

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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

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**REPLY COMMENTS OF AT&T**

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## **I. Introduction.**

In late 2008, incumbent carriers of all sizes, competitive providers, VoIP providers, cable providers, wireless providers, and state commissions supported Commission adoption of some type of numbers-based universal service contribution methodology in place of the current revenues-based mechanism.<sup>1</sup> For reasons unrelated to contribution methodology, the Commission failed to capitalize on that consensus and universal service contributions continue to be assessed based on an anachronistic and unsustainable revenue-based methodology. As a result, the contribution factor continues to spiral upwards – already it has increased from about seven percent a decade ago to fifteen percent or more – and, without meaningful contribution reform, further increases are all but inevitable.

In the meantime, the July 9 comments reveal that the consensus that existed in 2008 has now fractured, with some former numbers proponents now supporting revenues, others connections, and still others, including AT&T, actively evaluating any and all non-revenues options. Just as before, AT&T is committed to working with other stakeholders to develop a sustainable contribution methodology through which providers of interstate telecommunications will contribute to the Commission’s universal service support programs on an “equitable and nondiscriminatory basis.” 47 U.S.C. § 254(d). It has been years since the Commission’s universal service contribution methodology functioned consistent with this statutory requirement.

With no consensus in the 2012 record for how to achieve long-term reform, AT&T recommends that the Commission focus immediately on administrative improvements it could make by the end of this year that would ameliorate some of the problems with the existing

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<sup>1</sup> See AT&T Reply Comments, WC Docket No. 05-337, *et al.*, at n.90 (filed Dec. 22, 2008) (citing over 26 commenters that supported some form of a numbers-based contribution assessment).

system, pending broader reform. These common sense improvements, which would be useful regardless of which methodology the Commission subsequently adopts, include (1) seeking notice and comment before changing its 499 form and instructions and adopting such changes on a prospective basis only, prior to the beginning of the calendar year in which they take effect; (2) adopting an annual contribution factor, rather than adjusting the factor each quarter; (3) adopting a symmetrical filing deadline for 499 form revisions; and (4) providing greater transparency of contribution obligations via audit summaries and private rulings. In contrast to the lack of agreement over which contribution methodology is best for consumers, the industry, and the Commission over the long term, a large and diverse group of parties agree on these administrative fixes.<sup>2</sup>

On the other hand, the Commission should defer action on sweeping changes to the contribution methodology until next year, after it issues its order adopting the administrative changes recommended by AT&T and many others. Interested parties like AT&T could use this time to develop a comprehensive plan for long-term contribution reform. If the parties are unsuccessful in obtaining a broad-based consensus like the one that existed in 2008, these entities could redirect their efforts toward problem-solving several revenues-based issues,

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<sup>2</sup> Another area where there was near unanimity among the commenters concerned the Commission's proposals purportedly designed to provide clarity about universal service fund (USF) fees to consumers. See *Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC No. 12-46, ¶¶ 390-92 (rel. April 30, 2012) (*FNPRM*). These proposals, which AT&T discussed in its comments and does not repeat here, were universally panned and should not be adopted. See, e.g., AARP Comments at 52; American Cable Association Comments at 11-12; Clearwire Comments at 12; Comptel Comments at 38-39; CTIA Comments at 27-30; EarthLink, *et al.* Comments at 21; Level 3 Comments at 25-26; MegaPath Comments at 3-4; NCTA Comments at 6; Verizon Comments at 49-52. Similarly, there is no support in the record for the Commission's proposals to require contributors to establish USF trust accounts or to codify USAC's "pay and dispute" rule absent significant modification. See, e.g., American Cable Association Comments at 13; Clearwire Comments at 12-13; Comptel Comments at 36-37; CTIA Comments at 30; Level 3 Comments at 24-25; NCTA Comments at 7; XO Comments at 51-52.

including addressing the deficiencies in the proposals contained in the *FNPRM*. The Commission's suggestions for improving the revenues system drew as much fire by commenters as its requests for comments on non-revenues methodologies, and the current record gives the Commission no clear guidance on how to proceed. Further consideration is warranted on a number of these topics, which we discuss below, if the Commission concludes that it should continue with a revenues-based system.

For years, AT&T has expressed its skepticism about the ability of a contribution methodology based on interstate telecommunications revenues to keep pace with technological advancements, game-changing business models, and a growing universal service fund that could hit \$9.5 billion in 2012 based on the Universal Service Administrative Company's (USAC's) quarterly projections. Although several dozen commenters urge the Commission to continue with revenues, nothing we have read has persuaded us that an all-revenues regime can be salvaged.

Numerous commenters assert that merely expanding the contribution base – particularly when the expansion involves services that the commenter does not offer – and making adjustments to existing safe harbors or establishing new ones solves the woes that have plagued USF contributions for years. Pulling in revenues from several currently non-assessable services merely extends the shortcomings of a revenues-based methodology to those newly assessed services and does nothing to address the root causes of this regime's instability. The Commission's proposal to assess text messaging revenues offers just one example of the many different ways in which the interstate telecommunications revenues-based methodology is untenable in a world where convergence is king:

(i) if the Commission assesses only text messaging revenues and neglects to assess functionally equivalent competing services,<sup>3</sup> its assessment of text messaging providers would be inequitable and discriminatory, in violation of 47 U.S.C. § 254(d) and its competitive neutrality principle;<sup>4</sup>

(ii) in practical terms, by assessing text messaging services alone, the Commission's action would tamper with market forces by accelerating the following industry trends: consumers increasingly migrating to free competing services and traditional text messaging providers responding by restructuring their service offerings in order to remain competitive with these alternative service offerings;<sup>5</sup>

(iii) in a few short years, the Commission's efforts to expand the contribution base by including text messaging revenues would be wasted because those revenues will have diminished significantly, if not dried up altogether;

(iv) requiring all services that are functionally equivalent to text messaging to contribute, as the statute would require, likely will not significantly increase contributions to the fund because many, if not most, of these services do not generate end user revenues (e.g., these services may be advertiser-supported and offered to end users for free);

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<sup>3</sup> See, e.g., CTIA Comments at 25 (listing almost two dozen functionally equivalent options available to consumers today).

<sup>4</sup> Commission action in this regard also would violate its proposed "fairness" principle (i.e., the Commission should ensure "fairness and competitive neutrality in the contribution system"). *FNPRM* at ¶ 24.

<sup>5</sup> See, e.g., <http://solutions.vzwshop.com/shareeverything/?intcmp=VZW-VNT-SE-PLANRECMND>; <http://www.att.com/shop/wireless/data-plans.html#fbid=MsAkiCXpOH7?tab2source=EC0000PP100000JD>.

(v) assessing functionally equivalent non-end user-supported services would require the Commission to establish a new revenue assessment methodology that neither penalizes nor rewards these non-end user-supported services – a methodology that has, to date, alluded the Commission and industry;

(vi) even if the Commission could design a non-end user revenue assessment methodology that ensures traditional text messaging providers and their competitors contribute on an “equitable and nondiscriminatory basis,” contributors offering non-end user-supported services might be unable to recover their contribution costs, raising other fairness concerns;

(vii) assuming the Commission adequately addressed all of the foregoing issues, it still would confront several thorny allocation issues: As noted above, some wireless providers have recently begun or will soon begin offering shared data plans that include unlimited texting. If the Commission is going to require functionally equivalent services to contribute based on non-end user-supported revenues, it likely would direct providers of bundled unlimited text messaging to contribute on the basis of some other type of revenues (e.g., data plans). In that case, the Commission would have to determine how much of the data fee should be included in a provider’s contribution base. How should a provider perform this allocation if it and others no longer offer texting on a stand-alone basis? If the Commission were to require text messaging providers to contribute based on all of their data revenues or all of the revenues associated with a bundle that has a text messaging component, it could again tilt the balance toward non-traditional text messaging competitors. In that case, should the Commission increase the assessment on these competitive providers too, which likely would disadvantage this entire class of service providers vis-à-vis other communications alternatives (e.g., email, Skype)?

Given these difficult issues, it should come as no surprise that AT&T and many others believe a revenues-only contributions methodology is not sustainable, and therefore have encouraged the Commission to shift to a non-revenues based methodology.

## **II. Commenters Agree On The Changes That The Commission Should Make Immediately To Its Administration Of USF Contributions**

### **A. The Commission Should Request Comment Prior To Issuing Changes To Its Telecommunications Reporting Worksheet And Instructions, And Any Such Changes Should Be Prospective Only.**

One of the simplest, yet most effective, improvements the Commission could make with respect to USF contributions is to adopt a policy of providing notice and an opportunity for comment on proposed changes to its 499 form and instructions.<sup>6</sup> As AT&T and T-Mobile note, the Commission adheres to this practice when proposing revisions to its E-rate eligible services list (ESL).<sup>7</sup> There is no reason why the Commission should not adopt the same policy here, particularly given that changes to the 499 form or instructions can have far more profound consequences than changes to the ESL.<sup>8</sup> Seeking industry input also would reduce contributor confusion about the scope of reporting requirements because contributors will have the benefit of being able to review comments filed by others explaining how they would interpret proposed changes, as well as a Bureau order or public notice explaining whether the Bureau agrees or

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<sup>6</sup> While the Commission stated in its *FNPRM* that the Bureau makes only non-substantive changes to the 499 form and instructions, AT&T and others pointed out that this is an inaccurate statement. *See, e.g.*, AT&T Comments at 41-42; Comcast Comments at 30. To the extent that the Bureau is *only* changing the year (e.g., replacing 2012 with 2013), updating Commission or USAC contact information or updating the annual *de minimis* estimation factor, AT&T agrees that notice and comment are unnecessary. However, for any other proposed changes, the Commission should require the Bureau to notify interested parties of the proposed changes and request comment on the same.

<sup>7</sup> *See, e.g.*, AT&T Comments at 42; T-Mobile Comments at 9.

<sup>8</sup> *See, e.g.*, T-Mobile Comments at 10 (noting that 499 form and instruction changes affect recordkeeping and pass-through requirements).

disagrees with commenters' positions and why.<sup>9</sup> Additionally, as several commenters argue, any changes should be adopted in advance of the calendar year in which they take effect so that contributors have time to prepare to report their revenues consistent with any changes.<sup>10</sup> Equally important, the Bureau's practice of issuing 499 instructions and/or form revisions retroactively must end.<sup>11</sup>

**B. An Annual USF Contribution Factor Benefits Both Consumers and Contributors.**

There is little disagreement that quarterly changes to the USF contribution factor are confusing to consumers, costly to contributors, and do not produce any benefits to either group.<sup>12</sup> As we explained in our comments, AT&T's wireline affiliates alone spend over 500 hours per year managing the quarterly contribution factor changes.<sup>13</sup> We further explained that customer confusion over USF line-item charges likely results from the volatility of the quarterly

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<sup>9</sup> See Level 3 Comments at 23 (stating that, consistent with basic principles of administrative law, the Bureau should be required to explain the reason for any proposed change).

<sup>10</sup> AT&T Comments at 42-43 (but noting that contributors obviously will require more than one month in the event the Commission adopts significant reforms to its 499 form and instructions); T-Mobile Comments at 10 (explaining that advance notice is necessary so that contributors understand their reporting obligations throughout the reporting period); CenturyLink Comments at 7-8; Level 3 Comments at 22-23; Universal Service for America Coalition Comments at 5; USTelecom Comments at 9-10.

<sup>11</sup> See, e.g., Level 3 Comments at 23.

<sup>12</sup> See, e.g., DC Commission Comments at 6 ("the current quarterly adjustment is administratively burdensome for contributors and confusing for end users"); T-Mobile Comments at 11 (an annual contribution factor "would reduce consumer frustration and administrative burdens"); California Commission Comments at 14-15 (a six-month or annual contribution factor "would increase the predictability of the contribution factor and help reduce the cost of administering the USF"); ACS Comments at 23-24; CenturyLink Comments at 8.

<sup>13</sup> AT&T Comments at 43.

contribution factor, not from a lack of information regarding the charges are included in the line-item calculation.<sup>14</sup>

Nonetheless, a few commenters encourage the Commission to maintain the status quo and continue to modify the contribution factor on a quarterly basis.<sup>15</sup> These parties voice concern that the dramatic swings in the quarterly contribution factor that have become commonplace over the past several years will worsen if the Commission adopts an annual contribution factor. While these parties' concern over consumer sticker shock is understandable, we do not believe that annual fluctuations would be larger or any more disruptive than the current quarterly variances. Additionally, we recommend that USAC and contributors continue to submit quarterly filings and, armed with all of this data, the Commission could make a mid-course correction in the size of the factor if necessary.<sup>16</sup> Such a mid-course correction, which should be the exception and not the norm, would minimize any sticker shock between annual contribution factors. Finally, the Commission's reform efforts in its high-cost and Lifeline programs, both establishing budgetary targets, should result in a more accurate annual demand forecast.<sup>17</sup>

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<sup>14</sup> *Id.* at 50.

<sup>15</sup> Comcast Comments at 31; Level 3 Comments at 23.

<sup>16</sup> *See* AT&T Comments at 43-44 (also suggesting that the Commission could use surplus contributions to "buy down" the factor in the following year); Verizon Comments at 12 (suggesting that the Commission allow for mid-year corrections and/or create a reserve fund); ACS Comments at 24 (set the factor at a rate designed to create a small reserve during the initial year). We also agree with InterCall that USAC should continue to use contributors' quarterly projected collected revenues filings to calculate contributors' monthly invoices. InterCall Comments at 12.

<sup>17</sup> *See* ACS Comments at 23; AT&T Comments at 43.

**C. There Is No Reason For The Commission To Wait to Adopt a Single Filing Deadline Applicable to All 499 Form Revisions.**

At least six commenters recognized that one of the most important administrative changes that the Commission could and should make to its USF contribution obligations is to establish a single filing deadline for 499 form revisions – one that applies regardless of whether the revision would result in more or less contributions.<sup>18</sup> In a 2004 order, the Bureau adopted asymmetrical deadlines for submitting revisions to 499-A filings: contributors had one year to submit a revised 499-A form if that revision would result in a refund, but they could file revisions that increased their prior year contributions at any time and without regard to the one-year period applicable to changes resulting in refunds. For over seven years, the Commission has allowed the Bureau’s unlawful asymmetrical deadlines for revisions to remain in effect, ignoring pending applications for review. There is no need to repeat here the reasons why the Commission should reverse the 2004 Bureau decision, particularly since there is no dissent in the comments on this score. The only issue left for the Commission to decide is what that single revision deadline should be.<sup>19</sup> Suffice it to say, it is long past time for the Commission to address this unfair and unlawful ruling. To that end AT&T suggests that the Commission fix the problem by tracking the IRS’s statute of limitations of three years for all revisions.<sup>20</sup>

**D. USF Contributor Audits And Appeals Processes Should Be Improved.**

XO suggests two common sense audit-related reforms that the Commission should adopt.

First, XO recommends that the Commission “decide as many of [the long-pending contributor

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<sup>18</sup> AT&T Comments at 46-49; CTIA Comments at 20-22; MetroPCS Comments at 22; USTelecom Comments at 10-11; Verizon Comments at 12-15; XO Comments at 12-14.

<sup>19</sup> See Verizon Comments at 13 (recommending a symmetrical 3-year deadline); XO Comments at 14 (recommending a symmetrical 2-year deadline).

<sup>20</sup> 26 U.S.C. § 6501(a).

audit] appeals as it can, as quickly as it can.”<sup>21</sup> In comments discussing the Commission’s “pay and dispute” proposal, AT&T and several others pointed out that the Bureau and Commission routinely ignore the rules requiring them to act on USAC appeals within a certain amount of time.<sup>22</sup> We agree with XO that the pending appeals (along with USAC’s requests for Commission guidance) involve issues with industry-wide significance and that Commission decisions on these matters “will promote uniformity in the application of USF contribution obligations now and during any potential transition period.”<sup>23</sup> Prompt action is particularly important because how the Bureau or Commission decides these pending appeals likely would affect the work of an industry group trying to develop a long-term contribution reform plan.

Second, XO recommends that the Commission require USAC to release summaries of final audit reports.<sup>24</sup> While redacting the name of the auditee and any confidential information, such summaries “should identify the issue(s) raised, USAC’s analysis of the issue, including its application of the FCC rules to the issue, and should state in general terms the finding made by USAC.”<sup>25</sup> Today, the only time that the industry learns about how USAC is applying the Commission’s contribution rules is when a contributor files an appeal of a USAC audit with the Commission. It would be extraordinarily helpful not just to the industry but to the Commission

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<sup>21</sup> XO Comments at 6.

<sup>22</sup> AT&T Comments at 44-46 & n.48 (noting that three AT&T affiliates have contributor appeals pending since 2006 and earlier); CTIA Comments at 20; Comptel Comments at 36-37.

<sup>23</sup> XO Comments at 6.

<sup>24</sup> *Id.* at 48.

<sup>25</sup> *Id.* To ensure that all appropriate redactions have been made, the Commission should direct USAC to permit the auditee to review and edit the draft audit summary before the summary is made public. In the event of a disagreement between the auditee and USAC about whether certain information is confidential, Bureau staff could intervene, with the Bureau erring on the side of redacting to protect the identity of the auditee.

and USAC if such audit summaries were made routinely available. Access to such non-confidential information would enable the industry to identify trends in contributor controversies and, if non-audited contributors disagree with USAC's analysis, they could bring their concerns to the Commission in order to reduce the number of incorrect audit findings.

**E. The Commission Should Adopt A Private Letter Ruling And/Or Amnesty Process On A Trial Basis.**

Several commenters suggested other administrative changes that would make contribution reporting more transparent, thereby promoting “greater fairness among contributors.”<sup>26</sup> Level 3, MetroPCS, and T-Mobile suggest that the Commission adopt a process like that of the IRS for providing contributors a private ruling on contribution issues.<sup>27</sup> Under Level 3's proposal, a party could submit a question for Commission consideration along with a proposed resolution. The Commission would seek comment on the request and the Bureau would issue a ruling within 90 days. If the Bureau fails to act within that period of time, the request would be deemed granted.<sup>28</sup> If the Bureau issues a decision granting the request, the requesting party could rely on that decision without the possibility of retroactive liability if the Commission subsequently modifies the decision (via a rulemaking or otherwise).<sup>29</sup>

In its comments, USTelecom suggests that the Commission adopt an amnesty process for resolving uncertainty about the Commission's 499 instructions. Under its proposal, a contributor could meet with staff to explain how it has interpreted the Commission's 499 instructions and ask the Commission to confirm the contributor's understanding or, if staff disagrees with the

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<sup>26</sup> Level 3 Comments at 13.

<sup>27</sup> *Id.* at 11-13; MetroPCS Comments at 6-7, 21-22; T-Mobile Comments at 13.

<sup>28</sup> Level 3 Comments at 12.

<sup>29</sup> *Id.*

contributor's interpretation, to propose modifications to the instructions to make clearer the Commission's intent.<sup>30</sup> If the Commission disagrees with the contributor's interpretation, there would be no adverse consequence to the provider so long as the provider was not acting in bad faith (i.e., it had some reasonable basis to support its interpretation).<sup>31</sup>

Both proposals (establishing private ruling and amnesty processes) have merit, and the Commission should consider beginning trials of both before the end of the year. It would be particularly helpful to adopt USTelecom's amnesty proposal soon so that when the Bureau requests comment on the 499 instructions, its proposed modifications could incorporate industry input obtained via the amnesty process. We believe that trialing both proposals, say, for six months or a year makes sense. If it appears to the Commission that some contributors are abusing the amnesty process (i.e., presenting interpretations that have no basis in the instructions, the Commission's orders or rules in order to obtain protection from enforcement action or an audit finding), the Commission should reevaluate the operation of the amnesty program. Similarly, after a trial, the Commission may want to adjust the operation of the private ruling process. For example, perhaps the Commission will decide that the Bureau requires 120 days, not 90, to act on requests, or parties require additional guidance on the sorts of information that should be included with their requests.

### **III. The Commission Should Defer Action On Most Of Its Proposals To Reform The Revenues-Based System.**

Just as there is a pitched battle in the record over which interstate telecommunications providers should contribute to the USF, so too is there significant disagreement in the record

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<sup>30</sup> USTelecom Comments at 10.

<sup>31</sup> *Id.* (stating that the contributor should not be subject to an Enforcement Bureau referral or a USAC audit finding on the issue).

over the Commission’s proposed reforms to the revenues-based contribution regime.<sup>32</sup> In our comments, AT&T explained that the Commission should tackle these issues only if it declines to adopt a non-revenues-based contribution methodology.<sup>33</sup> The sharply divided record on the Commission’s revenue reform proposals only reinforces our view. In addition, many of the proposals would require significant time and money to implement, a factor that should weigh heavily against adopting them as “interim” improvements. Moving to non-revenues-based mechanism also would pose implementation challenges but the effort would be justified given the long-term benefit such an undertaking would provide. While AT&T thought that several of the Commission’s proposals, with modifications, held some promise,<sup>34</sup> a number of commenters have raised legitimate concerns that warrant further consideration in the event the Commission decides that a revenues-based methodology is sustainable in the long term.

**A. Establishing The Rate For The Assessable Component Of A Bundled Offering Or Services With An Interstate Telecommunications Component Require Further Consideration.**

The Commission proposes two new revenue allocation rules that are essentially minor variations of one another: unless a provider offers the interstate telecommunications component of a bundled service or an information service on a stand-alone basis, it must treat all revenues

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<sup>32</sup> See *FNPRM* at ¶¶ 101-78 (discussing apportioning revenues from bundled services, contributions for services with an interstate telecommunications component, allocating revenues between inter- and intrastate jurisdiction, and contribution obligations of wholesalers and their customers).

<sup>33</sup> AT&T Comments at 24 (though suggesting that the Commission adopt proposals that can be implemented quickly, like removing any ambiguity about the basis for a prepaid calling card provider’s contributions).

<sup>34</sup> See, e.g., *id.* at 25 (supporting limits on the flexibility that contributors have today to allocate assessable revenues), 32-35 (suggesting that the Commission consider requiring all providers of interstate telecommunications to contribute on a value-added basis).

associated with the service offering as assessable.<sup>35</sup> Many commenters opposed these proposed rules. We have grouped their concerns into several categories and discuss them below.

*Commenters assert that the Commission's proposed allocation rules are anti-competitive and would require providers to create stand-alone offerings just for USF contributions purposes.*

Many commenters opposed the Commission's proposed apportionment rules because they would require entities that do not offer the interstate telecommunications component of a service on a stand-alone basis to contribute based on all of their bundled or information service revenues.<sup>36</sup>

We agree with these commenters that the proposed rules in paragraphs 106 and 117 must be modified before the Commission could adopt them. As drafted, the proposed rules would disadvantage providers that do not make available the telecommunications input on a stand-alone basis.<sup>37</sup> In our comments, AT&T suggested that the Commission permit providers of bundled or information service offerings with an interstate telecommunications component to contribute based on either the price of their stand-alone offerings *or* objectively verifiable stand-alone prices of other providers.<sup>38</sup> Where a reseller purchases transmission from another provider and incorporates it in a bundled service offering that is feature rich with non-assessable components,

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<sup>35</sup> *FNPRM* at ¶¶ 106, 117.

<sup>36</sup> *See, e.g.*, Level 3 Comments at 14-15; Vonage Comments at 4.

<sup>37</sup> Level 3 Comments at 14-15 (explaining how the Commission's proposed rule disadvantages a reseller vis-à-vis its wholesale provider and how the proposal may force carriers to create stand-alone offerings just to minimize their USF contribution obligation).

<sup>38</sup> AT&T Comments at 25. *See also* Cincinnati Bell Comments at 9; Vonage Comments at 4 (proposing the same). To be clear, providers offering packages of services (the charges for which are separately stated on the customer's bill) are not subject to the Commission's apportionment rules and we do not read anything in the Commission's *FNPRM* as proposing to subject these service offerings to the Commission's apportionment rules. These providers can easily and verifiably identify interstate telecommunications charges (and associated revenue) and will continue to contribute to the USF based on their actual interstate telecommunications revenues.

the reseller should include in its contribution base only the amount it paid its wholesale provider if the reseller does not offer the telecommunications component on a stand-alone basis.<sup>39</sup>

*Commenters agree that the apportionment rule for bundled offerings should permit providers to allocate a pro rata amount of the bundling discount to the assessable component.*

In the *CPE/Bundling Order*, the Commission directed providers of bundled service offerings that allocate their assessable revenue not to apply any discount associated with the bundle to the assessable component if the provider is availing itself of one of the safe harbors.<sup>40</sup> The Commission proposes to continue this practice in its bundling apportionment rule.<sup>41</sup> However, AT&T agrees with commenters that the Commission should make clear that contributors are permitted to allocate a pro rata share of the bundling discount among all components, including assessable components, and it should modify its proposed rule accordingly.<sup>42</sup>

*Several commenters contend that the Commission's allocation proposals are unnecessary for providers that comply with GAAP.* A few commenters assert that the Commission's apportionment rules are unnecessary because GAAP already "provides guidance on how to

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<sup>39</sup> See InterCall Comments at 9-10 (requesting the Commission to adopt a safe harbor for audio conferencing providers to permit them to allocate the assessable component of a bundled offering based on the price paid to their underlying transmission providers). This approach is consistent with AT&T's recommendation although we do not believe that there is any reason why the Commission should limit it to audio conferencing providers.

<sup>40</sup> *CPE/Bundling Order*, 16 FCC Rcd 7418, ¶¶ 50 (2001). See also *id.* at ¶ 53 (informing contributors that choose not to rely on this safe harbor that the Commission "will apply the standards underlying the safe harbors described above. For example, carriers should not apply discounts to telecommunications services in a manner that attempts to circumvent a carrier's obligation to contribute").

<sup>41</sup> *FNPRM* at ¶ 106 ("allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services or products (*with any discounts from bundling assumed to be discounts in non-assessable revenues*") (emphasis added).

<sup>42</sup> See, e.g., Comcast Comments at 12; Satellite Industry Association Comments at 19; US Cellular Comments at 39; NCTA Comments at 9.

allocate bundled offerings for revenue recognition purposes.”<sup>43</sup> According to Verizon, adherence to GAAP methodologies is adequate for USF bundling allocation purposes because, “under GAAP, if the delivered services that comprise a bundled offering are available on a standalone basis, the arrangement consideration, including any discounts, is allocated among the services in the bundle based on the vendor-specific standalone selling price or, if not available, market selling price.”<sup>44</sup> This approach – allocate assessable revenues based on the provider-specific stand-alone selling price or, if not available, the stand-alone price of other providers, including any discounts – is the same as what AT&T and others recommend for how the Commission should modify its proposed bundling allocation rule.<sup>45</sup> Because not all contributors comply with GAAP, AT&T believes that it is prudent for the Commission to require *all* contributors to adhere to the same principles, without reference to GAAP.

*A few commenters argue that deriving the rate for a stand-alone offering may be impossible.* Commenters also express concern over how to derive the stand-alone rate of an assessable component in either a bundle or an information service when no “stand-alone offering[] of equivalent services or products” (*FNPRM* at ¶ 106) or “stand-alone offering[] of equivalent transmission” (*id.* at ¶ 117), exists.<sup>46</sup> We agree with these commenters that further consideration of this issue is warranted because the alternative – always treat all revenues from bundled or information service offerings as assessable – is unacceptable.

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<sup>43</sup> Verizon Comments at 23; Harris CapRock Comments at 10.

<sup>44</sup> Verizon Comments at 23 (citing a FASB document on revenue recognition).

<sup>45</sup> *See, e.g.*, AT&T Comments at 25; Cincinnati Bell Comments at 9-10.

<sup>46</sup> *See, e.g.*, Harris CapRock Comments at 9.

Some commenters suggest that the Commission adopt a service-specific safe harbor allocation<sup>47</sup> while others recommend extending the MPLS proposal (i.e., impute a fixed dollar amount set by the Commission) to other services.<sup>48</sup> However, before any of these proposals could be adopted, the Commission and industry would have to work through a number of issues including, which services should be subject to a safe harbor allocation, how should the safe harbor percentages or proxies be calculated, and how frequently should they be updated? Alternatively, the Commission could maintain the status quo with respect to those services for which there is no stand-alone equivalent. If the Commission has concerns about how those service providers are performing their allocation methodologies, the Commission could direct the contributors to submit their methodologies to the Commission and USAC. Although neither entity would pre-approve a contributor's methodology, Commission staff or USAC could compare that contributor's methodology with filings made by other providers offering the same type of service. If the Commission determines that one provider's methodology results in it treating a significantly smaller percentage of its revenues as assessable as compared to other providers offering the same type of service, it could find the first provider's methodology to be unreasonable.

**B. If the Commission Decides To Retain A Revenues-Based Contribution Methodology, The Commission Should Consider A Simpler Wholesale/Resale Regime.**

In response to concerns about the compliance costs associated with the current wholesale/resale reporting requirements as well as the concern that the current regime allows

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<sup>47</sup> See, e.g., American Cable Association Comments at 8-9.

<sup>48</sup> See BT Comments at 8 (recommending that the Commission apply the MPLS proposal more broadly so that "all providers would be on an equal footing in paying on the imputed local access portions of their service revenues"); XO Comments at 23-24 (same).

otherwise assessable revenue not to be reported, the Commission proposes a so-called value-added approach to wholesale/resale contributions. *FNPRM* at ¶¶ 149-61. In our opening comments, AT&T suggested that the Commission consider such an approach if it decides to retain a revenues-based methodology, which AT&T does not believe it should.<sup>49</sup> By contrast, most of the commenters that addressed this proposal opposed it. By our count, almost twenty commenters opposed the Commission value-added proposal<sup>50</sup> whereas the comments of about a half dozen parties, including AT&T, were positive.<sup>51</sup> Several commenters opposed the proposal because it would be time consuming and, perhaps, expensive to implement.<sup>52</sup> AT&T does not disagree. In fact, we informed the Commission that the industry would require about eighteen months to make all of the necessary changes and, of course, there is a price tag associated with the accompanying IT development and other work. For that reason, AT&T recommended that the Commission pursue this type of change *only* if it rejects a non-revenues-based long-term solution to contribution reform.<sup>53</sup> Other commenters opposed the proposal based on concerns

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<sup>49</sup> AT&T Comments at 32-35.

<sup>50</sup> American Cable Association Comments at 10-11; Cable & Wireless Comments at 3-4; CenturyLink Comments at 16-17; Cincinnati Bell Comments at 14; Clearwire Comments at 9-12; Comcast Comments at 13-14; Comptel Comments at 29-30; EarthLink *et al.* Comments at 16; Fibertech *et al.* Comments at 3-8; International Carrier Coalition Comments at 9-11; Level 3 Comments at 19-20; Logical Telecom Comments at 12-13 (as applied to prepaid calling card retailers); OnStar Comments at 26; Peerless Network Comments at 3-7; Retail Industry Leaders Association Comments at 2 (as applied to prepaid calling card retailers); Satellite Industry Association Comments at 7-8; Sprint Comments at 19-20; Verizon Comments at 18.

<sup>51</sup> CTIA Comments at 11-12; T-Mobile Comments at 8-9; Coalition for Rational Universal Service and Intercarrier Reform Comments at 10; ACS Comments at 20-21 (proposing a “top down” system where resellers would deduct amounts paid to wholesale providers); AT&T Comments at 32-35.

<sup>52</sup> *See, e.g.*, Cincinnati Bell Comments at 14 (“the substantial changes to the reporting and collection system necessary to focus on wholesale revenue . . . negate any theoretical benefit”).

<sup>53</sup> AT&T Comments at 35.

that warrant further consideration by the industry and the Commission. We discuss commenters' concerns below.

One simple adjustment that the Commission could make now to the current reseller certification process is to require resellers to submit their certification forms to USAC, with a copy to the wholesale provider. A clear weakness in today's system is that certifications are made only to wholesale providers – entities that do not have (and do not want) any enforcement authority. Under this proposal, until a reseller files its forms with USAC, the reseller's underlying providers will treat the reseller as an end user. Also, the Commission could consider establishing a deadline for these forms (e.g., January 31) and if reseller fails to file in time, wholesale providers have no obligation to provide credits for any USF fees they may have assessed between February 1 and whenever the reseller files its forms with USAC. Creating a process that ensures USAC automatically receives all of a reseller's certification forms may prompt some resellers to take more seriously their obligation to provide timely and accurate information.

*Numerous commenters assert that the Commission's value-added approach would be difficult or impossible to implement because of the tracking required.* The most significant criticism of the Commission's value-added proposal is that it would require a reseller to track how it is using a wholesale provider's transmission component when it may be using that component to serve multiple customers and/or to provide multiple services, as well as the amount of assessable revenues that it derived from reselling the wholesale provider's telecommunications input.<sup>54</sup> While some of the commenters' concerns seem overblown because

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<sup>54</sup> See, e.g., Sprint at 20 (the Commission's proposal "would require carriers to track the amount paid for services obtained from other providers entailing a considerable amount of data for those carriers with

today, at least in theory, a reseller should know how it is using a wholesale provider's facilities in order to give that wholesale provider an accurate reseller certification form, we agree that further consideration is warranted in order to address these concerns.<sup>55</sup>

*Some parties contend that the Commission's value-added proposal would require wholesale providers to obtain even more information from their carrier customers than they do today. A few commenters read the Commission's proposal as requiring wholesale providers to obtain even more information from and about their carrier customers than they are required to obtain today via the reseller certification forms. For example, Fibertech asserts that the Commission's proposal "would require upstream carriers to determine what uses their downstream customers make of the services and facilities they purchase from the upstream carrier" and "[u]nder this type of system, each carrier in the service stream would have to know the complete details of how each other downstream carrier uses each element of the service, whether the service constitutes interstate or intrastate services and whether it is classified as telecommunications or non-telecommunications."<sup>56</sup>*

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extensive networks and a large, diverse product portfolio to track"); International Carrier Coalition Comments at 10 ("[t]he tracking and monitoring of the value of input services from wholesales and value of outputs to retails would be unduly burdensome"); Verizon Comments at 18 (a reseller "would have to track and retain records supporting its claimed credit for purchases of services subject to assessment – *i.e.*, interstate telecommunications services or interconnected VoIP services"); Clearwire Comments at 10; Fibertech *et al.* Comments at 4.

<sup>55</sup> See, e.g., Level 3 Comments at 19-20 ("There is no existing system to assign and trace 'credits' through what can be very complex layers of wholesale relationships. For example, through least cost routing, many different carriers can be involved in handling a particular voice call. . . A VAT system would have to track credits on a call-by-call basis, which is simply not possible.").

<sup>56</sup> Fibertech *et al.* Comments at 5-6. See also American Cable Association Comments at 11 (if VAT were adopted, "there is a good chance that wholesale and retail companies would dispute such variables as a jurisdictional allocation, or one party might have difficulty obtaining timely data from the other as the filing deadline approaches").

We do not interpret the Commission’s proposal to suggest that wholesale providers would be required to obtain any of this information. If it was the Commission’s intent that a value-added regime would require wholesale providers to obtain this level of detail about the reseller’s service offerings, we too would oppose the proposal. As we understand it, under the Commission’s proposed value-added regime, wholesale providers of interstate telecommunications would treat every customer as an end-user customer. Thus, there is no reason for a wholesale provider to collect any information from their resale customers under a value-added approach, much less detailed information regarding the services they provide to their own customers. In addition to being irrelevant from a wholesale provider’s perspective, we do not believe it would be appropriate for a wholesale provider to obtain such information from a competitor. Based on our understanding of the Commission’s proposal, we believe that the only information that would be shared between a wholesale provider and its reseller for USF contribution purposes is a bill for services rendered.

*A few commenters state that a value-added regime is unnecessary if the Commission adds broadband revenues to the base.* According to several commenters, once the Commission expands the contribution base to include broadband revenues, carriers that incorporate telecommunications components into their broadband service offering “will no longer have the opportunity to exempt the broadband portion of those services, and the corresponding revenue, from contribution.”<sup>57</sup> Expanding the contribution base to include broadband is not a panacea as these parties claim. After all, broadband is but one of many information services with a telecommunications component. Moreover, adding broadband to the base does not address the issue of a reseller incorporating a transmission input in its bundled offering (which may not

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<sup>57</sup> International Carrier Coalition Comments at 9-10. *See also* Comptel Comments at 29 (same).

include a broadband component) and identifying little or none of the bundled revenues as assessable. And, as we noted above, the Commission's apportionment rules drew much criticism and also warrant further consideration.

*Several commenters assert that the value-added approach is anti-competitive because it would allow wholesale providers to charge resellers USF-related administrative fees. A few parties express concern that, if the Commission's value-added proposal is adopted, some wholesale carriers may seek to impose USF-related administrative fees on their competitors, "using the USF system as a means of raising rivals' costs, and as a result, inhibiting competition."<sup>58</sup> It is true that many providers, like AT&T's operating affiliates, that sell interstate telecommunications to end users seek to recover their significant administrative costs associated with USF contributions through certain fees that are in addition to the USF line-item charge. There can be no disagreement among the industry, including these commenters, that the Commission's contribution requirements impose significant costs on service providers, which is another reason why AT&T and others believe that the Commission should adopt a non-revenues-based methodology. While a reseller may complain about having to pay its competitor's administrative fees, the Commission should expect underlying carriers to complain just as forcefully if the Commission directs them to treat certain end users (carrier customers) differently from all other end users by prohibiting underlying providers from recovering their administrative costs associated with the Commission's USF contribution requirements. Such a decision would be particularly unfair because it would distort the underlying provider's costs in favor of its competitors that may no longer incur direct USF contribution and associated*

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<sup>58</sup> Fibertech *et al.* Comments at 7. *See also* International Carrier Coalition Comments at 10; Satellite Industry Association Comments at 8.

administrative costs. Simply put, there is nothing that would prohibit a reseller from, in turn, passing through a wholesale provider's fees to its customers, just as it would other wholesale-related costs.

#### **IV. Conclusion.**

For reasons described above, AT&T respectfully requests that the Commission act quickly to adopt improvements to its administration of USF contributions. On the other hand, the Commission's proposed reforms to its revenues-based system require further consideration in the event the Commission decides that a revenues-based USF contribution methodology is sustainable in the long term. AT&T and many others do not believe that a revenues-based regime can be salvaged, and we request the Commission to defer action on its revenue reform proposals to enable interested parties time to develop a comprehensive plan for long-term USF contribution reform.

Respectfully Submitted,

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