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July 9, 2012

Via ECFS
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Universal Service Contribution Methodology, A National Broadband Plan For
Our Future, FNPRM, WC Docket No. 06-122, GN Docket No. 09-51
Comments of BT -- Redacted for Public Inspection**

Dear Ms. Dortch:

BT Americas Inc. and other BT operating entities in the US (collectively "BT") hereby submit the redacted version of their Comments in the proceedings captioned above. A confidential version of these Comments is being submitted under separate cover with the Secretary's office by hand, along with a request for confidential treatment.

Please contact the undersigned counsel if you have any questions regarding this filing.

Respectfully submitted,

A handwritten signature in black ink that reads "A. Chacko".

A. Sheba Chacko
Senior Counsel and Head, N. American
Regulation and Global Telecoms Policy

Enclosure



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July 9, 2012

Via Hand Delivery
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Universal Service Contribution Methodology, A National Broadband Plan For
Our Future, FNPRM, WC Docket No. 06-122, GN Docket No. 09-51;
*Request for Confidential Treatment***

Dear Ms. Dortch:

BT Americas Inc. and other BT operating entities in the US (collectively "BT"), hereby request confidential treatment, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 CFR §§ 0.457, 0.459, for the information redacted from the public version of the attached confidential submission in the above-captioned dockets. The redacted information contains information about BT's billing operations, customer contract language and operational realities BT encounters when bidding and contracting for enterprise customer contracts. This information is highly confidential commercial information that is not ordinarily disclosed to unrelated third parties because disclosure of the information could have adverse competitive consequences for BT. Accordingly, this information qualifies for confidential treatment under Exemption 4 of the Freedom of Information Act ("FOIA") as "trade secrets and commercial or financial information obtained from any person and privileged or confidential-categories of materials not routinely available for public inspection." 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

In accordance with the requirements of Section 0.459(b) and in support of this request for confidential treatment, BT provides the following information:

1. *Identification of specific information for which confidential treatment is sought (Section 0.459(b)(1))*

BT seeks confidential treatment for the information redacted from the public version of the attached confidential submission.

Public Version

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission (Section 0.459(b)(2))*

BT is submitting the information for which confidential treatment is requested in response to the FNPRM on universal service contribution issues released by the Commission on April 30, 2012 in the above-referenced dockets.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged (Section 0.459(b)(3))*

The redacted information consists of information about BT billing, customer contracts and enterprise bidding and contracting that is treated as confidential by BT.

4. *Explanation of the degree to which the information concerns a service that is subject to competition (Section 0.459(b)(4))*

The redacted information concerns the commercial operations of BT in the global enterprise information and communications services market. This is a competitive market as evidenced by the number of competitors listed in analysts' reports that are competing in the global network services market.¹

5. *Explanation of how disclosure of the information could result in substantial competitive harm (Section 0.459(b)(5))*

Release of the above-mentioned information to the competitors of BT would give competitors information about bidding, contracting and billing that could enhance their ability to win customers away from BT.

6. *Identification of any measures taken to prevent unauthorized disclosure (Section 0.459(b)(6))*

The information about BT's bidding, contracting and billing strategies disclosed in BT's Comment is not available publicly in the normal course of business. Any such information made available to enterprises in the course of bidding or contracting for services is required to be kept confidential by enterprises and their employees, consultants, contractors and agents.

7. *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties (Section 0.459(b)(7))*

Information regarding BT's bidding, contracting and billing strategies is not available to the public and has not previously been disclosed.

8. *Justification of period during which the submitting party asserts that the material should not be available for public disclosure (Section 0.459(b)(8))*

BT respectfully requests that the Commission withhold the information from public inspection indefinitely in light of its highly sensitive nature.

As demonstrated above, the information for which the BT seeks confidential treatment is entitled to exemption from disclosure under both FOIA and the Commission's rules. If any person or

¹ Gartner, for example, lists the twelve top global network service providers. See Gartner, *Magic Quadrant for Global Network Service Providers* (April 24, 2012). If the wider global information communications technology services market is considered (which includes outsourcing, IT, network integration and business consulting services in addition to global managed network services), the number of participants exceeds thirty. See Ovum, *ICT Services Market Share: 1Q12* (June 11, 2012).

entity requests disclosure of the enclosed response, please notify the undersigned counsel immediately in order to permit the Applicants to oppose such request or take such other action to safeguard their interests as they deem necessary. Please direct any questions as to this matter, including the request for confidential treatment, to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Sheba Chacko". The signature is written in a cursive style with a horizontal line underlining the name.

A. Sheba Chacko
Senior Counsel and Head, N. American
Regulation and Global Telecoms Policy

Enclosure

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of)	
)	
Universal Service Contribution)	WC Docket No. 06-122
Methodology)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	
_____)	

COMMENTS OF BT AMERICAS INC. AND ITS US AFFILIATES

BT Americas Inc., a wholly owned indirect subsidiary of BT Group plc (“BT plc”), submits these Comments on behalf of itself and other BT operating entities in the US (collectively referred to herein as “BT”) pursuant to the Commission’s FNPRM published in the Federal Register on June 7, 2012.¹ BT serves the global information and communications technology needs of large enterprise customers worldwide. Most of BT’s global enterprise customers have a large footprint in the United States, and both BT and its customers are impacted by escalating USF rates, complexity of the mechanism, an uneven playing field, and a lack of clarity with respect to USF contribution rules, decisions, forms and/or instructions. Hence, BT welcomes the Commission’s initiation of a rulemaking to reform the universal service contribution regime.

ARGUMENT

I. The Commission Should Adopt The MPLS Industry Group’s Proposal As An Interim Measure While It Works Towards Comprehensive Reform.

BT commends the Commission for taking on difficult and thorny issues relating to USF contribution reform. Contribution reform is clearly needed, and the Commission poses many

¹ *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 77 Fed. Reg. 33896 (June 7, 2012) (“USF FNPRM”).

important questions in this FNPRM. However, the Commission's inquiries are wide-ranging and generalized; so wide-ranging that all BT can state at this point with respect to the Commission's discussion about a revenues, connections or numbers approach is that BT would be open to considering well-developed proposals that would ultimately lead to the adoption of simple, clear, easily administrable rules that widen the base, level the playing field, and create certainty and a sustainable Universal Service Fund. At present, unfortunately, there isn't a fully developed proposal for comprehensive contribution reform that meets these criteria.

Given that it would take time to build consensus around any proposal that seeks to comprehensively reform the universal service contribution mechanism, BT believes the Commission should pursue intermediate steps in the next few months, while continuing to work towards consensus for larger, more-comprehensive reform over the next twelve or more months. In the short term, the Commission should adopt rules implementing the MPLS Industry Group's proposal (MIG Proposal).²

Under the MIG Proposal, regardless of whether MPLS technology is used to provide information or telecommunications, the Commission would assess USF contributions on the access portion of MPLS-based services. The Commission would impute access revenues for different tiers of access bandwidths. Providers would calculate their contribution obligations by multiplying the number of connections in each bandwidth tier by the imputed access revenue amount for that bandwidth tier, adding these amounts up to establish the USF contribution base, and then multiplying this base by the current USF rate.³

Adoption of the MIG Proposal has many benefits. It levels the playing field amongst providers because all providers would pay the same universal service fees for every access

² Letter from MPLS Industry Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012) (MIG Proposal).

³ *Id.*

connection that sits within a bandwidth tier. The proposed mechanism is clear, simple and easier to administer than the Commission's current rules. Providers would no longer have to delve into whether a MPLS service is a telecommunications or information service. If there are one or more access connections provided as part of an MPLS-based service, then a contribution is owed on the access connections. The simplicity, clarity and administrability of the MIG Proposal becomes more evident in its application to complex, large enterprise services. This is because enterprise products and services have many billable components per product/service, and often many products/services are delivered under an enterprise contract. This situation is exacerbated when a provider wins a complex large enterprise contract because it often inherits the pre-existing third party communications contracts pursuant to which the enterprise customer received services. It is time-consuming to evaluate every billable component of in-house and third party services to determine whether a billed item is telecommunications or information. It is much simpler to look for the number and size of access connections for MPLS-based services and pay the USF contribution on this component.

For example, BT sells managed remote access services to enterprises which allow users to access the corporate VPNs securely from outside the office. One or more of BT's managed remote access services contain MPLS technology. **[confidential begin]**

[confidential end].

Under the MIG Proposal BT need only determine the size of the access connection delivered as part of this service and pay the contribution due on that particular element whereas under current Commission rules, BT has to evaluate every single billable component to determine if it is telecommunications or information. The MIG Proposal is much simpler, cleaner, and easier to administer.

Adoption of the MIG Proposal would also have the benefit of resolving uncertainties surrounding contributions on MPLS-based services that have been pending for many years. It would allow providers, enterprise customers and the Commission to address the issue and move forward. Moreover, adoption of the MIG would allow the Commission and industry to experiment with a mechanism that has attributes of both connections and revenues approaches thereby allowing stakeholders to evaluate the pros and cons of each before making comprehensive changes to systems and processes surrounding the USF contribution mechanism.⁴ Adoption of the MIG may also bring additional revenue into the Fund and stabilize it.

In time a comprehensive contribution proposal could be developed that expands the principles embodied in the MIG Proposal, that flesh out a connections-based mechanism or revise the existing revenues mechanism. Adopting the MIG Proposal could fit within a larger comprehensive reform framework based on revenues or connections. So the adoption of interim rules implementing the MIG Proposal need not be a wasted effort or detour.

⁴ The MIG Proposal looks like a connections mechanism in that providers would determine the number of MPLS access connections in each bandwidth tier and make the same payment per access connection within a tier regardless of whether the service is telecommunications or information. The MIG Proposal looks like a revenues mechanism because the USF rate is applied to access revenues.

II. The Commission Should Eliminate The Exemption For Systems Integrators, Seek Comment Via Rulemaking When It Changes Its Forms And Instructions And Adopt Rules To Address The Volatility Of The Contribution Factor.

The Commission should eliminate the exemption for systems integrators. There are systems integrators whose revenues are in the billions⁵ thereby allowing them to provide hundreds of millions of dollars worth of telecommunications services – equal to or many times more than the average CLEC’s revenues -- without ever hitting the threshold requiring systems integrators to file a Form 499, without including such fees on customers’ invoices, or suffering gaps in USF billed versus paid to the Fund. Take the following example of communications provider A which contributes to the Universal Service Fund and a systems integrator B which does not contribute to the Fund. Assume both purchase \$100 million of telecommunications inputs from suppliers and both bid for contracts to manage networks and other services for large enterprise customers. Assume both sell identical managed network services of \$120 million to large enterprises which services are one hundred percent telecommunications. In the case of communications provider A, it must pay USF fees to the Fund at 15.7% and hence pays \$18.84 million in universal service fees to the Fund. Systems integrator B meets the thresholds for the systems integrator exemption because its revenues are in excess of \$5 billion. It therefore pays universal service fees only to suppliers and hence only pays \$15.7 million (i.e. 0.157X\$100 million) in universal service fees. Systems integrator B therefore has a competitive advantage of \$3.14 million in bidding for such managed network contracts simply because of the existence of

⁵ IBM Global Services, earned approximately \$19.3 billion in 2011. *IBM Reports 2011 Fourth-Quarter and Full-Year Results*, available at <http://www-03.ibm.com/press/us/en/pressrelease/36553.wss>. CSC earned approximately \$15.9 billion in revenues in the year ending March 31, 2012. *CSC Annual Report* available at http://assets1.csc.com/investor_relations/downloads/CSCAR12_w10K_.pdf.

the USF exemption for systems integrators. There is no legitimate reason why systems integrators should be given any advantage. This is inequitable under Section 254(d)⁶, and the exemption should be eliminated.

The Commission should also seek comment via rulemaking when it changes instructions in forms regardless of whether such changes have the force of law and take steps to address volatility in the contribution factor, including by considering an annual contribution factor.

III. The Commission Should Not Adopt Rules: (i) Distinguishing Between Mass Market And Enterprise Contributions; (ii) Requiring Contributions Only From Wholesalers, Facilities-Based Providers Or On A Value-Added Basis; (iii) Implementing The Bundling Rule Proposed In The FNPRM; (iv) Requiring Purchasers To Certify On A Rolling Basis The Amount Of Inventory Used To Create Assessable Services; Or (v) Limiting Providers' Flexibility In Recovering USF From Customers.

The Commission seeks comment in the FNPRM about a number of proposals it believes could mitigate contribution burdens on residential customers, increase transparency and level the playing field. BT is specifically opposed to the following proposals discussed in the FNPRM.

(i) The Commission Should Not Distinguish Between Mass Market And Residential Contributions.

The Commission seeks comment on whether there should be different contribution rules for mass market and enterprise customers.⁷ BT believes the Commission should not make this distinction because it would only introduce complexity, opportunities for arbitrage and greater administrative burdens.

⁶ 47 USC §254(d).

⁷ The Commission asks whether to exempt mass market broadband Internet connections from contribution obligations but not enterprise Internet access connections; whether to distinguish between residential/mass market and business/enterprise in the context of a connections approach to universal service contribution reform; whether under a numbers approach, it should count numbers assigned under family/mass market plans differently from enterprise plans; how to distinguish between mass market and enterprise customers in the context of a hybrid plan which would assess mass market usage of telecommunications on a numbers basis while assessing enterprise usage on connections basis. *USF FNPRM*, 77 Fed. Reg. 33917-33925.

(ii) The Commission Should not Require USF Contributions Only From Wholesalers, Facilities-Based Providers or on a Value-Added Basis.

The Commission asks if it should require USF contributions only from facilities-based providers or wholesalers. BT believes this could be problematic because such a rule could change the contractual liability for payment of universal service/regulatory fees in existing end-user contracts. Enterprise customer contracts may contain language **[confidential begin]**

[confidential end]. If the Commission adopts rules requiring only facilities-based providers or wholesalers to contribute to universal service, a reseller would not pay fees directly to governmental or quasi-governmental entities under the new rules. As a result, customers may have contract law-based arguments to refuse to pay universal service/regulatory fees they previously paid. A contract that had been entered into on the basis that it would generate margins of 15% may have all the margins wiped out if the reseller or onward seller could no longer contractually pass on USF of 15.7% to its customer. Therefore, the Commission should be very careful about writing rules that unintentionally change the allocation of risks and liabilities for regulatory fees in existing contracts. For similar reasons the Commission should approach adoption of rules implementing a value-added services model with care. A mechanism whereby a provider would contribute based on its projected assessable revenue less a credit for telecommunications purchased from other contributors or subtract from its final contribution liability any pass-through charges paid to others might trigger some of the same contract disputes. As discussed above, if providers/resellers seek to recover the portions of USF **[confidential begin]**

[confidential end], enterprise customers may argue that they no longer have the contractual liability for USF and regulatory fees.

(iii) The Commission Should Not Require Providers To Pay USF On Entire Bundles Of Services Just Because They Do Not Provide As Standalone Offerings All the Telecommunications Inputs Into An End Customer Service.

The Commission should not adopt a bundling rule whereby providers must pay USF on the entire bundle or allocate revenues associated with the bundle consistent with the price charged for standalone offerings. The Commission proposes this rule as a way of preventing some providers from gaining advantage over others by under-representing the telecommunications component of their bundles. The solution as proposed by the Commission dis-incentivizes marketing of services and products that respond to customers' needs and penalizes providers that do not sell some or all of the input components on a standalone basis. In any case, the same ends could be achieved under a MIG-style approach because all providers would be on an equal footing in paying on the imputed local access portions of their service revenues. For these reasons, the Commission should not pursue the bundling rule it proposes in the FNPRM.

(iv) The Commission Should Not Require Purchasers To Monitor Their Inventory On An Ongoing Basis So That They Can Certify Changes In Status Within 30 To 60 Days.

The Commission should not adopt changes to the resale exemption certificate process that would require providers to monitor on a monthly basis the providers' inventories to determine which inputs are being used to create assessable versus non-assessable services, and to report such to the wholesale carrier within 30 or 60 days. This is an overly complex and administratively burdensome proposal which would require additional staffing so inventory of thousands of circuits could be monitored on an ongoing basis. Again, adoption of a simpler, cleaner, MIG-style proposal would obviate any argument for tracking circuit inputs because

under the MIG Proposal providers would pay on their access services irrespective of whether the end-user services are assessable.

(v) The Commission Should Not Limit Providers' Flexibility In Recovering USF From Customers.

The Commission's Truth-in-Billing rules already exist to protect customers.⁸ Additional rules that would require that the advertised price include the universal service contribution, while allowing the continued publication of the universal service contribution as a line item in end-users' bills would be unworkable especially for large enterprise services. These services can include **[confidential begin]**

[confidential end]. This would be an unnecessary protection given that large enterprise customers have expert telecommunications consultants who assist enterprises very ably in evaluating and comparing the pricing and responses of providers who are vying to win their business. Likewise rules that would require providers to disclose at the time of initial service subscription the amount of the quoted rate or other assessable units that would be subject to assessment would be burdensome and complex given that **[confidential begin]**

[confidential end]. Similarly any rule that restricts the characterization of any line item on end-

⁸ See 47 CFR 64.2401.

user customer bills as a federal universal service charge could change the allocation of risk in a contract for USF liability and trigger contract disputes. Therefore the Commission should not intervene by limiting the flexibility of providers in recovering fees.

CONCLUSION

Reform of the universal service contribution mechanism is urgent. For the reasons stated above, the Commission should adopt the MIG proposal as an interim reform measure and refrain from adopting the proposals discussed in Section III of this Comment.

Respectfully submitted,

BT AMERICAS INC.

By: 

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Dated: July 9, 2012