

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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| In the Matter of                                 | ) |                      |
|  | ) |                      |
| International Comparison and Consumer            | ) | GN Docket No. 09-47  |
| Survey Requirements in the Broadband Data        | ) |                      |
| Improvement Act                                  | ) |                      |
|  | ) |                      |
| A National Broadband Plan for our Future         | ) | GN Docket No. 09-51  |
|  | ) |                      |
| Inquiry Concerning the Deployment of Advanced    | ) | GN Docket No. 09-137 |
| Telecommunications Capability to All Americans   | ) |                      |
| in a Reasonable and Timely Fashion, and Possible | ) |                      |
| Steps to Accelerate Such Deployment Pursuant to  | ) |                      |
| Section 706 of the Telecommunications Act of     | ) |                      |
| 1996, as Amended by the Broadband Data           | ) |                      |
| Improvement Act                                  | ) |                      |
|  | ) |                      |

**COVAD COMMUNICATIONS COMPANY  
COMMENTS IN RESPONSE TO  
NBP PUBLIC NOTICE #19**

**I. INTRODUCTION AND SUMMARY**

Covad Communications Company (“Covad”) respectfully submits its comments in response to National Broadband Plan Public Notice No. 19 (“Notice”) released by the Federal Communications Commission (“FCC” or “Commission”) on November 13, 2009 in the above-captioned dockets.<sup>1</sup> Pursuant to the American Recovery and Reinvestment Act of 2009 (“Recovery Act”),<sup>2</sup> and as part of the Commission’s development of the National Broadband

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<sup>1</sup> FCC Public Notice, *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, NBP Public Notice # 19, Pleading Cycle Established*, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2186 (rel. Nov. 13, 2009) (“Notice”).

<sup>2</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

Plan (“Plan”),<sup>3</sup> the Notice seeks input on universal service and intercarrier compensation policy options that will further the goal of “making broadband universally available to all people of the United States.”

As one of the nation’s largest independent providers of broadband services, Covad has an acute interest in the Commission’s development of the National Broadband Plan. Covad supports the Commission’s holistic review of its universal service and intercarrier compensation policies in light of the Recovery Act’s goal of promoting broadband affordability and availability. Covad’s comments respond, in particular, to the question of how the Commission should modify the universal service contribution system, and how such modifications would impact end users.<sup>4</sup> As described herein and in previous filings by Covad, the Commission should adopt a numbers-based contribution methodology for universal service or, in the alternative, AT&T’s November 21, 2008 hybrid proposal based on numbers and “connections.”

## **II. THE UNIVERSAL SERVICE CONTRIBUTION SYSTEM SHOULD BE MODIFIED TO REDUCE WASTE AND ENHANCE FAIRNESS**

### **A. Any Plan Adopted by the Commission Must be Equitable and Non-Discriminatory**

The Commission must use all of the regulatory tools it has at its disposal to meet the broadband deployment goals of the Recovery Act, including reformation of the USF contribution system. Any contribution plan adopted by the Commission must be equitable and non-discriminatory. Specifically, Covad urges the Commission to ensure that any methodology adopted not discriminate against certain types of carriers or services, or otherwise create burdensome administrative requirements. Section 254(d)<sup>5</sup> of the Communications Act of 1934,

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<sup>3</sup> Recovery Act § 6001(k).

<sup>4</sup> See Notice, 1-2 (Question 2).

<sup>5</sup> 47 U.S.C. § 254(d).

as amended, requires that the Commission establish universal service contributions on an “equitable and nondiscriminatory basis.” Importantly, small businesses must not be unduly burdened with more than their fair share of universal service support.

Small businesses are the engine of innovation and job creation in the United States. As the Small Business Administration has outlined, small businesses created between 60-80 percent of net new jobs in the United States over the past decade.<sup>6</sup> Small businesses employ half of all private sector employees and create almost half of non-farm gross domestic product.<sup>7</sup> They produce more than 13 times more patents per employee than large firms, and employ approximately 40 percent of technology workers in the United States.<sup>8</sup> Many of the great success stories of the last decade were recently small businesses, including notable companies such as Google, Yahoo, Amazon.com, EBay, and Facebook. Small business access to broadband will continue to produce significant economic opportunity and growth in the United States.<sup>9</sup>

The Commission’s objectives of stimulating demand for broadband, economic growth, and job creation require that small businesses are not left to shoulder the load of USF contributions. Keeping contribution rates fair, low, and non-discriminatory, will promote small business broadband demand, uptake, and ultimately, economic success.

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<sup>6</sup> See Small Business Association, *Advocacy Small Business Statistics and Research*, available at: <http://web.sba.gov/faqs/faqindex.cfm?areaID=24>.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> As recently recognized by Congresswoman Nydia Velazquez, Chairwoman of the U.S. House Small Business Committee, “[t]echnology is often called the great equalizer of the business world. If done properly, increasing access to broadband will allow small firms to compete with big companies. It will also create new opportunities for small businesses - all while connecting our country with the fastest means of communication. We’ve come a long way since the days of dial-up. New investments in broadband can take that progress one step further, and allow America’s small businesses to help rebuild our economy.” Statement of Rep. Nydia Velazquez, Chairwoman, House Committee on Small Business, “Bridging the Digital Divide: The Role of Small Firm in Expanding Broadband Access” (Oct. 28, 2009), available at: <http://www.house.gov/smbiz/Statements/2009/broadband-investment.html>.

## **B. The Numbers-Based Model Reduces Costs, and Improves Accuracy and Enforceability**

To ensure fairness, reduce costs for residential and small business consumers, and relieve administrative burdens on broadband and other service providers (expenses that can be better put into deployment efforts), the Commission should adopt a numbers-based contribution methodology for all services contributing to universal service and other federal funds. Numerous parties in the telecommunications industry have signaled their support of a numbers-based methodology.<sup>10</sup> The evidence in the Commission's existing record 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 ("USAC"), and the Commission to administer and enforce. Additionally, a numbers-based contribution system will provide more stability than the current revenue-based system because determining contribution amounts from number usage should be more predictable than industry interstate or international revenues over a given timeframe. A numbers-based system would likewise be transparent for all parties: the end user, the carrier, USAC, and the FCC. Consumers will know, on a predictable and consistent basis, what their surcharge will be for any given month. Carriers will have clear guidance, without burdensome and in-depth regulatory analysis, on how much to collect and

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<sup>10</sup> 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. Blaszk, 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, 2008); *Ex Parte* Letter from James S. Blaszk, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, Docket No. 06-122 (filed Nov. 19, 2007).

remit. USAC and the FCC will likewise have a clear picture into the scope of carrier collection efforts, and will utilize fewer administrative resources to enforce collection and remittance.

### **C. Alternative to the Number-Based Methodology**

To the extent the Commission considers an alternative methodology to numbers-based contribution, Covad urges the Commission to ensure that such a system does not discriminate against certain types of carriers or services, or otherwise create burdensome administrative requirements. One such method may be a hybrid solution whereby both numbers and dedicated broadband connections are assessed. Such a system would remain objective and easy to administer and enforce. However, to ensure that small businesses are not unfairly burdened under such a system, the FCC must ensure that any contribution rates established for such “connections” are done so fairly, and in a manner that does not overbear upon those connections commonly used by small businesses.

For example, one numbers and connections-based methodology that Covad can support would be the proposal made by AT&T on November 21, 2008.<sup>11</sup> AT&T’s proposal would create “tiers” of dedicated broadband Internet connections for purposes of USF contribution, which goes a long way to ensuring neutrality between large and small business end users.<sup>12</sup> AT&T’s 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.

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<sup>11</sup> 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).

<sup>12</sup> 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).

AT&T's proposal would result in similar contribution levels for broadband connection services typically purchased by small and large businesses. For example, the numbers and connections hybrid methodology would result in a contribution of \$2.00 for small business DSL lines (an effective universal service contribution rate of approximately 2.85% assuming a retail rate of \$70). The universal service contribution for a company that purchases an OC48 connection at a monthly cost of approximately \$20,000 would be \$250, or 1.25% of the cost of that circuit, while a company that purchases a dedicated T-1 connection (at approximately \$200 per month) would have an effective contribution rate of approximately 2.00% of the cost of that service.

As discussed above, Covad supports a numbers-based contribution methodology. But, to the extent that the Commission decides to not undertake that model, Covad believes that any other system must ensure competitive neutrality, and non-discriminatory treatment of small business-class services. In that regard, AT&T's alternative proposal is a second-best alternative. While there is still some discrimination in effective rates between small and large capacity circuits, AT&T's proposal creates broadband usage tiers that go a long way to treat small business fairly, and not left bearing the brunt of universal service contribution.<sup>13</sup> The Commission, however, might wish to consider whether any additional tiers should be included to prevent potential discrimination between high capacity services.<sup>14</sup>

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<sup>13</sup> AT&T and Verizon have 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, and in so doing, the proposed tiers mitigate discriminatory treatment of small businesses. *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).

<sup>14</sup> 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

### **III. THE EXISTING REVENUES-BASED SYSTEM RESULTS IN WASTE, ARBITRAGE, AND DISCRIMINATION**

#### **A. The Commission Should Eliminate Dissimilar Treatment of Functionally Equivalent Services**

Contrasted against an objective numbers or hybrid numbers and connections-based system, the existing revenue-based contribution mechanism is fraught with confusion, waste,<sup>15</sup> and discriminatory treatment of functionally equivalent services. These costs are passed down to consumers in ever-increasing contribution rates, which are currently too high. Subscribers are predicted to be assessed for USF contribution at a rate of over 14% for the first quarter of 2010. A 14% tax on the most basic of telecommunications services is humbling, and exceedingly out of line with Congress' original intention when universal service was first established in 1996. In its review of the High-Cost USF program last year, the Government Accountability Office ("GAO") found that the USF program has not met the Congressional expectation when it was first established in 1996.<sup>16</sup> Rather than shrinking over time, high cost fund payments have risen from \$1.118 billion in 1996 to \$4.428 billion in 2008.<sup>17</sup> Moreover, the Commission has recognized these problems for almost a decade, asking for comments in 2001 on whether to revise the contribution mechanism to a numbers-based model.<sup>18</sup> Yet, the fund continues to expand, waste grows, and carrier administrative costs continue to surge.

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including 500 mbps and add a Tier 4 to require a \$250 contribution per connection, per month for dedicated connections over 500 mbps.

<sup>15</sup> See *FCC Office of Inspector General, Semiannual Report to Congress, October 1, 2008 – March 31, 2009 (July 30, 2009)*, at 18-19 (finding that erroneous payments from the high cost fund total approximately 23.3%, and are rising).

<sup>16</sup> See Government Accountability Office, *FCC Needs To Improve Performance Management And Strengthen Oversight of the High-Cost Program*, GAO-08-633, at 2 (June 2008).

<sup>17</sup> See Federal State Joint Board on Universal Service, *2008 Universal Service Monitoring Report*, at Table 3.1, available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-287688A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A1.pdf).

<sup>18</sup> *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review –Streamlined Carrier Reporting Requirements Associated with Administration of Telecommunications Relay Service*,

Because carriers must detangle a myriad of often-conflicting contribution rules and procedures, self-reporting is in many cases a subjective enterprise that results in significant carrier administrative costs, regulatory enforcement costs, and ultimately diminished collections. Further, under the current system, RBOCs may reclassify their broadband services as “information services” and thus escape USF contributions, while other carriers are unable to do so.<sup>19</sup> This inequity results in an implicit subsidy of RBOC customer connections that is shouldered by the customers of other carriers paying into the fund for functionally equivalent services. The adoption of a contribution system that is objective, such as a numbers or numbers and connections hybrid system, will address this dissimilar and discriminatory regulatory treatment, and result in carrier and regulator efficiencies, which will reduce costs for all parties.

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*North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, CC Docket Nos. 96-45, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001).*

<sup>19</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (rel. Sep. 23, 2005); Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002).*

#### IV. CONCLUSION

Covad supports the adoption of a numbers-based contribution methodology for all services. As a second-best alternative, Covad supports AT&T's November 21, 2008 proposal to the extent it mitigates discriminatory results against small business end users.

Respectfully submitted,

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