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

Re: In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92

Dear Ms. Dortch,

The Commission has before it draft orders that would finally begin the process of comprehensively reforming both intercarrier compensation and universal service. Virtually every aspect of these policies has been overtaken by technology and the marketplace, and it is the Commission's duty to reform them so that they promote, rather than hinder, the public interest and the goals of the Telecommunications Act of 1996. One aspect of reform that has perhaps not received quite as much attention as some others is that of the Commission's universal service contribution methodology. That may be because there is a full record and almost complete unanimity within the industry that the Commission should move universal service contributions to a numbers-based methodology. But this reform is just as critical to the nation's broadband future as the other reforms under discussion because the universal service fund (USF) cannot be used to promote broadband deployment as envisioned in the draft orders unless it is supported by a stable, sustainable, and technology-neutral contribution methodology.

The failings of the existing contribution methodology should be so well known as to make their recitation unnecessary. The Commission's existing revenues-based contribution methodology is simply inadequate to the task of supporting universal service, whether of the 20th or 21st century. For years, providers have warned the Commission about the ever increasing problems with identifying interstate end-user telecommunications service revenues and have cautioned that a revenues-based methodology is unsustainable. Although the Commission has previously acknowledged

these difficulties, and recognized the wisdom of moving to a numbers-based mechanism, it has yet to respond. AT&T urges the Commission to act now to establish a more sustainable and efficient contribution methodology.

With just a few modifications that we describe below, the contribution methodology proposal in Appendix B would provide the requisite stability to the USF, certainty to providers, and clarity to consumers. AT&T proposes several critical changes that it believes should be made in order to ensure that a telephone number and business connection-based methodology can be successfully and uniformly implemented by contributors. We provide these suggestions now so that the Commission and commenters will have ample time to consider them prior to the Commission's scheduled December open meeting. We also explain why it is not feasible for contributors to implement the Commission's proposal set forth in Appendices A and C.

Appendix B Draft Order

AT&T offers few suggested improvements to the *Appendix B Draft Order* because that draft's fundamental structure is sound: assess all telephone numbers the same per number assessment (i.e., no distinction between residential and business telephone numbers) and assess business connections, based on the capacity of the particular connection. Specifically, the Commission should modify its proposed capacity tiers, adopt AT&T and Verizon's proposed definitions of key terms, modify the implementation period, and apply the new methodology to certain other fees. If the Commission decides to treat certain classes of end users differently in terms of how they should be assessed USF fees by their service providers, AT&T explains why the Commission should implement any special treatment based on the class or identity of the end user (e.g., a public university) differently from any special treatment based on the type of service (e.g., Lifeline service).

Additional assessment based on business connections. AT&T continues to support adoption of a numbers-only contribution methodology, for the reasons set forth in its prior filings in this docket.¹ If the Commission nevertheless determines that an "additional assessment" based on business connections is necessary, it should modify the connections proposal contained in Appendix B. The *Appendix B Draft Order* would require providers to contribute \$0.85 per assessable number, a proposal that AT&T supports. To meet the remaining fund demand, the draft proposes to require providers to contribute based on the capacity of interstate dedicated access connections for business services. AT&T also supports this proposal but recommends that the Commission modify the proposed capacity/assessment tiers.²

¹ All three of the Commission's draft orders reject in one sentence the notion that a legally sustainable contribution methodology may be based on telephone numbers only and instead conclude that any such methodology must reach interstate telecommunications services that lack telephone numbers. See, e.g., App. B at n.193. AT&T disagrees with such a cramped reading of the statute and continues to support the telephone numbers-only proposal that it filed with Verizon on September 11, 2008. Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Sept. 11, 2008) (September 11 *ex parte* letter). If, for other reasons, the Commission concludes that it must include in the contribution base assessments on high-speed business connections, AT&T urges the Commission to adopt AT&T's proposed modification to the *Appendix B Draft Order* discussed below.

² The current draft would assess connections up to 64 kbps at \$5/month and connections that exceed 64 kbps at \$35/month. App. B at para. 81.

In its October 28 *ex parte* letter, AT&T recommended the Commission adopt the following capacity/assessment tiers: interstate dedicated business connections with capacity up to and including 25 mbps should be assessed \$2/month; connections that are over 25 mbps and up to and including 100 mbps should be assessed \$15/month; and connections over 100 mbps should be assessed \$250/month.³ AT&T proposed these modified tiers in response to concerns expressed by some commenters that the connections purchased by certain customers, particularly small business customers, may cost only slightly more than the USF fee of \$35/month that would apply under AT&T and Verizon's earlier filed suggested tiers.⁴ Because the proposed assessments for each tier represent a relatively small USF fee in relation to the cost for the service itself, revising the tiers as AT&T proposes would not affect customer purchasing behavior by creating incentives for customers to purchase different services simply because of differences in regulatory fees. Additionally, the new tiers are more technology neutral and forward-looking insofar as they are not based on legacy ILEC speed breakpoints.

Commission should adopt AT&T and Verizon's proposed definitions. The Commission should adopt the definition of "Assessable Number" proposed by AT&T and Verizon and not the definition contained in the draft orders. AT&T and Verizon proposed a clear and simple definition of Assessable Number: "An Assessable Number is a North American Numbering Plan (NANP) telephone number that enables a Final Consumer to make or receive calls."⁵ By contrast, the definition proposed in the drafts is confusing, introduces – without explanation – terminology not previously used by Congress or by the Commission, and is unnecessarily overreaching. Specifically, the Commission defines "Assessable Number" as "a NANP telephone number or functional equivalent identifier in a public or private network that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telecommunications network."⁶ The Commission must replace or modify this definition. This definition is incomprehensible and would doom a numbers-based contribution system from the start by embroiling the Commission, USAC and contributors in exactly the same types of disputes and uncertainty that plague today's system. Below we explain some of our concerns with this definition.

The proposed definition includes NANP telephone numbers and functional equivalent identifiers in the assessable base. The proposed definition of this term

³ Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 28, 2008) (October 28 *ex parte* letter).

⁴ See, e.g., Letter from Mary Albert, COMPTTEL, to Marlene Dortch, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 22, 2008). See also Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 20, 2008) (October 20 *ex parte* letter). In this filing, AT&T and Verizon stated that if the Commission determined that it should include a connections-based assessment in any new methodology, it should consider adopting two tiers based on 64 kbps.

⁵ AT&T and Verizon obviously agree that for purposes of this definition, only NANP telephone numbers used in the U.S. and its territories and possessions should be included. See, e.g., App. B at n.162.

⁶ See, e.g., *id.* at para. 63.

includes IP addresses if those IP addresses are used in place of a NANP number to provide the ability to make or receive calls on the PSTN.⁷ SkypeOut, for example, is a service offered by Skype that permits its users to call NANP telephone numbers using their computers. Under the Commission's definition, these IP addresses would be treated as NANP numbers and assessed. It is unclear how contributors could ever implement this proposal. Broadband Internet access service providers (not application providers) typically assign consumers dynamic, not static, IP addresses for a given session. The application provider (i.e., Skype in the example provided above) thus has no control over the assignment of its customers' IP addresses and would seemingly have no ability to assess them.

While it is generally believed that NANP telephone numbers may eventually be replaced by other "identifiers," Commission reports confirm that the number of NANP numbers in service is consistently growing, not shrinking.⁸ Instead of creating confusion by including functionally equivalent identifiers in the definition of Assessable Number now, the Commission should seek further comment on whether and how to define an identifier that is functionally equivalent to a NANP telephone number. If the Commission decides not to address "functional equivalent identifiers" in this order (and instead seek further comment), then it need not introduce new and confusing terms and concepts such as "interstate public telecommunications network" and "network that traverses (in any manner) an interstate public telecommunications network" into the definition of Assessable Number. For example, AT&T does not understand what the term "interstate public telecommunications network" is designed to cover. While Congress and the Commission have used the term "public telecommunications network" on rare occasion,⁹ neither Congress nor the Commission has ever used the term "*interstate* public telecommunications network" and the Commission makes no effort to explain it. Wholly apart from the ambiguity surrounding the term "interstate public telecommunications network," the Commission provides no explanation of what it intends when it refers to a network that traverses "in any manner" an interstate public telecommunications network. This ambiguity not only will lead to disputes, but also create incentives for providers to route their traffic in a way to avoid USF assessment.

Similarly, AT&T does not know what "in use by an end user" means and how an end user can put a number "in use." While the Commission may have intended its discussion of NRUF terms to clarify what "in use by an end user" means, that discussion is at best superfluous and at worst, confusing.¹⁰ AT&T's and Verizon's proposed

⁷ See, e.g., *id.* at n.161.

⁸ See the Commission's Numbering Resource Utilization in the United States reports available at <http://www.fcc.gov/wcb/iatd/number.html>.

⁹ See, e.g., 47 U.S.C. §§ 254(c)(1)(C), 265.

¹⁰ For example, the Commission explains that carriers "report as assigned numbers, for NRUF purposes, entire codes or blocks of numbers dedicated to specific end-user customers if at least fifty percent of the numbers in the code or block are working in the PSTN." App. B at para. 70. The Commission concludes that because "the non-working numbers portion of these blocks are not providing service to the end user," they should be excluded from a contributor's count of Assessable Numbers. *Id.* Whether a particular telephone number in such a block of numbers is "working" is within the sole control of that end user – not the customer's carrier. Thus, carriers would have no way to identify which numbers within a block of numbers that they have provided to end users are "working" or "in use" at any given time. For this reason,

definition (a NANP number that “enables a Final Consumer to make or receive calls”) is much clearer and should be adopted. To eliminate confusion, AT&T recommends that the Commission delete the NRUF discussion from the order. Although the Commission states that it is not adopting the definition of “assigned number” as that term is defined in the Commission’s numbering rules (47 C.F.R. § 52.15(f)(iii)), it devotes pages to discussing the relevance of those rules to its USF contribution rules.¹¹ In those paragraphs, the Commission is essentially explaining what assigned numbers are not, but not what they are. Relying on such a “non-definition” of a critical term would lead to as many (if not more) conflicting interpretations as today’s flawed revenues mechanism.

The Commission’s numbering rules were designed for an entirely different purpose: number conservation. While number conservation is a benefit of adopting a telephone number-based contribution methodology, the Commission’s arcane numbering rules, which are understood by and applicable to only a subset of telecommunications providers, are not germane to USF contribution methodology. If the Commission adopts AT&T and Verizon’s definition of Assessable Number, which it should, the NRUF discussion is unnecessary and should be excluded from the Commission’s order. Since USF contributors encompass a broad range of providers, the Commission should use the most generic terms possible to explain these critical definitions rather than terms that are relevant to only a subset of potential contributors.¹²

While AT&T supports the Commission’s definition of “Assessable Connection,”¹³ it is important that the Commission explain, as AT&T and Verizon do in their October 20 *ex parte* letter, how providers of Assessable Connections should count those connections. Silence in this regard will only lead to unnecessary confusion. AT&T and Verizon proposed that the number of assessable connections should be based on the number of dedicated connections at the contributor’s network (versus the number of channels or circuits on the end-user’s side of the network). For example, a business customer that purchases an interstate dedicated connection and channelizes that connection to provide service to a four-unit office building, would be assessed one connection and not four.¹⁴ AT&T urges the Commission to address how providers are to count connections to eliminate any ambiguity on this point.

AT&T and Verizon would treat as assessable all numbers that are in the control of the end user and thus “enable a final consumer to make or receive a call.”

¹¹ See generally App. B at paras. 62-76.

¹² In this same vein, in the Further Notice of Appendix A and Appendix C, the Commission also asks whether it should require all contributors to begin filing NRUF reports. App. A at para. 344; App. C at para. 341. AT&T opposes this suggestion. There is no need for USF contributors to be burdened with NRUF obligations when they are not otherwise subject to numbering rules.

¹³ The *Appendix B Draft Order* uses the definition of Assessable Connection proposed by AT&T and Verizon (though it adds “or the PSTN” to the end of our definition). Upon further consideration, AT&T suggests that the Commission modify “to the contributor’s network” to “to a contributor’s network” to account for access-only providers that provide connections between their end-user customers and another provider’s network.

¹⁴ The business customer would also be assessed per-number charges assuming it provided number-based services over that connection.

Implementation period. Contributors need more than six months to modify their systems and procedures to implement the new contribution methodology.¹⁵ In their September 11 *ex parte* letter, AT&T and Verizon recommended that contributors have one full year in which to make modifications to their billing systems to implement a numbers-only contribution methodology. We also requested an additional six months *beyond* the twelve-month implementation period during which providers would report numbers while continuing to contribute based on revenues.¹⁶ Adopting a modified version of the hybrid numbers/connections approach contained in the *Appendix B Draft Order* (which AT&T supports) will be more complex than a numbers-only methodology so twelve months for system changes is the absolute minimum. Qwest previously detailed the information technology (IT) and billing system preparatory work required before it could begin contributing based on telephone numbers.¹⁷ According to Qwest, it would require it approximately eighteen months to implement these changes. AT&T's IT and billing systems personnel reviewed Qwest's filing and generally concur with the work steps and the amount of time required. For reasons that it has detailed for years, AT&T believes strongly that the Commission must replace the current revenues-based contribution methodology and would like nothing more than to replace that broken methodology as quickly as possible. Unfortunately, AT&T and other providers cannot skip steps when implementing fundamental and complex changes to their numerous billing systems, and thus will need at least one full year to implement the new contribution methodology.

Modify funding mechanism for TRS, NANP, LNP. In its draft orders, the Commission rejects without explanation AT&T and Verizon's proposal to modify the revenues-based methodology used for the TRS, NANP, and LNP funds to the new methodology, stating that the other funds "do not rely on many of the revenue distinctions, such as interstate and intrastate, that necessitate the change from a revenues-based assessment for the universal service fund."¹⁸ AT&T urges the Commission to reverse itself on this point. Requiring contributors to maintain dual contribution methodologies serves no policy benefit – indeed, the Commission has identified none – and unnecessarily complicates a provider's ability to comply. The Commission is incorrect in asserting that these other funds do not rely on revenue distinctions that necessitate changing USF to the new methodology. For example, all of these other funds would require telecommunications providers to continue identifying and separating telecommunications service revenues from information service revenues. This analysis is far more difficult and subject to varying degrees of interpretation than the interstate/intrastate distinction noted by the Commission in its footnote. Moreover, perpetuating the revenues-based assessment for these funds is contrary to the Commission's stated benefits of adopting a number-based assessment (e.g., eliminate

¹⁵ If contributors have to distinguish residential from business customers, which AT&T opposes for reasons detailed below, that project alone would likely consume at least six months.

¹⁶ The Commission thus misunderstands AT&T and Verizon's proposal because all of its drafts characterize AT&T and Verizon as requesting just 12 months, not 18, before providers would commence paying based on their number of telephone numbers. *See, e.g.*, App. B at para. 102, n.247.

¹⁷ Letter from Melissa Newman, Qwest, to Marlene Dortch, FCC, CC Docket No. 96-45, at 2 (filed April 7, 2006).

¹⁸ *See, e.g.*, App. B at n.239.

incentives under the current mechanism for providers to migrate to services and technologies that are exempt from contribution obligations) and therefore should be reconsidered.¹⁹

Reseller certifications will no longer exist. AT&T strongly urges the Commission to make clear that wholesale providers no longer will have the obligation to collect annual reseller certifications from their resellers once the new methodology is implemented. As AT&T and Verizon proposed in their September 11 *ex parte* letter, shortly after the new rules become effective, resellers would have to indicate to their underlying providers whether the resellers are contributing with respect to all of the existing numbers/connections they obtain from that wholesale provider. Resellers would also indicate during the service ordering process whether they will contribute directly for new numbers/connections.²⁰ If a reseller fails to self-identify its status, the wholesale provider should treat it as an end user. In no case would a reseller's failure to contribute in whole or in part (after informing its underlying provider that it will contribute) shift that reseller's liability to the underlying provider. To the extent the Commission is concerned that resellers may not contribute to the fund as required, it could direct wholesale carriers to occasionally provide USAC with lists of their resellers along with information concerning the number of numbers/connections resold to particular resellers. While the Commission's previous contribution orders have failed to address reseller/wholesaler issues with this level of detail, AT&T recommends that the Commission do so here. Commission silence on these matters has resulted in uncertainty and controversy among providers, as well as between providers and USAC auditors.

Invoices and monthly counts. While the Commission's draft orders appear to adopt AT&T and Verizon's streamlined reporting/contribution proposal (under which contributors file monthly counts of their Assessable Numbers and Assessable Connections) in concept, the Commission appears to expect that USAC will continue to send monthly invoices to contributors – needlessly increasing the complexity of the process.²¹ Under AT&T and Verizon's proposal, contributors would simply be required to submit a contribution payment with each monthly filing (i.e., the number of numbers/connections multiplied by the relevant number/connection charge). Requiring USAC to issue an invoice based on a contributor's monthly count is not only unnecessary but also would delay by at least one month a contributor's payment.²² Thus, although the Commission appears to recognize the benefit of reducing the lag between counting and contributing, the draft order contradicts itself on this point by proposing an invoicing system that negates the supposed benefit. AT&T also urges the Commission to make clear that a contributor must record its number of Assessable

¹⁹ See, e.g., *id.* at para. 56.

²⁰ Resellers using the ASR process do this today.

²¹ "Contributors will then be invoiced and required to contribute the following month." See, e.g., App. B at 97.

²² For example, instead of a provider remitting payment along with its January monthly count of Assessable Numbers and Assessable Connections by the end of February, it would submit its monthly count by the end of February, receive an invoice from USAC sometime in March that would be payable sometime – typically 30 days – thereafter.

Numbers (and Connections) only once a month (that is, take a “snapshot” as of a particular date each month), and to give contributors some flexibility in setting the date for counting Assessable Numbers (and Connections).²³ So long as contributors are required to take their monthly snapshots around the same time of the month, they will have no incentive or ability to game the system.

Implementing special treatment based on the class of end user. In all three draft orders, the Commission made few exceptions to its proposed contribution obligations (e.g., requiring contributors to exclude Lifeline customers from USF assessment). As the Commission recognized, the more exceptions it establishes, the greater the contribution obligation will be on those providers (and, importantly, their customers) that are not exempted.²⁴ AT&T supports the Commission’s drafts in this regard.

If, upon further consideration, the Commission determines that additional exceptions are warranted based on the class or identity of customer (versus the type of service, such as Lifeline service), it is critical that the Commission implement any such exception in a manner that ensures the benefit can actually be received. For example, last month, a number of colleges, universities, and hospitals wrote the Commission requesting that their providers either continue to assess them based on revenues or treat their telephone numbers differently (e.g., apply an equivalency ratio).²⁵ Irrespective of the merit of these requests, the Commission must recognize that carriers do not have the ability to distinguish, for example, a public university or a non-profit hospital from any other business customer. Requiring providers to attempt to identify and apply special assessments on a narrow class of customers not only would be costly and prone to error, it could add months to the amount of time required by a provider to implement the new methodology.

In their October 20 *ex parte* letter, AT&T and Verizon recommended that the Commission instead adopt a Billed Entity Applicant Reimbursement (BEAR) process similar to that which has been used in the E-Rate program for years. Under the BEAR method, end users that are entitled to discounts or special treatment because of their status (e.g., public university) are billed and pay in full but then obtain reimbursement for whatever discount the Commission provides to them directly from USAC.²⁶ This enables these end users to self-identify themselves as eligible for special treatment and thus ensures that they receive the discounts to which they may be entitled. The BEAR method is used regularly by thousands of elementary and secondary schools. These E-Rate eligible entities typically have far fewer administrative resources than some of the

²³ See, e.g., App. B at para. 96 (“Contributors must report as an Assessable Number any such number that is in use by an end user during any point in the relevant month.”). While this language could be read to require contributors to count their numbers daily, this would be so burdensome that the cost would far outweigh any perceived benefit of precision. Since this would contradict the Commission’s stated desire to simplify and streamline the mechanism, AT&T does not believe that this is what the Commission intended.

²⁴ See, e.g., App. C at para. 136.

²⁵ See, e.g., Letter from Alvin Hooten, University of Tennessee – Martin, to Commissioners, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Nov. 4, 2007); Letter from Roger Zaremba, Saint Luke’s Health System, to Chairman Martin, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 31, 2008).

²⁶ October 20 *ex parte* letter at 4-5.

classes of end users that have written the Commission seeking special treatment and yet they are able to manage their budgets and the submission process. We therefore believe it is reasonable to adopt the BEAR process if the Commission determines that certain classes of customers warrant special treatment.

AT&T also recommends that the Commission seek further comment on exactly which end users should be granted discounts or exemption from USF recovery, as well as how any such exception should be implemented. For example, some public universities maintain on campus conference centers or research entities. To the extent the Commission finds that public universities should receive a discount on their USF fees, it is unclear whether such discounts should extend to such research entities or conference centers. If the Commission concludes that private universities and colleges also deserve a discount, should it factor in the size of that college's or university's endowment when determining eligibility, as Congress directed the Commission to do with respect to the E-Rate program?²⁷

Appendix A and Appendix C Draft Orders

The Commission should reject the contribution methodology proposal contained in Appendices A and C. For reasons detailed below, there are critical differences between that proposal and that contained in Appendix B, which make the former impossible for providers to implement and nearly impossible for the Commission and USAC to audit.

Carriers should not be required to distinguish "residential" customers from "business" customers. Any telephone number-based methodology that the Commission adopts must treat all telephone numbers the same: providers would contribute based on all of their assessable numbers and would contribute the same amount for each assessable number regardless of whether a particular assessable telephone number was being used by a residential or a business customer. The Commission's draft proposal in Appendix B does this and should be adopted. Not only would it be nearly impossible for providers to distinguish between residential and business telephone numbers (as required by the draft proposal contained in Appendices A and C), doing so would be bad policy and run counter to the stated benefits of moving away from a revenues-based methodology.²⁸ The residential/business distinction for many providers is anachronistic and artificial and it certainly has no relevance in a forward-looking funding mechanism.

While the largest providers may have established retail organizations or channels (e.g., sales, marketing) just for large business customers that would enable them to identify certain accounts established through that sales/marketing channel as "business" accounts, other providers may not have such a division among personnel and systems. Such providers will either be required to make costly adjustments or be tempted not to comply. Moreover, many business customers – small businesses, in particular – may purchase the same services as residential customers and do so using

²⁷ See 47 U.S.C. § 254(h)(4) (limiting E-Rate eligibility to schools with endowments not exceeding \$50 million).

²⁸ See, e.g., App. B para. 42 (noting that it is becoming increasingly difficult to identify interstate end-user telecommunications service revenues as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services).

the same retail channel. These business customers would thus appear to be “residential” customers when they order service; confirming that any distinction between business and residential customers is arbitrary. The difficulty in determining whether a customer is a residential or business customer is particularly acute with respect to mobile wireless providers. These providers have no business or regulatory need to distinguish between residential and business customers and have not established systems to do so.²⁹ Thus, such providers might only be able to identify as “business” customers those customers that have enterprise accounts

Although the Commission offers two suggestions for how carriers may distinguish residential from business telephone numbers, AT&T believes that these suggestions offer carriers no “safe harbor” on which they can rely. In Appendices A and C, the Commission states that mobile wireless providers are required “to report as residential subscriptions those subscriptions that are not billed to a corporate account, to a non-corporate business customer account, or to a government or institutional account.”³⁰ While the Commission infers that this would be a “reasonable and supportable” means to identify residential and business telephone numbers, such a methodology would be incomplete and arbitrary since small business customers would end up being classified as residential customers. As AT&T explained in the *Broadband Data Gathering* proceeding (the proceeding on which the Commission relies), AT&T – like other providers – does not keep separate data on residential and small business customers because there is little to no difference in the types of services provided to those customers.³¹

Moreover, relying on the type of SLC assessment, the second of the Commission’s two recommendations, is also problematic. The fact that the Commission uses this as an example only highlights what a legacy LEC construct residential/business is and how unsuitable it is for a future-oriented contribution mechanism. While AT&T’s LECs do assess multi-line SLC charges to business customers, only LECs assess SLCs. And, as the Commission acknowledges, SLC reliance cannot work for single-line businesses because the amount of their SLC assessment is the same as that charged to residential customers. Thus, in distinguishing between residential and business telephone numbers, SLCs provide only limited utility and do so only for one class of provider – LECs.

Adopting an arbitrary distinction that is neither recognized by many contributors nor even clearly definable, means that the discretion afforded to carriers could result in an unlevel playing field between competitors, with some carriers undertaking more comprehensive good-faith efforts to make this determination than their competitors. Adopting a business/residential split thus undermines one of the principal benefits of moving away from a revenues-based contribution methodology: a clear, transparent process will eliminate difficult decisions about what should be included in the assessable base. In sum, requiring providers to distinguish between residential and business

²⁹ Indeed, even the term “residential” refers to a legacy wireline rate classification and hence is not applicable to CMRS services. Moreover, many customers use their mobile phones for both personal and business communications making even the consumer/business dichotomy an increasingly artificial classification.

³⁰ Appendix C at para. 145 (citing *Broadband Data Gathering Order*).

³¹ Letter from Frank Simone, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 07-38 (filed May 13, 2008).

telephone numbers does not reflect current marketplace realities, would be difficult and expensive for contributors to implement and for the Commission and USAC to audit.³² Additionally, any such distinction would be imprecise, and subject to gaming by providers. These are problems with the current methodology and it would be a mistake to perpetuate them in any new contribution methodology.

Connections assessment for all business services. AT&T urges the Commission to reject the proposal in Appendices A and C to assess all business services based on connections.³³ Instead, the Commission should treat all telephone numbers the same and assess dedicated business connections only as an additional element of the mechanism as proposed in Appendix B. In addition to the reasons provided above about the difficulty in distinguishing between residential and business numbers, it unclear on what basis the Commission would treat a POTS line used by a residential customer differently from a POTS line used by a business customer. If a business customer purchases only POTS lines from a carrier, what is the rationale for assessing that business customer's POTS lines differently from a residential customer's POTS lines? Such disparate treatment is inconsistent with the Commission's current practice of permitting contributors to recover their USF contribution costs by apply the *same* contribution factor to all of their customers' interstate telecommunications charges – residential and business customers alike. The Commission cites the wireless and interconnected VoIP safe harbors as examples of different contribution methodologies. Importantly, these different methodologies – based on technology reasons – do not discriminate between classes of customers purchasing the same services, as would the Commission's proposal in Appendices A and C. While the Commission asserts that its proposed different treatment of identical residential and business services is equitable and nondiscriminatory, it offers no justification to support this statement – nor can it.

The suggestions that we offer today to the *Appendix B Draft Order* are critical but few in number and incorporating them into this existing draft order would be relatively easy. AT&T's recommendations are consistent with the Commission's stated goals for contribution methodology reform and necessary so that providers can implement the Commission's proposal in a timely manner. These few modifications to Appendix B, if adopted, will result in a contribution methodology that is designed for the broadband era.

³² Short of contacting a provider's subscribers to verify that they are indeed "residential" customers, it is unclear how the Commission or USAC would audit a provider's compliance with this rule. In addition, it would be very difficult for a provider to verify whether all of its existing subscribers are residential or business customers. Unless the Commission requires providers to survey all of their existing customers – which AT&T would oppose because the associated expense would be astronomical – AT&T does not understand how a provider could, with certainty, declare certain customers to be residential or business customers. CMRS providers alone have over 262 million subscribers. See CTIA Semi-Annual Wireless Survey (as of June 2008), available at http://files.ctia.org/pdf/CTIA_Survey_Mid_Year_2008_Graphics.pdf. AT&T expects that all providers – wireline and wireless alike – would be unanimous in their opposition to any Commission attempt to make the residential number proposal in Appendices A and C operational (and auditable) by requiring providers to verify the residential/business status of their embedded customer base.

³³ See App. C at para. 127 (concluding that a connections-based mechanism can be easily applied to all business services).

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Mary L. Henze

Mary L. Henze

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