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

JOINT COMMENTS OF ALPHEUS COMMUNICATIONS, L.P.
AND COVAD COMMUNICATIONS

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SUMMARY

Alpheus Communications, L.P. and Covad Communications urge the Commission to adopt a numbers-based contribution methodology. Commenters strenuously oppose the hybrid methodology in the *Order and FNPRM* -- Proposal B -- that would inequitably burden small businesses and discriminate between types of service. Commenters endorse AT&T's alternative proposal as the second-best alternative, to the extent the Commission considers adopting something other than a numbers-only methodology, because AT&T's alternative proposal creates broadband usage tiers that treat small business more fairly and ensures small businesses are not left bearing the brunt of universal service contribution. If the Commission considers adopting Proposal A or C, it must fix a potentially discriminatory exception that could require contributors to treat services to residential customers without an assigned number as business services and could cause residential customers to be assessed multiple times. Additionally, Commenters oppose requiring three separate reporting methodologies as unduly burdensome, but support at least a one-year transition period to allow carriers a reasonable amount of time to modify and implement a numbers-based methodology. Commenters also recommend that *if* the FCC determines it *must* classify interconnected VoIP services, computer-to-phone services, or any other *services* that touch the PSTN as information services, it must affirm that LECs' Section 251 and 252 obligations continue to apply. It should also make clear that LECs serving information service providers are entitled to use unbundled network elements to provide a telecommunications service to such customers.

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JOINT COMMENTS OF ALPHEUS COMMUNICATIONS, L.P. AND COVAD COMMUNICATIONS

I. INTRODUCTION

Alpheus Communications, L.P. ("Alpheus") and Covad Communications ("Covad" and together "Commenters"), through undersigned counsel, submit comments regarding the Commission's *Order and FNPRM*.[1] As described herein and in previous filings by

[1] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking,

Commenters, the Commission should adopt a numbers-based contribution methodology for universal service and reject the hybrid proposal described in Appendix B to the *Order and FNPRM*. In the alternative, the Commission should adopt the AT&T Nov. 21, 2008 proposal.[2] The Commission should also ensure any new methodology avoids double-assessment or discriminatory contribution for similar services. Finally, the Commission should adopt a single reporting methodology for all federal funds rather than multiple methodologies and implement at least a one-year transition period.

II. REFORM OF UNIVERSAL SERVICE CONTRIBUTIONS (IV.)[3]

A. Contribution Assessment Methodology for Business Services (IV.B.3.)

The Commission should adopt a numbers-based contribution methodology for all services contributing to universal service and other federal funds. Sufficient evidence has already been filed in the record to support a numbers-based methodology.[4] This evidence

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Docket Nos. 05-337, 96-45, 03-109, 06-122, 99-200, 96-98, 01-92, 99-68 & 04-36, FCC 08-262 (rel. Nov. 5, 2008) ("*Order and FNPRM*"). For administrative convenience, Appendices A, B, and C to the *Order and FNPRM* will be referred and cited to herein as "Proposal A," "Proposal B" and "Proposal C."

[2] *See Ex Parte* Letter from Mary L. Henze, AT&T Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122, 96-45, & 01-92 (filed Nov. 21, 2008).

[3] For administrative convenience, Commenters utilize certain headers in the Proposals and refer to the applicable sections in the Proposals.

[4] *See, e.g., Ex Parte* Letter from Stephen W. Crawford, General Counsel and Senior Vice President, Alpheus Communications, L.P., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122 & 96-45 (filed Oct. 28, 2008); *Ex Parte* Letter from Russell M. Blau, Counsel to Covad and PAETEC, to Marlene H. Dortch, Secretary, FCC, Docket No. 01-92, Covad Communications Ex Parte Presentation (filed Oct. 28, 2008); *Ex Parte* Letter from John Windhausen, Jr., Coordinator, USF by the Numbers Coalition, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 96-45 & 06-122 (filed Oct. 28, 2008); *Ex Parte* Letter from Tamar E. Finn, Counsel to IDT Telecom, to Marlene H. Dortch, Secretary, FCC, Docket No. 96-45 (filed Oct. 28, 2008); *Ex Parte* Letter from Sheba Chacko, Head, Global Operational Regulation and Americas Regulation, BT Global Services, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122 & 96-45 (filed Oct. 28, 2008); *Ex Parte* Letter from James S. Blaszak, Counsel for Ad Hoc, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, Docket Nos. 05-337, 07-135, Attach. at 5 (filed Oct. 14, 2008); *Ex Parte* Letter from Jean L. Kiddoo and Tamar E. Finn, Counsel to IDT Telecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Aug. 2, 2007); *Ex Parte* Letter from Sheba Chacko, Head, Global Operational Regulation and Americas Regulation, BT Global Services, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122 & 96-45 (filed July 10,

demonstrates that numbers-based contribution is more predictable and easier for consumers to understand, and it will be easier for carriers, the Universal Service Administrative Company, and the Commission to administer and enforce. Additionally, numbers-based contribution would provide more stability than the current revenue-based system because determining contribution amounts from number usage should be more predictable than calculating applicable interstate or international revenue categories.

To the extent the Commission considers an alternative methodology to numbers-based contribution, Commenters urge the Commission to consider the discriminatory and burdensome effects of Proposal B, a broad exception to numbers-based contributions, and multiple reporting requirements as described below.

1. The Published Hybrid Contribution Methodology for Numbers and Connections Would be Discriminatory and Inequitable to Small Businesses

Commenters strenuously oppose the hybrid methodology in Appendix B to the *Order and FNPRM* to assess contribution based on numbers and connections because it would cause high and disproportionate fees for small business services. Proposal B's methodology requires carriers to contribute:

- $0.85/month per number (residential & business, including 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"[5]

Under Proposal B, as compared to the current methodology, the contribution for one DSL line, costing a small business $70 per month, would increase approximately 335% (from $8.05 to $35)

2008); *Ex Parte* Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, Docket No. 06-122 (filed Nov. 19, 2007).

[5] *See* Proposal B, ¶¶ 81-82.

and the total cost would increase 34.5% (from $78.05 to $105).[6] Additionally, small businesses would be adversely affected by Proposal B as it requires the same fee for a small business DSL connection or an integrated T-1 service that delivers voice, data, and Internet access services as a large enterprise's OC48 connection.[7] For example, one company's contribution would decrease to less than 0.2% of the rate paid for an interstate OC48 circuit (from $2,280 to $35) under Proposal B, while another company's contribution would increase to 22% of the rate paid for an interstate T-1 service (from $17.67 to $35).[8] Small businesses should not be inequitably burdened with funding universal service, which would be the outcome under Proposal B.

Section 254(d) of the Act requires that the Commission establish universal service contributions on an "equitable and nondiscriminatory basis." Proposal B would be unlawful and unfair under the Act. Not only is Proposal B inequitable to small businesses as described above, it is discriminatory for requiring wireline and fixed wireless connections to pay contributions but not requiring contributions from mobile wireless connections, including broadband.[9] Also, Proposal B would establish poor public policy in these terrible economic times by increasing rates for small businesses as much as 50% and impacting approximately 4.8 million business broadband users with a yearly cost increase of $1 to 1.5 billion.[10]

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[6] *See, e.g., Ex Parte* Letter from Russell M. Blau, Counsel to Covad and PAETEC, to Marlene H. Dortch, Secretary, FCC, Docket No. 01-92, Covad Communications Ex Parte Presentation (filed Oct. 28, 2008).

[7] *See generally Ex Parte* Letter from Stephen W. Crawford, General Counsel and Senior Vice President, Alpheus Communications, L.P., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122 & 96-45 (filed Oct. 28, 2008).

[8] *See id.*

[9] *See id.*

[10] *See, e.g., Ex Parte* Letter from Russell M. Blau, Counsel to Covad and PAETEC, to Marlene H. Dortch, Secretary, FCC, Docket No. 01-92, Covad Communications Ex Parte Presentation (filed Oct. 28, 2008). *See also, FCC, Trends in Telephone Service*, Table 2.2 (Total Advanced Service Lines) and Table 2.4 (Residential Advanced Service Lines), August 2008 (data as of June, 2007), *available at*: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf.

2. AT&T's Nov. 21, 2008 Alternative Numbers-Connections Proposal Is the Second-Best Solution

AT&T submitted an alternative numbers-connections proposal on November 21, 2008 that was not included in the Commission's *Order and FNPRM*.[11] AT&T's alternative methodology requires contribution for business service connections as follows:

- Tier 1: dedicated connections up to and including 25 mbps @ $2.00 per connection per month.
- Tier 2: dedicated connections over 25 mbps up to and including 100 mbps @ $15.00 per connection per month.
- Tier 3: dedicated connections over 100 mbps @ $250.00 per connection per month

Commenters urge the Commission to adopt a numbers-based contribution methodology, but endorse AT&T's alternative proposal as a second-best alternative. The AT&T alternative makes great strides in fixing the inequities inherent in Proposal B by creating broadband usage tiers that treat small business more fairly and ensure small businesses are not left bearing the brunt of universal service contribution. For example, AT&T's alternative proposal would result in less than a 0.05% difference between the contribution percentages of the rates paid for an interstate OC48 circuit and an interstate T-1 service.[12] Thus, AT&T's proposed tiers mitigate discriminatory treatment of small businesses, although the Commission might wish to consider whether any additional tiers should be included to prevent potential discrimination between high capacity services.[13]

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[11] *See Ex Parte* Letter from Mary L. Henze, AT&T Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122, 96-45, & 01-92 (filed Nov. 21, 2008). *See also, Ex Parte* Letter from Mary L. Henze, Senior Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Docket Nos. 06-122 & 96-45 (filed Oct. 29. 2008).

[12] *See infra*, Section II, 1. demonstrating a difference of almost 22% under Proposal B.

[13] For example, the Commission might consider modifying Tier 3 of AT&T's proposal to require a $100 contribution per connection, per month for dedicated connections over 100 mbps up to and including 500 mbps and add a Tier 4 to require a $250 contribution per connection, per month for dedicated connections over 500 mbps.

3. Any Exception For Services with No Assessable Numbers Should Prevent Discriminatory Treatment and Improper Double-Assessment

If the Commission nevertheless considers adopting Proposal A or C, it must fix an exception included in those Proposals that could cause discriminatory treatment for like services and cause residential customers to be assessed multiple times. These Proposals include the following statement: "Prepaid calling card providers, *as well as any other current contributors who provide services to residential consumers but do not assign Assessable Numbers*, shall continue to contribute based on their revenues during the interim period until these business services are assessed on the basis of connections and/or numbers."[14] One plausible interpretation of this broad exception could require contributors to treat as business services those services without an assigned number that are provided to residential customers. Such a result could result in a regulatory-conferred competitive advantage to bundled service providers and an inequitable burden on residential consumers by subjecting them to double-assessment. It also would cause confusion and disorder with the implementation and enforcement of a new reporting and contribution methodology.

Under the proposed exception, a residential customer would contribute only $1 per assigned telephone number for bundled services. In contrast, a residential customer purchasing stand-alone DSL and "over-the-top" VoIP service from two different providers could pay $4.45 ($3.45 for a $30 DSL service with a contribution rate at 11.4% [15] and $1 for the VoIP phone

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[14] *See* Proposal A, n.329 (*emphasis added*). *See also* Proposal C, n.321.

[15] The "current contributor" language also perpetuates the competitive disadvantage inherent in the current system. Today, CLECs must treat their DSL services as telecom in order to obtain UNEs to provide such services. RBOCs, on the other hand, may reclassify their DSL services as information and escape USF contributions on such services. *See generally Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, etc.*, Report and Order and Notice of Proposed Rulemaking, Docket Nos. 02-33, 01-337, 95-20, 98-10, 04-242, 05-271, FCC 05-150, ¶¶ 126-127 (rel. Sept. 23, 2005). Thus an RBOC providing a stand-alone DSL service would not be a "current

number). Similarly, a residential customer purchasing a bundled local/long distance product would pay $1 whereas the same customer purchasing stand-alone local and long distance services from different providers would pay more than $1 ($1 for local and 11.5% times the interstate/international portion of the long distance service). This would be unjust and inequitable to those service providers and customers that do not bundle voice and data services or local and long distance services and would create severe competitive disadvantages. Moreover, such a double-assessment is impermissible as a violation of the anti-discrimination provisions of the Act[16] since like services cannot be treated differently for purposes of universal service assessments.

Finally, the Proposals would create unnecessary confusion and burdens in reporting and implementation. They would classify certain services provided to residential customers as "business" services for USF contribution purposes only. Thus, for example, a DSL provider might have to report DSL lines as residential for purposes of the Form 477 but as business for purposes of the Form 499, depending on whether the DSL service was bundled with an assigned number service. In addition, the Proposals may require reporting and assessment changes for carriers to classify services sold to small business customers, even though the small business customers purchase the same services in the same manner as residential customers.[17] The Commission should focus on removing arbitrary classification requirements and not require carriers to determine how a customer is using a particular service in order to classify it for USF contribution purposes, which has been a significant problem with the current methodology.

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contributor" and would escape contribution under this footnote while a CLEC providing a stand-alone DSL service would be required to continue contributing.

[16] See 47 U.S.C. § 254(d).

[17] *See Ex Parte* Letter from Mary L. Henze, AT&T Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122, 96-45, & 01-92 (filed Nov. 21, 2008).

Carriers should be provided bright line rules to categorize USF obligations based on the actual service sold to customers.

4. Adopting Multiple Reporting Methodologies Will Be Unduly Burdensome

Commenters oppose the Commission's proposal for three separate reporting methodologies for numbers,[18] connections,[19] and revenues.[20] A primary reason for adopting a numbers-based methodology is to lessen reporting and contribution complications arising from a revenue system that bases assessment on separate service categories (e.g., telecommunications and information, interstate and international, etc.). The Commission should not maintain a revenue reporting system if it adopts a numbers-based contribution methodology or complicate reporting requirements by requesting multiple reports. The completion of one numbers-only report will be less onerous and should permit more reliable and auditable reporting for a carrier. It may also reduce time and effort and improve contribution examinations by USAC and the Commission.

In Commenters' experience, it takes considerable time to compile the information to complete a Form 499-A under the current revenue-based system and much more than the Commission's 13.5 hour estimate.[21] To complete three reports, carriers might need to triple the amount of time already spent to comply, which will unnecessarily burden small entities that do not have the same resources as larger entities. Carriers will need to modify their accounting, billing and collection systems to comply with changes to reporting and contribution

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[18] *See* Proposal A, ¶¶ 105-129; Proposal C ¶¶ 101-125.

[19] *See* Proposal B, ¶¶ 78-82.

[20] *See* Proposal A, n.373; Proposal B, n.239; Proposal C, n.364 (noting that TRS, LNP, and NANPA support will continue to be assessed through carrier revenue reporting).

[21] *See Ex Parte* Letter from Stephen W. Crawford, General Counsel and Senior Vice President, Alpheus Communications, L.P., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122 & 96-45 (filed Oct. 28, 2008).

methodologies, and those changes will be much more extensive and costly should the Commission require multiple reports. If the Commission requires multiple reports, efforts should be taken to provide clear service categories and minimize any burden for revenue reporting because carriers will confront the same or an increased burden to complete a Form 499A if the Commission requires reporting total revenue by type of service rather than jurisdictionally categorizing revenue, especially if they need to determine how to classify a service being used by a customer.

B. Transition to New Methodology (IV.B.7.)

Commenters support at least a one-year transition to transform the current revenue-based system to a numbers-based methodology. A minimum of one year is essential to allow a carrier sufficient time to modify its reporting and billing systems, including back-office billing, collection and accounting systems. A one-year transition period is even more critical to the extent the Commission imposes multiple reporting requirements because carriers will need the time to develop a multifaceted reporting system. Commenters agree with others, including AT&T, that support a one-year transition period to allow carriers time to implement necessary changes to internal systems and procedures before contributions are required using a number-based methodology or something more complex, such as a systems where contributors must distinguish residential and business services.[22] Accordingly, Commenters urge the Commission to provide a reasonable amount of time, and a one-year transition period at a minimum, for carriers to modify their internal systems to comply with new universal service contribution and reporting requirements.

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[22] *See Ex Parte* Letter from Mary L. Henze, AT&T Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 06-122, 96-45, & 01-92 (filed Nov. 21, 2008).

A one-year implementation period is especially important to ensure that small businesses are not adversely affected by any proposed rule as required under the Regulatory Flexibility Act ("RFA").[23] The Commission's data shows that 918 of 1,005 carriers reported to be engaged in the provision of either competitive access provider services or competitive local exchange services have 1,500 or fewer employees,[24] the size standard typically used under Small Business Association rules.[25] These carriers will confront staggering implementation costs and expenses to comply with any changes to the contribution methodology, and billions of revenue dollars will be affected by any change. Small businesses must be given adequate time to make the adjustment to prevent a discriminatory and negative impact.

III. IF THE COMMISSION CLASSIFIES IP-PSTN SERVICES AS INFORMATION SERVICES, IT MUST AFFIRM THAT CLASSIFICATION DOES NOT AFFECT LECS' SECTION 251 AND 252 RIGHTS AND DUTIES

If the FCC determines it *must* classify interconnected VoIP services, computer-to-phone services,[26] or any other *services* that touch the PSTN as information services, it must affirm that LECs' Section 251 and 252 obligations continue to apply.[27] The technology used by a LEC's customer to provide an information service to an end user does not alter the interconnection

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[23] 5 U.S.C. § 601 *et seq.*

[24] *Order and FNPRM*, Appendix E, ¶ 17, *citing* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (Aug. 2008) ("the Commission estimates that most providers of competitive local exchange service, competitive access providers, 'Shared-Tenant Service Providers,' and 'Other Local Service Providers' are small entities").

[25] *Id.*, ¶ 17, *citing* 13 C.F.R. § 121.201, NAICS code 517110.

[26] *See generally Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Stevens Report*").

[27] *See Ex Parte* Letter from Russell M. Blau, Counsel to Covad and PAETEC, to Marlene H. Dortch, Secretary, FCC, Docket No. 01-92, Covad Communications Ex Parte Presentation, at Attachment 2 (PAETEC Attachment) (filed Oct. 28, 2008); *Ex Parte* Letter from 360networks(USA), Inc., *et al.* to Kevin Martin, Chairman, FCC, Docket Nos. 01-92 & 04-36 (filed Sept. 29, 2008); *Ex Parte* Letter from Thomas Jones, Counsel for tw telecom, *et al.*, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 05-337, 99-68, 04-36, 01-92 & 96-45 (filed Oct. 24, 2008).

rights and duties associated with the telecommunications input used by the information service to exchange calls with the public switched telephone network ("PSTN"). For example, AT&T and Verizon cannot escape their obligation to exchange traffic with other carriers because they move their customers to fixed VoIP services. The Commission therefore should re-affirm the *Time Warner Order*[28] and make clear that it applies to all LECs. The *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 Section 251(a) and (b)."[29]

The Commission must also extend the principles adopted in *Time Warner* to make clear that LECs serving information service providers are entitled to use unbundled network elements to provide a telecommunications service to such customers. Whether a CLEC is offering a T-1 transport circuit to an information service provide or offering PSTN connectivity to an information service provider, the CLEC is providing a telecommunications service that entitles it to Section 251 rights.

Remaining silent on these issues, as Proposals A & C do, will result in endless litigation and disputes that would undermine the market opening provisions of the 1996 Act. Congress did not intend for the market-opening provisions of the 1996 Act to be nullified by RBOCs migrating their end user customers to information services. AT&T and Verizon cannot transition to managed packet networks in order to escape the market opening obligations of Sections 251 and 252. *If* the Commission classifies any IP-PSTN or PSTN-IP service as information services, it must make clear that LECs' Section 251 and 252 rights and obligations continue to apply.

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[28] *Time Warner Cable Request for Declaratory Ruling*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) ("*Time Warner Order*").

[29] *Id.*, ¶ 15.

IV. CONCLUSION

Commenters support the adoption of a numbers-based contribution methodology for all services and a transition period of at least one year. As a second best alternative, Commenters support AT&T's Nov. 21 proposal.

The Commission must reject the hybrid proposal described Appendix B to the *Order and FNPRM* for its discriminatory and inequitable effect on small businesses and the proposal for three reporting requirements for its undue burden on carriers. In addition, the Commission should make certain any exception for services with no assessable numbers is applied without causing discriminatory treatment for similar services or improper double-assessments.

Respectfully submitted,

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