



Office of the President

December 11, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, DC 20554

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Re: Re: Universal Service Contribution Methodology
WC Docket No. 06-122
Federal-State Joint Board on Universal Service
CC Docket No. 96-45
Written Ex Parte Communication

Dear Commissioners:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the American Council on Education ("ACE"), representing over 1,800 colleges and universities, and the higher education associations listed below¹ hereby submit this *ex parte* presentation in the above-referenced dockets. This letter responds to a November 21, 2008, *ex parte* letter submitted by AT&T, which argued that the Commission should adopt a slightly modified version of the proposal that AT&T and Verizon submitted in October.²

Our members previously described their views on the universal service contribution requirement to the Commission in a letter dated October 28, 2008.³ We now have reviewed

¹ The full list of entities supporting this letter follows the signature line.

² Letter of Mary L. Henze, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, dated Nov. 21, 2008 (the "AT&T Letter").

³ Letter of Molly Corbett Broad, President, ACE, to Kevin J. Martin, et al., WC Docket No. 06-122, CC Docket No. 96-45, dated October 28, 2008 (the "Contribution Letter").

the proposals contained in the Commission's Further Notice.⁴ Based on that review, we have concluded that the proposals contained in Appendices A and C of the Further Notice, which would apply a numbers-based methodology to residential services and seek further comment on how to modify the current revenues-based methodology for services offered to non-residential customers, provide the best course forward at this time. Our members oppose AT&T's argument that the Commission should instead adopt AT&T's modification of the proposal in Appendix B, deferring the question of how to address the impact of that proposal on colleges and universities until an unspecified time in the future.⁵ AT&T's proposal would impose significant harm on colleges, universities and other users of large quantities of telephone numbers, with no certain prospect that this harm would be addressed in a timely fashion.

As described in the previously submitted Contribution Letter, the undersigned recognize the importance of the federal universal service program and of ensuring sufficient funding to meet the goals set by Congress in Section 254 of the Communications Act.⁶ Institutions of higher education benefit directly and indirectly from universal service programs, including the high cost fund, the schools and libraries program (which supports distance learning and other services provided by colleges and universities) and the rural health care program. Colleges and universities also understand the importance of ensuring adequate funding, and already contribute close to \$60 million annually to the universal service fund. Our members are also cognizant of the concerns that have led the Commission to consider modifying the ways in which universal service contributions are determined and levied, and that any changes are likely to have some impact on users of telecommunications services.

In evaluating any proposals to change the contribution system, however, the Commission should be cognizant of the potential that a change will have a disparate and unreasonable impact on a particular group of customers. AT&T's proposal attempts to brush this consideration aside, while the proposals in Appendices A and C of the Further Notice would provide the Commission with an opportunity to address the issue directly.

The undersigned support the proposals in Appendices A and C as a way for the Commission to address universal service contribution issues now without unreasonably burdening colleges and universities. Under these proposals, the Commission would adopt a numbers-based system for determining contributions from residential customers, and would determine the amounts to be paid for residential services based on the current share of

⁴ High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic and IP-Enabled Services, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 06-122, 05-337, 04-36,03-109, CC Docket Nos. 01-92, 99-200, 99-68, 96-98, 96-45, FCC 08-62, rel. Nov. 5, 2008 (the "Further Notice").

⁵ AT&T Letter at 2-9.

⁶ Contribution Letter at 1-2.

universal service costs covered by those services. The remaining costs would be borne by commercial services. Those services initially would continue to contribute to the fund based on interstate revenues, but the Commission would later convert commercial customers to a connections-based approach under a system that would avoid rate shock for entities like colleges and universities that would suffer disproportionate effects under a pure numbers-based system.

This approach would address the immediate concerns about continuing to apply a revenue-based methodology to residential services and would prevent harm to commercial customers. While we also would support a comprehensive solution that addressed the disparate impact of a numbers-based contribution system on customers that use large quantities of telephone numbers, we recognize that it might not be possible to craft such a solution quickly enough to be included in a broader reform package. Thus, deferring the final shape of a connections-based methodology for commercial customers to a later date, and retaining the revenues-based approach until that time, is a reasonable approach.

In contrast, AT&T's proposal would guarantee that colleges, universities and other commercial customers would experience significant rate shock, with no guarantee that the issue ever would be addressed. Most significantly, and as described in the previously submitted Contribution Letter, the AT&T proposal would increase universal service costs for the average college or university by about 600 percent, to about \$100,000 a year, just for the telephone numbers assigned to them.⁷ In addition, college and university customers would be required to make further contributions based on the specific connections they purchase from interstate carriers. While AT&T has proposed adjustments that would reduce the fee for many individual connections, those fees would constitute only a small percentage of the costs faced by colleges and universities under the AT&T regime, and so those changes would not mitigate the impact in any meaningful way.⁸

AT&T claims to address the inequities of its proposal through a further notice of proposed rulemaking in which the Commission would adopt specific exemptions from the contribution rules.⁹ This suggestion that the Commission should impose costs first and decide whether to mitigate those costs later is unreasonable. Most important, AT&T's proposal does not guarantee that the impact will be mitigated in any way. Colleges, universities and other customers would have to wait for a decision that might take years and, in the meantime, would have to make dramatically increased payments under the rules then in place.

⁷ Contribution Letter at 2-3. Of course, some colleges and universities would experience smaller increases and some would experience larger increases.

⁸ Ironically, AT&T's proposed adjustments to the contributions for individual connections are intended to set those contributions to levels that "represent a relatively small USF fee in relation to the cost for the service itself," AT&T Letter at 3, but AT&T does not propose to apply the same principle in evaluating the impact of a numbers-based system on customers that use large quantities of telephone numbers.

⁹ *Id.* at 8-9.

In addition, AT&T's proposal includes a requirement that exempted users apply to the Universal Service Administrative Company for reimbursement. Requiring users to apply for exemptions, and then to get paid back from USAC funds, is unreasonably burdensome for the users and would impose unnecessary administrative costs on USAC. It is far more efficient for all concerned—including contributing carriers—to avoid collecting burdensome contributions in the first place, rather than requiring those contributions to be paid by the user, collected by the carrier, remitted to USAC, subject to an application for reimbursement and then finally paid back to the user.

AT&T's further suggestion that the Commission consider adopting some sort of means test for colleges and universities before they can qualify for an exemption also should be rejected.¹⁰ A means test is inappropriate because the main problem with the pure numbers-based system is not that it would hurt customers that do not have much money. Rather, the main reason the Commission should not adopt a pure numbers-based contribution system is that it would impose an unreasonably disparate impact on colleges, universities and other customers that use large quantities of telephone numbers.

Finally, and contrary to AT&T's claims, there is no reason to believe that it would be difficult for carriers to distinguish between business and residential services. If nothing else, carriers typically price their residential and business services differently, and serve them through different parts of their companies. It is likely that the overwhelming majority of customers, and possibly nearly all customers, already are classified as business or residential customers by their retail carriers.

For these reasons, and for the reasons described in the previously submitted Contribution Letter, ACE and the higher education associations listed below urge the Commission to adopt the universal service contribution proposal described in Appendices A and C of the Further Notice.

Respectfully submitted,



Molly Corbett Broad
President

MCB\ksm

On behalf of:
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of Catholic Colleges and Universities

¹⁰ *Id.* at 9.

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Association of Community College Trustees
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EDUCAUSE
Hispanic Association of Colleges and Universities
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
University Continuing Education Association

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Office of the Secretary (4 copies)