

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Universal Service Contribution Methodology )      WC Docket No. 06-122

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AT&T PETITION FOR IMMEDIATE COMMISSION ACTION TO REFORM ITS UNIVERSAL  
SERVICE CONTRIBUTION METHODOLOGY

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Cathy Carpino  
Gary L. Phillips  
Paul K. Mancini

AT&T Services, Inc.  
1120 20<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 457-3046 – telephone  
(202) 457-3073 – facsimile

Its Attorneys

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**INTRODUCTION AND SUMMARY**

Consumers are now paying almost thirteen percent of their interstate telecommunications charges in federal universal service fees.<sup>1</sup> Growing demands on the universal service fund and the instability of current telecommunications revenue base almost guarantee that this percentage – the contribution factor – will increase. The Commission must ask itself how a contribution factor approaching 15 percent can be considered consistent with the fundamental goal of universal service: ensuring that all Americans have access to affordable communications

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<sup>1</sup> See *Proposed Third Quarter 2009 Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 09-1322 (rel. June 12, 2009). As the Commission is well aware, providers of interstate telecommunications are permitted to recover their universal service contribution costs from their customers and most do. See, e.g., *High-Cost Universal Service Support*, WC Docket No. 05-337 (and related proceedings), Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC No. 08-262, Appx. B at ¶ 54 (rel. Nov. 5, 2008) (*Intercarrier Compensation and Universal Service Reform FNPRM*). Consequently, while providers of these services have the obligation to contribute directly to the Commission’s universal service support mechanisms, it is these providers’ customers that ultimately pay to support the Commission’s universal service programs. We note that contributions from wireless carriers and interconnected VoIP providers are calculated somewhat differently so that customers of wireless and interconnected VoIP services will not see a universal service fee line-item charge of 12.9 percent on their bills but the effect of this latest increase on these customers is the same as it is for customers of wireline interstate telecommunications services.

services.<sup>2</sup> On top of this, the contribution factor – which has historically seen shifts of 1.5-2.0 percentage points over short periods of time – has actually jumped 3.5 percentage points since the first quarter of this year (an increase of 36 percent). The volatility of the contribution factor is probably only mildly less vexing to consumers than the amount of the charge they see on their bill every month.

In response to the concerns that the Commission has repeatedly expressed about the viability of its existing contribution methodology, AT&T and Verizon crafted and filed a fully operational, ready to implement telephone numbers-based methodology to replace it.<sup>3</sup> It is imperative that the Commission act now to address the concerns it has long recognized because implementing any new contribution methodology cannot happen over night. Accordingly, AT&T now petitions the Commission to act quickly to adopt the AT&T and Verizon proposal, which garnered widespread support throughout the industry.<sup>4</sup> It is an understatement to say that there are few areas of consensus among competitors on universal service matters. Indeed, AT&T can think of no other universal service issue on which such a diverse group of telecommunications providers can agree. Telecommunications providers of all sizes and using

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<sup>2</sup> See 47 U.S.C. §§ 151, 254.

<sup>3</sup> Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Sept. 11, 2008) (Sept. 11 *Ex Parte*). The parties made several minor clarifications to its September 11 telephone numbers-based proposal (i.e., their “Direct USF Contribution Methodology” proposal) in a filing made on October 20, 2008. Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Oct. 20, 2008) (Oct. 20 *Ex Parte*). AT&T asks that the Commission incorporate these few clarifications in its order. For ease of reference, we will refer to this modified telephone numbers-based proposal as the “Numbers Proposal.”

<sup>4</sup> The following associations and companies endorsed the Numbers Proposal: USF by the Numbers Coalition, CTIA, USTelecom, NCTA, AdHoc Telecommunications Users Committee, GCI, IDT Corporation, and DSL.Net. Additionally, as we note below, dozens of providers and state commissions filed comments with the Commission late last year urging it to replace its current methodology with one based on telephone numbers and/or telephone numbers and connections.

all types of technologies are united in their agreement that the current contribution methodology must change. The Commission should seize this opportunity, using its unified record on this topic, to make a fundamental and necessary change in the contribution methodology, which will, in turn, create the necessary breathing room in order to tackle highly contentious universal service distribution issues.

## ARGUMENT

### I. The Commission Can No Longer Delay Contribution Reform.

For years, differently composed Federal Communications Commissions, led by different chairmen, have recognized the need for reform of the means by which its universal service programs are funded.<sup>5</sup> While these previous Commissions all acknowledged the deep-seated flaws inherent in the existing universal service contribution methodology,<sup>6</sup> the Commission has failed to undertake fundamental reform, relying instead on regulatory patches and half-measures to hide those flaws and put off the day of reckoning when the growth in the contribution factor finally reached an untenable level. That day arrived on July 1, 2009, when the contribution

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<sup>5</sup> See, e.g., *Schools and Libraries Universal Service Support*, CC Docket No. 02-6, First Report and Order, 17 FCC Rcd 11521, ¶ 3 (2002) (“We intend to complete our examination of the issues in the contribution methodology proceeding and implement appropriate rules no later than first quarter 2003. We will endeavor, however, to complete the proceeding at an earlier date.”).

<sup>6</sup> See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (and related proceedings), 17 FCC Rcd 24952 (2002) (*Second Wireless Safe Harbor Order*):

Although the interim measures we adopt today will improve the current contribution methodology, they do not address our concerns regarding the long-term viability of any revenue-based system. . . [I]nterstate telecommunications revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services. This has increased opportunities to mischaracterize revenues that should be counted for contribution purposes . . . [which] may result in decreases in the assessable revenue base. . . Customers are also migrating to mobile wireless and Internet-based services.

*Id.* at ¶ 3.

factor shattered the twelve percent ceiling set by the Commission in 2002,<sup>7</sup> increasing 90 percent during this period of time, from 6.8 percent to 12.9 percent.

That the factor would exceed twelve percent and show no sign of decreasing was entirely predictable. Over the past decade, interstate telecommunications revenues have fallen, as prices fell and consumers shifted to alternative communications technologies and services, while the size of the universal service fund has continued to grow by leaps and bounds. The markets for non-business consumer and enterprise interstate telecommunications have become fiercely competitive, resulting in significantly lower prices for such services. While lower prices are great news for consumers, particularly in today's economic downturn, falling prices have resulted in an overall reduction in interstate telecommunications revenues, and thus a smaller universal service contribution base. In addition, providers and consumers have embraced new technologies, some of which are not subject to today's universal service contribution requirements, again resulting in a decrease in interstate telecommunications revenues subject to USF contributions. These reductions in the USF contribution base mean a higher contribution factor. And the rise in the contribution factor itself has exacerbated the problem by raising the cost of those services subject to contributions, and thus encouraging consumers to migrate to

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<sup>7</sup> In 1999, the Commission created its limited international revenue exception (LIRE) in response to a Fifth Circuit Court of Appeals remand in which the court held that it was unlawful for the Commission to require predominantly international telecommunications providers to pay more in universal service contributions than they derive from interstate telecommunications revenues. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (and related proceedings), Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, ¶ 123 (2002) (*Connections FNPRM*) (further citations omitted). A carrier whose interstate telecommunications revenues comprise less than a certain percent of its combined interstate and international telecommunications revenues shall contribute based only on the carrier's interstate telecommunications revenues. *See* 47 C.F.R. § 54.706(c). Seven years ago, the Commission increased the LIRE percentage from eight to twelve percent on the theory that this higher amount would "provide more than adequate margin of safety if the current contribution factor increases over time" "while we consider whether to move away from a revenue-based assessment system altogether." *Connections FNPRM* at ¶¶ 125, 128.

alternatives. In the Commission's own understated words, the result is a contributions system that is under "significant strain."<sup>8</sup>

Last year, in response to concerns expressed by the Commission regarding the continued viability of the existing contribution methodology, AT&T and Verizon filed a proposal to implement a telephone numbers-based contribution methodology that finally would remedy these flaws and create a stable source of universal service funding.<sup>9</sup> As the companies explained, the number of North American Numbering Plan (NANP) telephone numbers continues to grow, and the simplicity and transparency of the pure Numbers Proposal would ensure that all providers of voice applications that use NANP telephone numbers, regardless of technology, contribute to the fund in the same manner. Combined, these factors would ensure a low per telephone number charge that will not be subject to the unpredictable fluctuations that we have witnessed with the revenues-based contribution factor. In the aggregate, consumers would see a decrease in their universal service fees and finally understand how such fees are calculated, enabling them to better manage their telecommunications spending. In addition, individual consumer and business customers alike no longer would have an incentive to select a particular telecommunications provider or technology based on the amount they are assessed in universal service fees. Instead, these customers would select the telecommunications provider or technology that best meets their needs. Finally, the Numbers Proposal would be easy for the Universal Service Administrative Company (USAC) to administer and audit, and for contributors to manage.

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<sup>8</sup> *Universal Service Contribution Methodology*, WC Docket No. 06-122 (and related proceedings), Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 17 (2006) (*Interim Contribution Methodology Order*).

<sup>9</sup> See Sept. 11, 2009 *Ex Parte*.

**A. Efforts To Prop Up The Revenues-Based Methodology Have Been Unsuccessful.**

The band-aids that previous Commissions applied both to rein in fund size and to broaden the contribution base have proven unsuccessful, as demonstrated by the current 12.9 percent contribution factor. On the disbursement side, the Commission has capped various universal service programs<sup>10</sup> as well as the amount of high-cost support made available to competitive eligible telecommunications carriers (CETCs).<sup>11</sup> Other support mechanisms, like the low-income program, are uncapped and have continued to grow.<sup>12</sup> Moreover, the Rural Health Care program, which is capped at \$400 million/year, has been woefully underutilized, with actual disbursements amounting to a mere fraction of the cap. Several years ago, the Commission launched its Rural Health Care Pilot Program in an effort to jump start this sleepy mechanism.<sup>13</sup> Once that pilot, which is authorized to disburse approximately \$140 million/year for three years, gets up and running, it also will increase the strain on the fund. In addition, the Commission has not yet made a determination to directly support broadband services, but if and when that happens, the pressures on the demand side may very well increase – and potentially significantly increase. Since 1998, the universal service fund has grown from approximately \$4

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<sup>10</sup> The following universal service mechanisms operate under financial caps: Schools and Libraries, Rural Health Care, high-cost loop support, safety net additive support, and safety valve support. Also, interstate access support has a target, though it is not a hard cap.

<sup>11</sup> See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd 8834 (2008) (capping CETC high-cost support).

<sup>12</sup> See, e.g., *Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Third Quarter 2009*, USAC, at 14 (filed June 1, 2009) (noting the \$20 million dollar increase in Lifeline support from the second quarter), available at <http://www.usac.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Contribution%20Base%20Filing.pdf>.

<sup>13</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360 (2007).

billion in 1998 to approximately \$7.5 billion in 2008, an increase of 90 percent. Based on the foregoing information, it is likely that the fund will continue to grow.

On the contribution side, the Commission has sought to increase the amount of payments it receives from CMRS providers over the past seven years. It has done this by increasing the percentage of revenue that a wireless provider must presume to be jurisdictionally interstate in nature, absent a traffic study justifying a lower percentage. When the Commission adopted the CMRS safe harbor in 1998, it set the amount at fifteen percent.<sup>14</sup> It increased this percentage in 2002 to 28.5 percent<sup>15</sup> and again in 2006 to 37.1 percent.<sup>16</sup> But increasing the safe harbor further is no longer a viable option. Not only is there no basis in the record to increase the safe harbor again, but going back to the well one more time likely would not result in any increase in contributions by wireless providers. That is because wireless providers always have the option of contributing to the fund based on their actual interstate revenues as determined by traffic studies. Increasing the safe harbor likely would prompt any CMRS providers that previously relied on the safe harbor to perform traffic studies, which will show that their actual interstate traffic is less than whatever new percentage the Commission might establish.

In its 2006 *Interim Contribution Methodology Order*, the Commission also sought to offset increases in the size of the fund, as well as decreases in the size of the contribution base, by requiring interconnected VoIP providers to contribute to the fund.<sup>17</sup> Many popular VoIP services (e.g., Skype-In and Skype-Out), however, do not meet the definition of interconnected

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<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998).

<sup>15</sup> *Second Wireless Safe Harbor Order*.

<sup>16</sup> *Interim Contribution Methodology Order* at ¶ 25.

<sup>17</sup> *Id.* at ¶ 53.

VoIP and thus are not captured under the current rules. The Commission established a safe harbor for interconnected VoIP providers set at 64.9 percent, which is based on the percentage of interstate revenues reported to the Commission by wireline toll providers. Although the Commission said that it would be reasonable to treat interconnected VoIP traffic as 100 percent interstate for universal service contribution purposes, it concluded that a 64.9 percent safe harbor was reasonable on an interim basis.<sup>18</sup> The Commission obviously could not increase this safe harbor without correspondingly decreasing the amount of VoIP revenue that could be subject to state universal service contributions.<sup>19</sup> If the Commission believes that states should be permitted to assess state universal service fees on interconnected VoIP providers, it should recognize that, as VoIP becomes more prevalent, increasing the federal safe harbor likely would limit a state's ability to fund its own universal service support mechanisms, contrary to section 254(f) of the Telecommunications Act of 1996 (1996 Act).<sup>20</sup>

The Commission also should not lose sight of the fact that the way that Americans communicate is changing. Anyone in their 20's will tell you that text-messaging, Tweeting and other applications are increasingly important avenues of communication, which are not subject to universal service contributions. Recent press reports indicate that consumers are buying 9,000-

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<sup>18</sup> *Id.*

<sup>19</sup> See *Intercarrier Compensation and Universal Service Reform FNPRM* at Appx. C at n. 527 (“states are free to require contributions [from interconnected VoIP providers] to state universal service or telecommunications relay service funds through methodologies that are consistent with federal policy” and citing with support a Letter from Robert W. Quinn, Jr., AT&T, to Chairman Kevin J. Martin, FCC, WC Docket Nos. 04-36, 06-122, CC Docket No. 96-45 (filed July 17, 2008)). In its July 17, 2008 letter, AT&T requested that the Commission clarify that states may impose state universal service and TRS contribution obligations upon interconnected VoIP, subject to the parameters outlined in that letter, and explained in this regard that under a telephone numbers-based methodology, any corresponding state mechanism similarly would not be permitted to burden the federal mechanism. *Id.* at 14.

<sup>20</sup> See 47 U.S.C. § 254(f).

10,000 Magic Jack devices per day.<sup>21</sup> And Google Voice has already expanded its service beyond former GrandCentral customers to anyone requesting an invitation.<sup>22</sup> We are quickly reaching the point at which all voice services will be just one of many applications on the Internet, some of which may contribute to universal service but the majority of which will not. Unless the Commission is prepared to use its ancillary jurisdiction in ways that it has not previously, the consequence of these changes will be an even smaller contribution base.

**B. Adding Intrastate Revenues Does Not Address Problems Inherent In A Revenues-Based Methodology And It Creates New Ones.**

Even if Congress were to amend the 1996 Act to permit the Commission to assess contributors based on intrastate revenues, that would not solve the problem, and, indeed, could simply create new ones. First, by expanding the federal contribution base in this manner, the Commission would impose a greater contribution burden on individual consumer customers, to the benefit of business customers. Under today's interstate-only revenues-based methodology, contributions based on revenues from non-business consumer services comprise approximately 48 percent of all contributions to the fund. If Congress were to amend the 1996 Act to permit the Commission to assess intrastate revenues, AT&T estimates that this percentage would increase to 55 percent, with contributions based on business service revenues decreasing to 45 percent. By contrast, if the Commission were to adopt the Numbers Proposal, contributions based on non-business consumer services would drop to 45 percent. Ironically, one of the early criticisms of a telephone numbers-based methodology was that low-volume users of interstate telecommunications services would end up paying dramatically more than they do under an interstate revenues-based methodology. While AT&T and Verizon have filed data

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<sup>21</sup> See <http://www.businessinsider.com/magicjack-will-top-100-million-in-sales-this-year-2009-6>.

<sup>22</sup> See <http://googleblog.blogspot.com/2009/06/google-voice-invites-on-their-way.html>

demonstrating that this criticism is unfounded,<sup>23</sup> expanding the federal contribution base to include intrastate revenues *would* increase low-volume users' federal universal service contributions.<sup>24</sup>

Second, advances in technology coupled with complex bundled service offerings in the enterprise market have made it difficult to distinguish telecommunications service revenue from information service revenue, forcing service providers to interpret the Commission's rules to determine whether and how much to contribute. While most providers will attempt to make such interpretations in good faith, it is likely, if not inevitable, that competing providers will reach different conclusions, skewing the competitive landscape and reducing the contribution base. Adding intrastate telecommunications service revenues to the federal contribution base would not address this problem and, assuming Congress acted expeditiously to permit the Commission to assess intrastate telecommunications revenues, it would, at most, simply buy the Commission some additional time in which to adopt an alternative, non-revenues-based contribution methodology. The Commission, of course, does not need any additional time since it already has a complete record, refreshed late last year, on which to base an order that changes the current methodology to one based on telephone numbers.<sup>25</sup>

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<sup>23</sup> Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45, at Table 4 (filed Sept. 23, 2008) (Sept. 23 *Ex Parte*) (which assumed a contribution factor of 11.4 percent, not 12.9 percent).

<sup>24</sup> Under today's contribution methodology, a consumer who makes only local calls would still contribute indirectly to the federal fund based on the consumer's subscriber line charge (SLC) (i.e., 12.9% of no more than \$6.50). If the Commission were to begin assessing a provider's intrastate revenues, that consumer's provider would recover its contribution costs by applying a federal universal service fee to that consumer's intrastate charges (e.g., \$20 for the consumer's basic local rate), which would be in addition to federal universal service fee on the SLC noted above.

<sup>25</sup> See *Intercarrier Compensation and Universal Service Reform FNPRM*.

### C. The Current Methodology Could Not Sustain A Broadband-Focused Universal Service Fund.

The Commission's universal service support mechanisms cannot serve as a cornerstone of the Commission's National Broadband Plan<sup>26</sup> if the contribution methodology upon which those mechanisms rely is unstable. Today's revenues-based assessment system is simply ill-equipped to support any universal service broadband initiatives that the new Commission might have, no matter how meritorious.<sup>27</sup> This is due to the fact that the Commission would have to use *new funding* to support any such initiatives that it wants to implement in the near term. The Commission is bound by the statute to establish universal service mechanisms that are "predictable."<sup>28</sup> Therefore, it is precluded by statute from simply eliminating universal service funding to carriers or a class of carriers through a flash cut and redirecting that legacy funding to new broadband programs. An orderly transition that redirects legacy support to new broadband funds in compliance with the statute could take five years or more.<sup>29</sup> Insofar as every \$100 million increase per quarter in the size of the universal service fund causes a 5.4 percent increase

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<sup>26</sup> See *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, FCC 09-31 (rel. April 8, 2009) (seeking comment on the formulation of the National Broadband Plan mandated by the American Recovery and Reinvestment Act of 2009, which also requires the Commission to present its Plan to Congress next February).

<sup>27</sup> For example, several parties have urged the Commission to expand its existing Lifeline program to include a broadband component.

<sup>28</sup> 47 U.S.C. § 254(b)(5) (directing the Commission to establish "specific, predictable and sufficient" mechanisms to "preserve and advance universal service").

<sup>29</sup> See, e.g., *Intercarrier Compensation and Universal Service Reform FNPRM*, Appx. C at ¶ 17 (proposing a five year transition during which time CETC support is reduced in equal steps); Letter from Paul W. Garnett, CTIA, to Marlene H. Dortch, FCC, CC Docket No. 01-92, WC Docket Nos. 04-36, 05-337, 06-122 at 1 (filed Oct. 22, 2008) (proposing a "five year transition from support currently provided to [CETCs] under the identical support rule to any successor mechanism(s)").

to the contribution factor,<sup>30</sup> it should be plain that the Commission cannot initiate any new support mechanisms – such as a mechanism to support broadband infrastructure deployment – that would radically increase the size of the fund without sharply increasing the contribution factor, and thus jeopardizing the affordability of interstate telecommunications services, contrary to congressional directives in section 254.<sup>31</sup>

## **II. A Telephone Numbers-Based Contribution Methodology Is Stable, Pro-Consumer, Competitively Neutral, And Can Support Universal Service Broadband Initiatives.**

Last September, to address the Commission’s long-standing concerns regarding the existing contribution methodology, AT&T and Verizon submitted a detailed proposal to fund the Commission’s universal service support mechanisms through a telephone numbers-based assessment. This telephone numbers-only mechanism would be straightforward and neutral across technologies and end users. It would also be entirely predictable in application, easy to audit, and readily extendable to new and emerging technologies. The virtues of the Numbers Proposal are beyond dispute. In fact, the Commission itself ascribed these attributes to the telephone numbers-based portion of the hybrid numbers/connections-based mechanism it proposed late last year in its *Intercarrier Compensation and Universal Service Reform*

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<sup>30</sup> This optimistically assumes that the quarterly contribution base remains approximately \$18 billion. As an example of how this increase operates, if the Commission were to expand its Lifeline program to include a \$300 million dollar broadband component, as some have recommended, the current contribution factor would increase from 12.9 percent to 13.4 percent, assuming the \$300 million was disbursed evenly throughout the year (i.e., \$75 million/quarter).

<sup>31</sup> 47 U.S.C. § 254(b)(1). *See also Alenco v. FCC*, 201 F.3d 608, 620 (5<sup>th</sup> Cir. 2000) (“excessive subsidization in some rates may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market”); *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10<sup>th</sup> Cir. 2005) (“excessive subsidization arguably may affect the affordability of telecommunications services”).

*FNPRM*.<sup>32</sup> The comments in response to this aspect of that *FNPRM* overwhelmingly supported replacing the existing revenues-based methodology with some type of telephone numbers-based mechanism.<sup>33</sup> Indeed, this was one of the few – if not the only – areas of consensus in that far-reaching and controversial *FNPRM*.

**A. Summary of the Numbers Proposal.**

Under the Numbers Proposal, a provider would contribute each month to the universal service fund based on its assessable telephone numbers. The plan defines an Assessable Number as “a North American Numbering Plan (NANP) telephone number that enables a Final Consumer to make or receive calls.” The plan also allows companies to exempt from their monthly count assessable numbers provided to Lifeline customers for Lifeline services and numbers classified as administrative for numbering purposes; and allows companies to pay reduced assessments for numbers used for prepaid wireless services, and, for a transitional period, secondary numbers offered in wireless family plans. The Commission would modify the per telephone number charge, which would be calculated by dividing USAC’s fund size projections by the assessable base of telephone numbers, no more frequently than twice a year.

Each month, each contributor would determine how many of its NANP telephone numbers it has provided to Final Consumers during that month. The result becomes that contributor’s monthly count of assessable numbers. Within thirty days from the end of each month, each contributor must submit to USAC an amount equal to its monthly count multiplied

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<sup>32</sup> *Intercarrier Compensation and Universal Service Reform FNPRM*, Appx. B at ¶¶ 53-59 (*Appendix B Draft Order*).

<sup>33</sup> By AT&T’s count, over 25 commenters, ranging from state commissions, CLECs, cable providers, VoIP providers, wireless providers, rural carriers, mid-sized carriers, and large carriers, supported this goal. See AT&T Reply Comments, WC Docket No. 05-337 (and related proceedings), at n.90 (filed Dec. 22, 2008).

by the per telephone number charge. Contributors and USAC would have twelve months in which to implement the new methodology and an additional six-month dry run in which contributors would report their monthly counts of assessable numbers to USAC without payments. This six-month transition period would enable the Commission to make any necessary tweaks to, for example, the telephone number charge or to any of the exceptions before contributors begin paying based on telephone numbers.

AT&T and Verizon proposed few exceptions to their telephone numbers-based proposal because every exception increases the contribution burden on other consumers. If the Commission, however, determines that it should expand the number of exceptions, AT&T urges the Commission to incorporate AT&T and Verizon's recommendations contained in their Oct. 20 *Ex Parte*. In that filing, AT&T and Verizon explained that granting exceptions either as a full exemption or a discount off of the standard telephone number charge is preferable to exceptions that require alternate calculation methodologies or that maintain the revenues-based methodology.<sup>34</sup> Alternatively, the companies recommended that the Commission adopt a reimbursement method in which the customer would pay its provider the full telephone number charge per assessable number but then seek reimbursement from USAC of a certain portion of its paid universal service fees.<sup>35</sup>

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<sup>34</sup> Oct. 20 *Ex Parte* at 4.

<sup>35</sup> *Id.*

## **B. Consumers Win Under A Telephone Numbers-Based Methodology.**

Unlike interstate telecommunications revenues, which at best will remain stagnant, the number of North American Numbering Plan telephone numbers continues to grow.<sup>36</sup> Due to its transparency and ease of administration, a telephone numbers-based assessment would stabilize the fund by assessing all providers and users of services that utilize numbers regardless of technology and making it difficult for them to escape assessment. And because the number of telephone numbers is large and growing, the per telephone number charge will remain low and stable for the foreseeable future, which will redound to the benefit of consumers and enable the Commission to implement universal service broadband initiatives in the near term. Given the broad base of assessable telephone numbers, a \$100 million dollar increase to the federal fund would result in a per telephone number charge increase of merely \$0.014.<sup>37</sup>

Consumers also will benefit by being able to understand, for the first time, how their universal service fees are calculated and thus to better manage their telecommunications spending. Moreover, as the Commission recognized in its draft order, because all competing services will contribute on the same basis to the universal service fund, a numbers-based contribution methodology would ensure that consumers select “the providers and provider types that they want without regard to any artificial distortions that would otherwise be caused by differing contribution charges.”<sup>38</sup> In addition, non-business customers, on average, will pay less in universal service fees under the Numbers Proposal than they do today under the current

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<sup>36</sup> *Compare Numbering Resource Utilization in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at Table 1 (March 2009) *with* the same report released in previous years.

<sup>37</sup> This figure is based on data AT&T and Verizon filed last year and it assumes that the per telephone number charge, prior to the \$100 million increase, is \$1.01. *See* Sept. 23 *Ex Parte* at Table 3.

<sup>38</sup> *Appendix B Draft Order* at ¶ 55.

methodology.<sup>39</sup> As we mentioned earlier, approximately 48 percent of universal service support comes indirectly from non-business consumers.<sup>40</sup> This percentage would drop to approximately 45 percent if the Commission were to adopt the Numbers Proposal, with business customers picking up a greater share of the contribution burden.<sup>41</sup>

**C. By Adopting A Telephone Numbers-Based Methodology, The Commission Will Satisfy Its Competitive Neutrality Principle.**

Under today’s revenues-based contribution methodology, the Commission – and providers themselves – can have little assurance that competitors are contributing to the universal service support mechanisms on the same basis, as is required by the statute and the Commission’s universal service competitive neutrality principle.<sup>42</sup> It is no easy feat for a provider, particularly a provider of complex business services, to determine whether particular services are information or telecommunications services and/or to identify the assessable telecommunications component of a bundled service offering. The Commission’s information service precedent, which began with its *Computer Inquiry* proceeding, stretches back decades and is understood by few both inside and outside of the Commission. Competitors’ good faith interpretations of this complicated and arcane area of Commission precedent are likely to vary, resulting in these providers contributing different amounts for the same service. By contrast, the transparency and simplicity of a telephone numbers-based system eliminates many, if not most,

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<sup>39</sup> See September 23 *Ex Parte* at Table 4.

<sup>40</sup> *Id.* at Table 1.

<sup>41</sup> *Id.* at Table 2.

<sup>42</sup> 47 U.S.C. § 254(d) (contributions must be “equitable and nondiscriminatory”); *Federal-State Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC 8776, ¶ 47 (1997) (“Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”).

of the competitive distortions inherent in the current methodology. Providers (and their customers) will embrace new services and technologies based on their own merits, not because these new services or technologies will give them a universal service contribution advantage.

**D. A Telephone Numbers-Based Methodology Will Be Easier For All Parties to Manage And Will Be Easier For The FCC And USAC To Audit.**

The “real time” nature of the Numbers Proposal would significantly streamline the contribution process by eliminating monthly invoices and FCC Form 499 filings, resulting in tremendous savings for the Commission, USAC, and contributors, which, in turn, inevitably would flow through to consumers. Additionally, due to its simplicity, a telephone numbers-based methodology would make for more efficient and effective contributor audits. Under today’s regime, auditors must scrutinize eight pages of revenue lines on the FCC Form 499-A, which providers populate based on instructions that are more than 35 single-spaced pages long, to ascertain whether a contributor has reported correctly its interstate telecommunications revenues. In performing these audits, auditors must perform the same complicated analyses as contributors as to whether a particular service is a telecommunications or an information service, interstate or intrastate, and, if it is a bundled offering, whether the contributor’s telecommunications/information service allocation was reasonable. By contrast, under the Numbers Proposal, auditors would simply review whether a contributor had accurately calculated its assessable numbers, and paid the correct per-number contribution into the fund.

**E. If The Commission Declines To Adopt A Telephone Numbers-Only Methodology, A Numbers and Connections Methodology Is Preferable To Today's Revenues-Based System.**

AT&T is aware of no policy or legal impediment to the Commission adopting a pure telephone numbers-based methodology. Indeed, there is consensus in the industry that the Commission should do just that.<sup>43</sup> Section 254(d) requires providers of interstate services to contribute on a non-discriminatory *basis*, but that does not mean that such providers must contribute on *every interstate service*. The equitable and nondiscriminatory standard in section 254(d) requires that the Commission's contribution methodology "not treat similarly situated contributors differently."<sup>44</sup> As we explained above, it is problematic for carriers to determine which portions of their revenues are subject to universal service assessments. The direct impact of this difficulty on customers is that competitive providers offering the same or very similar services may be passing on very different universal service fees. A telephone numbers-based contribution methodology would address this problem by basing universal service assessments on a common element of these services. As such, it better ensures that the contributions from all telecommunications providers are equitable and nondiscriminatory in accordance with the statute.

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<sup>43</sup> Most of the criticisms that commenters raised last year concerning the Commission's proposed hybrid methodology related specifically to the inclusion of connections as part of the methodology, since – as proposed in the Commission's *Appendix B Draft Order* – a connections component would complicate compliance and raise various questions concerning the appropriate and equitable assessments for connection-based customers.

<sup>44</sup> *Interim Contribution Methodology Order*, at ¶ 24 (citing *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, ¶ 10 (1998)); see also *TOPUC v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999) (statutory language in section 254(d) requiring an equitable contribution system "refers to the fairness in the allocation of contribution duties").

If, however, the Commission prefers a dual telephone numbers- and connections-based methodology, AT&T urges the Commission to work from the proposal AT&T and Verizon filed with it on October 20, 2008.<sup>45</sup> Though more complex than a telephone numbers-only plan and lacking industry consensus on how the Commission should set the connections tiers, this type of hybrid proposal would still be preferable to today's revenues-based regime.

## **CONCLUSION**

The ever-increasing contribution factor combined with possible Commission interest in re-focusing its universal service programs to support broadband initiatives has created a perfect storm of events that the Commission can no longer ignore or merely pay lip service to by issuing yet another further notice of proposed rulemaking as it did under previous chairmen. It is essential for the Commission to act now to adopt the Numbers Proposal since it will take contributors and USAC a year and a half to implement this new methodology.

Competitors of all sizes and utilizing different technologies, in addition to a number of state commissions, have all recognized the merits of a telephone numbers-based assessment system and have urged the Commission to adopt such a methodology. Last month, one of the last holdouts to favor maintaining a revenues-based regime – NASUCA – filed a petition with the Commission requesting it to raid undisbursed E-rate funding to lower the third quarter contribution factor in order to “protect consumers throughout the Nation from the harm of paying

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<sup>45</sup> Since that filing, both AT&T and Verizon realized that their October 20<sup>th</sup> proposed connections tiers would have an unintended and adverse effect on small business customers. In response, the parties clarified that they did not intend to include certain services used by businesses for broadband Internet access that are also offered to residential customers in the proposed tiers. *See* Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Oct. 24, 2008). AT&T filed its own proposed clarification to the tiers on October 29, 2008. Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Oct. 29, 2008).

increased USF assessments.”<sup>46</sup> AT&T – and most in the industry – could not agree more that consumers are being harmed by the current revenues-based system, which is why Commission must finally act to fix this broken regime.

Respectfully Submitted,

/s/ Cathy Carpino  
Cathy Carpino  
Gary Phillips  
Paul K. Mancini

AT&T Inc.  
1120 20<sup>th</sup> Street NW  
Suite 1000  
Washington, D.C. 20036  
(202) 457-3046 – phone  
(202) 457-3073 – facsimile

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Its Attorneys

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<sup>46</sup> Request of the National Association of State Utility Consumer Advocates for Interim Emergency Relief to Reduce the Universal Service Fund Contribution Factor, WC Docket No. 05-337 and CC Docket No. 96-45 (filed June 9, 2009). The Commission did not act on NASUCA’s request.