find that the term “public” excludes wholesale
- Focus remains on holding service out to serve indifferently all potential users. – DC Circuit decision in *NARUC II*

*Time Warner Order* applied this principle specifically to §§ 251(a) and - (b) based on the request set forth in *Time Warner’s* Petition

- Principles of *Time Warner Order* obviously apply with equal force under § 251(c) – including 251(c)(3);
- However, to avoid gamesmanship by ILECs, Commission should re-affirm that to the extent that UNEs are available under the Commission’s impairment framework, CLECs can use UNEs, collocation and other § 251(c) based rights to provide service to interconnected VoIP providers.

Policy rationale underlying *Time Warner Order* applies equally

- Section 251 Interconnections is a critical component for the growth of facilities based competition
- Access to UNEs remains critically important for facilities-based competitors to economically connect their customers to their networks where impairment remains
- Affirming the rights of wholesale carriers to interconnect and access UNEs for the purpose of providing service to VoIP providers will spur the development of broadband. *Time Warner Order* ¶ 13