

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	
Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Developing a Unified Intercarrier Compensation)	
Regime)	CC Docket No. 01-92
)	
Intercarrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
IP-Enabled Services)	WC Docket No. 04-36

COMMENTS OF MEGAPATH INC.

Megapath Inc., an Internet Service Provider, submits these comments to oppose the adoption of a connections-based contribution formula for the universal service fund, especially for connections used to provide Internet access or other information services.

MegaPath is astonished that the Commission would even request public comment on a proposal to assess a \$35 universal service charge for small business Internet access services that today may be priced for less than \$50. A near-doubling of the total price of small business Internet access services would defy the Commission's obligations under Section 706 of the Act, its long-standing policy of exempting information services from

common carrier regulation, and the nation's broadband objectives and economic imperatives.

In general, many of the Commission's proposals in this proceeding reflect careful consideration based upon years of deliberation and thousands of pages of public comment from all sectors of the industry and economy. By contrast, a connections-based contribution system was proposed apparently in a last-minute rush based upon an *ex parte* letter filed by AT&T and Verizon just two weeks before the FNPRM.¹ The rushed nature of this proposal is highlighted by the fact that just a few days later, AT&T and Verizon retracted a significant piece, by clarifying that they did not intend to propose to assess "certain services used by business for broadband Internet access that are also offered to residential customers in the proposed tiers of assessable connections."² AT&T then subsequently withdrew further by proposing a \$2 connection charge for most small business services, rather than \$35.³

Given the rushed nature of this proceeding and the lack of detailed consideration of various connections-based proposals, it is far too premature for the Commission to conclude that "a connections-based mechanism can be easily applied to all business services."⁴ If "ease" is an objective, as it should be, then the current proposals certainly cannot be the answer. Instead, the current proposals would: (1) leave all of the burdens of reporting revenues in place for TRS and other funds; (2) add a new, telephone number

¹ Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, WC Docket No. 06-122 and CC Docket 96-45, October 20, 2008.

² Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, WC Docket No. 06-122 and CC Docket 96-45, October 24, 2008.

³ Letter from Mary L. Henze, AT&T to Marlene Dortch, WC Docket No. 06-122 and CC Docket 96-45, October 28, 2008 (proposing "capacity/assessment tiers" for "interstate dedicated business connections with capacity up to and including 25 mbps" of \$2/month; 25-100 mbps at \$15/month; and connections over 100 mbps at \$250/month.).

⁴ Proposal B, ¶ 79.

reporting scheme for residential accounts, (3) add yet another new, ill-defined reporting scheme for business connections; and (4) drag in thousands of information service providers into the rules for the first time by reversing the Commission's long-standing exemption for information services. The resulting complexity would make parties miss the current system as the good old days.

While AT&T's proposed revised tier structure is – at the moment – dramatically better than its first proposal, it also would be a disastrous public policy choice over time. A system that taxes broadband speeds would deter investment and development of higher capacity broadband services. In particular, small business owners would be effectively frozen out of obtaining 100mbps broadband services, which would be assessed a \$250/month USF charge. While that may not sound like a problem today, technology and business needs change much more rapidly than the Commission's rules. 100mbps service is already a commonplace residential and small business offering in parts of Asia, and would eventually be in the United States – but would never be so if the Commission taxes it out of viable existence. The AT&T proposal would assure that no competitor or new technology would be able to bring inexpensive 100mb to the masses. That may be acceptable to AT&T as a means of protecting its more expensive legacy services, but the suppression of lower prices and new technologies should not be acceptable to the Commission as it is flatly contradictory to the goals of the Act.

Even AT&T's proposed lower speed tier threshold would greatly undermine small business broadband growth. A sudden seven-fold jump from \$2/mo to \$15/mo for crossing the 25mb threshold would deter small business owners from adopting 25mbps services. Jarring tiers would be worse for the USF program than the existing revenues-

based system, in which increases are steadily graduated as a percentage of revenue, which is less likely to discourage consumers from purchasing slightly more expensive services.

If the Commission nonetheless elects to adopt a connections formula, it should limit assessment to telecommunications services connections, rather than all “service[s] with a telecommunications component.”⁵ For more than a quarter-century, the Commission has affirmatively avoided the imposition of common carrier regulations on information service providers. Then, only three years ago, the Commission made a landmark decision to also generally remove wireline Internet access services from USF assessment, and it followed that decision with similar relief for wireless Internet access services. The Commission’s proposals offer no explanation or justification for reversing this long-standing and repeatedly-reaffirmed Commission policy.

Finally, MegaPath opposes the part of Proposal B that would assess business customers for both telephone numbers *and* connections. The supposed purpose of a connections system is that some *carriers* offer business private line or special access services that are not associated with telephone numbers. But that is not a basis to double-charge business *consumers* who do use telephone numbers. For example, consider a small business customer that has 1.5mbps connection with 4 VoIP telephone numbers. Across the street, a Verizon FiOS residential consumer might subscribe to a 20.0 mbps Internet service with 5 VoIP telephone numbers. Under Proposal B, the business customer would pay \$38.40 per month in universal service, while the residential customer

⁵ Attachment B, ¶ 81. By its reference to services rather than the physical facility, this definition could be misread to include information service applications that ride over a broadband service. Numerous different service providers may offer their service using a single broadband connection.

would pay \$4.25 per month for greater service. This significant disparity would violate Section 254's general requirement that assessments are equitable.

Accordingly, MegaPath agrees with AT&T and Verizon that connection charges should not be assessed on connections that "are also offered to residential customers,"⁶ such as Internet access services, or that do include assessable telephone numbers. Instead, the Commission should adopt a numbers-based system for all types of customers, and seek further comment for proposals that would assess additional universal service contributions upon a more narrow class of high-bandwidth, special access and private line telecommunications services purchased by large enterprise customers.

One option to assure contributions from all carriers would be to require a minimum contribution (e.g., \$10,000) from all carriers that have a certain amount of interstate end-user telecommunications service revenue, regardless of the number of telephone numbers or connections they provide. That simple fix would assure contributions from all non-de minimis carriers without forcing the Commission to create separate reporting rules for residential and business customers.

Respectfully submitted,



Paul B. Hudson
Counsel for Megapath Inc.

November 26, 2008

⁶ Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, WC Docket No. 06-122 and CC Docket 96-45, October 24, 2008.