

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

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

**COMMENTS BY  
EDUCAUSE, AAU, ACE, APLU, AASCU, and NACUBO**

**I. Summary**

EDUCAUSE,<sup>1</sup> the Association of American Universities (AAU),<sup>2</sup> the American Council on Education (ACE),<sup>3</sup> the Association of Public and Land-grant Universities (APLU),<sup>4</sup> the American Association of State Colleges and Universities (AASCU)<sup>5</sup>, and the National Association of College and University Business Officers (NACUBO),<sup>6</sup> collectively referred to

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<sup>1</sup> EDUCAUSE is a nonprofit association of over 1,900 colleges and universities whose mission is to advance higher education through the use of information technology. For more information, see <http://www.educause.edu>.

<sup>2</sup> The Association of American Universities (AAU) is a nonprofit organization of 61 leading public and private research universities in the United States and Canada that focuses on issues such as funding for research, research policy issues, and graduate and undergraduate education. For more information, see <http://aau.edu>.

<sup>3</sup> The American Council on Education (ACE), in its role as the major coordinating body for all the nation's higher education institutions, provides leadership on key higher education issues and influences public policy through advocacy, research, and program initiatives. For more information, see <http://www.acenet.edu>.

<sup>4</sup> The Association of Public and Land-grant Universities (APLU) is a research and advocacy organization of public research universities, land-grant institutions, and state university systems with member campuses in all 50 states, U.S. territories and the District of Columbia. For more information, see <http://www.aplu.org>.

<sup>5</sup> AASCU is a Washington-based higher education association of nearly 420 public colleges, universities and systems whose members share a learning- and teaching-centered culture, a historic commitment to underserved student populations and a dedication to research and creativity that advances their regions' economic progress and cultural development. For more information, see <http://www.aascu.org>.

<sup>6</sup> The National Association of College and University Business Officers (NACUBO) is a membership organization representing more than 2,500 colleges, universities, and higher education service providers across the country and around the world. For more information, see <http://www.nacubo.org>.

below as “Higher Education Associations” or “HEA,” appreciate the opportunity to comment on the proposed reform of the Universal Service Fund (USF) contribution methodology.<sup>7</sup> The HEA recognize that the existing contribution mechanism is out of step with the current marketplace and support the effort to update the contribution mechanism based on the significant market changes since 1997. At the same time, the HEA urge the Commission to retain some of the key principles that have guided its administration of the USF contribution mechanism from the beginning – particularly the need to avoid imposing an unfair burden on any sector, and the treatment of educational institutions as “end users” and not as “providers” of telecommunications.

## **II. The HEA Support the Proposed USF Contribution Reform Principles.**

The Further Notice of Proposed Rulemaking (FNPRM) identifies three goals in this proceeding: efficiency, fairness and simplicity. While the HEA support the clear intent of these three principles, the HEA draw particular attention to several particulars within them.

### **A. Efficiency**

The Commission proposes that

one goal for reform should be to make compliance with and administration of the contribution system more efficient (1) by developing rules that operate clearly within the evolving structure of the marketplace, and (2) by closing loopholes. . . . Clearer, simpler rules that can be applied in new situations could deter gaming of the system and save consumers, companies, and the government money.<sup>8</sup>

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<sup>7</sup> See, "In the Matter of Universal Service Contribution Methodology, A National Broadband Plan for Our Future," Further Notice of Proposed Rulemaking (FNPRM), FCC 12-46, released April 30, 2012, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0501/FCC-12-46A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0501/FCC-12-46A1.pdf).

<sup>8</sup> See, FNPRM, para. 32.

The HEA wholeheartedly agree with this principle. The current system is based on ambiguous distinctions between intrastate and interstate services, end user and wholesale services, and telecommunications and information services. The inherent uncertainties in how to classify IP-based services create numerous opportunities for gaming and manipulation. As EDUCAUSE said earlier in this proceeding,

EDUCAUSE recommends that the new USF contribution methodology be easy to understand, administered simply, accommodate technological progress, resist manipulation, gamesmanship, and subterfuge, rely on metrics readily and transparently accessible to direct contributors and to end users, and not introduce major new burdens disproportionate to the burden different users impose on the public network.<sup>9</sup>

## **B. Fairness**

It is particularly important for the Commission to seek a solution that does not impose an undue or unfair burden on any sector. As much as possible, the Commission should promote the equitable treatment of all participants. The new system should not impose a substantially higher burden on some end users over others; conversely, the new system should avoid loopholes and be designed to prevent gaming as a way to avoid contributions. Certain proposals, such as the pure “numbers based” proposal, for instance, would likely impose an excessive and unfair burden on colleges and universities, perhaps raising their USF fees by as much as 10 times their current fees.<sup>10</sup>

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<sup>9</sup> EDUCAUSE ex parte submission, April 16, 2012, WC Docket No. 06-122.

<sup>10</sup> EDUCAUSE conducted a member survey in 1Q12 requesting data on off-campus data connections, externally-assigned telephone numbers and Internet addresses, payments to communications providers, and USF “taxes” on those payments. The data comes from a sampling of research universities, liberal-arts colleges, and other large and medium-sized campuses. The data revealed, for instance, that the average research university has over 21,000 telephone numbers and (at \$1 per month per phone number) might pay over \$250,000 in annual USF fees – or about 10 times what it pays under the current system.

The HEA recognize that higher education will be required to contribute its “fair share” as end users to support the costs of the public switched telephone network (PSTN) and the USF. Nonetheless, a regime in which every higher education institution will be subjected to enormous increases will not be fair, particularly when the presence of a telephone number does not reflect the usage of the PSTN, as is the case for organizations that operate their own internal branch exchanges. Public higher education is already suffering from significant reductions in state aid; one report finds that state aid dropped by 7.6% from 2011 to 2012.<sup>11</sup> At the same time, all colleges and universities are facing rising costs to conduct their programs of education and research and accommodate the steadily growing regulatory and compliance imposed on them. These cost increases are coming at the same time that institutions are facing increasing pressure to reduce tuition to make college more affordable.<sup>12</sup> Subjecting higher education institutions to a significant cost increase from a numbers-based plan would make it that much more difficult for those institutions to meet their educational mission and would not be in the public interest.

### **C. Sustainability**

As noted earlier, certain contribution mechanisms may be more sustainable than others. Ideally, the Commission should strive to assess contributions on a measure that will grow faster or at the same rate as the growth of the overall USF. Not only would a pure numbers-based regime impose crippling USF fee increases on higher education institutions, but such a regime is

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<sup>11</sup> See, “State Support for Colleges Falls 7.6% in 2012,” The Chronicle of Higher Education, by Eric Kelderman, January 23, 2012, available at <http://chronicle.com/article/State-Support-For-Higher/130414/>. “As a whole, state spending on higher education—after being supported by the recovery-act money for three budget years—is now nearly 4 percent lower than it was in the 2007 fiscal year.”

<sup>12</sup> See, “Obama Pressures Colleges to Reduce Costs,” by Richard Wolf, USA Today, January 27, 2012, available at <http://content.usatoday.com/communities/theoval/post/2012/01/obama-pressures-colleges-to-lower-costs/1#.T-hRtMXNmJU>.

probably not sustainable; telephone numbers are not likely to sustain their recent growth as the mobile phone marketplace becomes mature and saturated. There is reason to believe that IP addresses may substitute for phone numbers in the near future,<sup>13</sup> which may cause a reduction in assessable phone numbers, and which could lead to the same sort of declining base of revenues that plagues the current system. Moreover, numbers-based regimes are intrinsically open to gaming, since various ordinary network-management techniques lead to ambiguous or ill-defined counts.

### **III. The HEA Support Retaining the Current Rule under which Higher Education**

#### **Institutions Contribute as End Users, not as Providers.**

Before addressing the contribution alternatives, the Commission properly asks what entities should be required to contribute directly to the USF. The Commission notes that there are two separate categories of direct contributors: 1) “telecommunications carriers” are required to contribute directly to the USF; and 2) “providers of telecommunications” can be compelled by the Commission under its permissive authority to contribute directly to the USF if doing so would be in the public interest.

In the past, the Commission has specifically chosen not to require higher education to contribute directly to the USF. In 1997, the Commission ruled that non-profit schools, colleges, universities, libraries, and health care providers should pay USF charges as end users, not as providers of telecommunications.<sup>14</sup> The HEA submit that this decision should continue to apply,

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<sup>13</sup> Hack a Day Blog, “Hackit: Why We Don’t Need Phone Numbers,” blog entry by Greg Szczys, September 4, 2009, <http://hackaday.com/2009/09/04/why-we-dont-need-phone-numbers/>.

<sup>14</sup> Federal-State Joint Board on Universal Service et al., CC Docket No. 96-45 et al., Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5476, para. 284 (1997). “We also find, on our own motion, that non-profit schools, colleges, universities, libraries, and health care providers should not be made subject

and that there is no reason to subject higher education to the burdensome process of filling out the forms required by the Universal Service Administrative Company (USAC) and making direct contributions to the USF. The HEA advocate this for several reasons.

First, higher education plays an increasingly important role in many of the nation's highest priorities – economic recovery, research and innovation, digital learning, and the development of new broadband technologies and services. As the Commission noted in 1997, subjecting colleges and universities to the USAC process would be contrary to the educational goals of the universal service program.

Second, treating colleges and universities as end users is consistent with how their telecommunications bills are actually paid. Colleges and universities are responsible for paying the telecommunications bills (including the USF “pass through” fees) for the students, faculty and staff users of campus phones. If colleges and universities were required to pay directly into the USF as “providers” of telecommunications, they would not be able to collect reimbursement of their USF charges from their users as other “providers” do. Thus, the current system – in which higher-education institutions pay USF fees as end users to their telecommunications providers – reflects the real world environment in which the vast majority of colleges and universities operate.

Third, it would be extremely cumbersome and administratively difficult for colleges and universities to be required to fill out the multiple USAC forms and comply with the regulations

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to universal service contribution requirements. ... We conclude, however, that the public interest would not be served if we were to exercise our permissive authority to require these entities to contribute to universal service ... [W]e find that it would be inconsistent with the educational goals of the universal service support mechanisms to require colleges and universities to contribute to universal service. To maintain the sufficiency of the federal support mechanisms, we have determined to treat non-profit schools, colleges, universities, libraries, and health care providers as telecommunications end users for universal service contribution purposes.”

that apply to “providers.” Colleges and universities are not traditionally regulated as telecommunications service providers, and they are typically not familiar with the Commission’s rules and regulations. As noted earlier, colleges and universities are already burdened by significant regulatory and compliance requirements. Treating higher education institutions as “end users” is a much less burdensome way for these entities to contribute to the USF.

Fourth, the Commission should continue to recognize the distinction between the PSTN (which serves the general public) and private networks such as those that provide on-campus communications capabilities to students, faculty and staff and are not open to the general public. We support the principle that the USF collection mechanism should be competitively neutral and that providers that compete with each other should be subject to the same USF contribution requirements. But on-campus communications networks do not compete with other providers; they are self-provisioned internal networks operated by the colleges or universities themselves. A campus communications network is analogous to the inside wire of a school building or a corporate intranet. To the extent that these internal communications networks carry traffic within a closed population set of students, faculty and staff, they do not benefit from, and thus should not bear the costs of supporting, the PSTN. Colleges and universities understand that they will pay USF fees on connections with the networks outside the campus, but there is no rationale for imposing USF fees on internal communications that do not interact with the PSTN.<sup>15</sup> The Commission has not heretofore treated on-campus communications networks and services as assessable, and there is no reason to change this basic distinction.

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<sup>15</sup> The HEA agree with the Commission’s statement in the FNPRM (paragraph 9) that “those who benefit from access to the public switched telephone network (PSTN), which is supported by the universal service fund, should contribute. As the U.S. Court of Appeals for the Fifth Circuit has explained, ‘Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service.’”

#### **IV. Conclusion**

While the HEA are not in a position at this time to endorse any particular contribution methodology, our preliminary analysis indicates that a pure “numbers based” proposal would impose a significant hardship on colleges and universities, and so would violate the Commission’s proposed fairness principle. Furthermore, a numbers-based approach may not be sustainable in the future, especially as "telephone" numbers become conflated with "network" numbers such as IP addresses.

The HEA look forward to reviewing the comments in this proceeding before offering any further views about a revenues-based, capacity-based, or connections-based approach. Regardless of the methodology, the HEA urge the Commission to continue the current rule under which higher education contributes to the Universal Service Fund as “end users” and not as “providers” of telecommunications.

**EDUCAUSE  
ACE  
AAU  
APLU  
AASCU  
NACUBO**

July 9, 2012