BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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

To: The Secretary, Federal Communications Commission

Attn: Wireline Competition Bureau

ASSOCIATION OF TELESERVICES INTERNATIONAL, INC.
COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Maryann Wetmore, President
Darlene E. Campbell, Co-Chairman,
D. Michael Fultz, Co-Chairman,
Government Relations Committee
of the Board of Directors
ASSOCIATION OF TELESERVICES
INTERNATIONAL, INC.
12100 Sunset Hills Road, #130
Reston, VA 20190

Kenneth E. Hardman
2154 Wisconsin Avenue, NW
Suite 250
Washington, DC 20554
Telephone: (202) 223-3772
Facsimile: (202) 315-3587
kenhardman.law@gmail.com

Attorney for Association of TeleServices International, Inc.

July 9, 2012

SUMMARY OF POSITION

ATSI adheres to its previous criticisms of a "Numbers" contribution methodology, and to ATSI's recommendations to expand the USF contribution base under the current contribution methodology. In summary, ATSI submits that the current contribution methodology (the "Revenues" contribution methodology) should be retained, but that wireline and wireless Internet access services also should contribute to the USF on the same basis as traditional telecommunications services, since broadband and wireless telephony facilities are now explicitly eligible for USF support as a result of the USF distribution-side reforms adopted by the Commission. In ATSI's view, elementary fairness requires that services benefitting from USF support must also in equal measure contribute to the USF.

ATSI also submits that a contribution methodology based on monthly fees assessed on assigned telephone numbers (a "Numbers" methodology) should be unequivocally rejected, because it fails any reasonable measure of fairness, efficiency and sustainability, which the FNPRM otherwise suggests should be the criteria governing reform of the USF contribution rules. The fundamental flaw with "Numbers" is that it treats all uses of telephone numbers the same for USF contribution purposes, despite enormous differences in the value and network usage of different applications of telephone numbers. Such facially "equal" treatment of widely different circumstances not only is egregiously inequitable in fact, but ultimately also would result in substantial reductions in number usage, thereby undercutting the sustainability of "Numbers" as a funding mechanism over the long term.

As a second choice to retaining the "Revenues" contribution system with an expanded contribution base, ATSI believes that a properly structured assessment mechanism based on the capacity of a user's connections to the network (a "Connections" contribution methodology) could be made reasonably fair and workable. However, ATSI believes that the complications involved in properly structuring the fee schedule in a “Connections” methodology are significant enough that the better, more efficient course is to retain the “Revenues” methodology with an expanded contribution base.

Finally, ATSI strongly urges the Commission not to define contribution obligations in general terms, but to instead be as specific as possible in defining services and entities that are required to contribute to USF. USAC has every incentive to enlarge USF contributions as much as possible, and charging USAC with the enforcement of broad, general contribution obligations would be a blatant invitation for USAC to make direct contributors out of untold numbers of entities that properly should not be burdened with such regulations. ATSI is particularly concerned that its members could be victims of an expansive USAC interpretation of broadly-worded contribution rules, and strenuously urges the Commission to reject such an approach to defining USF contribution obligations.

TABLE OF CONTENTS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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

To: The Secretary, Federal Communications Commission

Attn: Wireline Competition Bureau

ASSOCIATION OF TELESERVICES INTERNATIONAL, INC.
COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

THE ASSOCIATION OF TELESERVICES INTERNATIONAL, INC. (ATSI), by its President, by its Co-Chairmen of the Government Relations Committee of the Board of Directors, and by its attorney, respectfully submits its comments to the Federal Communications Commission in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the captioned proceedings, FCC 12-46, released April 30, 2012 and published at 77 Fed. Reg. 33896 (June 7, 2012). As its comments in response to the FNPRM, ATSI respectfully states:

Introduction and Background

ATSI (www.atsi.org) is an international trade association established in 1942 by and for entrepreneurs in the Telephone Answering Services (TAS) business. Referred to as Private Sector Critical Response Centers (PSCRCs) in the modern era, inbound contact centers operated by ATSI members typically are small, locally owned and operated businesses providing a wide variety of human communications services within their local communities. The gross revenues of

PSCRCs average on the order of $550,000 annually, of which approximately 45% go to direct payroll expenses for their employees.

Entrepreneurial in their approach to business issues, ATSI members offer innovative human solutions to business communications problems and provide essential response services in disaster situations. PSCRCs serve over 1.4 million professional, commercial, not-for-profit, governmental agencies, and local emergency respondent clients, including doctors; emergency response centers; public utilities; public safety offices; local, state, and federal government offices; rape and suicide crisis centers; and Red Cross emergency centers. PSCRC agents, who are US citizen employees, assist neighbors in some 3.6 billion inbound call transactions annually.

Under current rules, ATSI members are end users that pay contributions indirectly to the USF through assessments on their telephone bills imposed by carriers and, in some cases, by interconnected VoIP providers. Also, ATSI members are substantial users of telephone numbers,[1] typically assigned to the PSCRC in blocks of 100 or 1,000 by its serving ILEC or CLEC for a monthly fee. According to data previously collected by ATSI, its members are assigned an average of approximately 2,000 telephone numbers each.

Calls associated with telephone numbers utilized by a typical ATSI member are predominantly intrastate in character; and the telephone numbers assigned to ATSI members typically generate less than three minutes of usage per day, compared to an average of approximately 25-30 minutes of usage per day common for conventional wireline and wireless telephone numbers.[2] Additionally, the telephone numbers assigned to ATSI members characteristically are used for

---

[1] These numbers are predominantly local Direct Inward Dial (DID) numbers, but also include quantities of toll-free (8XX) telephone numbers.

[2] CTIA data show, e.g., that postpaid wireless subscribers generated an average of 826 minutes of usage for the month of December 2007. *See* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, *et al*.,, FCC 08-262, adopted and released November 5, 2008, and published at 73 Fed. Reg. 66821 (November 12, 2008) (the "2008 FNPR"), at Attachment A & ¶138, p. A-60.

internal network signaling or call distribution purposes. They generally are not used for the origination or termination of telephone calls by the public at large.

The FNPRM is the latest in a series of orders commencing in 2001 looking towards modification of the Universal Service Fund (USF) contribution rules. These rules were initially implemented pursuant to Section 254 of the Communications Act, as added by the Telecommunications Act of 1996, 47 U.S.C. §254; and they have been modified in various ways since that time. Interested parties have commented at length over the years on various proposals by the Commission to reform the method by which USF contributions are assessed, including the three principal contribution methodologies again posed for comment in the FNPRM.

In this regard, ATSI emphatically opposed proposals advanced in 2008 to adopt a contribution methodology based in whole or in part on assessing USF fees on telephone numbers (referred to in shorthand as "Numbers" proposals).[3] ATSI again submitted comments critiquing "Numbers" contribution methodology proposals in 2009, in response to the request of the National Broadband Plan Task Force for comments on the role of the USF in the National Broadband Plan.[4] The FNPRM primarily seeks to refresh the record on these proposals in light of the objectives of the National Broadband Plan (NBP) and the distribution-side reforms adopted last year, but also seeks to comprehensively review USF contribution issues, including potential reform of the administration of the contribution system.

---

[3] Association of TeleServices International, Inc. Comments on Further Notice of Proposed Rulemaking, *High Cost Universal Support*, *et al*, WC Docket No. 05-337, *et al.*, November 26, 2008 ("*ATSI 2008 Comments*"), available at http://apps.fcc.gov/ecfs/document/view?id=6520188869 (last viewed June 18, 2012). ATSI relies upon and incorporates herein its comments in the *ATSI 2008 Comments.*

[4] Association of TeleServices International, Inc. Comments – NBP Notice #19, *A National Broadband Plan for our Future*, *et al.*, GN Docket No. 09-51, *et al.*, December 7, 2009 ("*ATSI RFC #19 Comments*"), available at http://apps.fcc.gov/ecfs/document/view?id=7020351449 (last viewed June 18, 2012). ATSI also relies upon and incorporates herein its comments in the *ATSI RFC #19 Comments.*

Comments on FNPRM

A. A "Numbers" Contribution Methodology Should Be Unequivocally Rejected

ATSI's principal message in response to the FNPRM is that a "Numbers" contribution methodology fails the tests of fairness, efficiency and sustainability and should be unequivocally rejected by the Commission once and for all. "Numbers" is fatally flawed philosophically because it is premised on assessing the same flat fee per month on every telephone number in use, despite the wide variation in the price of services to which telephone numbers are assigned, and despite the similarly wide variation in the burden on or usage of the network represented by the different services associated with assigned telephone numbers. The result of such facially "equal" treatment of telephone number usage in fact would be a massive, unjustified shift in the burden of USF contribution obligations among user groups, unrelated to the statutory objectives for universal service.

ATSI members represent a classic case in point. The DID numbers utilized by ATSI members generally are used for internal routing and caller identification rather than for the public at large to access telephone stations connected to the PSTN. They are predominantly used in connection with intrastate services; and they are utilized only briefly in comparison to general PSTN traffic. Under current rules, when last calculated by ATSI, the USF contributions paid by members to their service providers translate into less than $0.10 per number per month. Changing to a "Numbers" contribution methodology thus would mean a drastic increase in USF assessments for ATSI members that is entirely unrelated to either USF distribution side reforms or the purposes of the universal service programs. Such an increase not only would be unfair in the abstract, but also would violate principles of competitive neutrality as well.[5]

---

[5] *See ATSI 2008 Comments* at pp. 13-14 & Appendix A for more extended discussion of this point.

ATSI further points out that the drastic increase in USF contributions expenses under "Numbers" would cause many users of low-value or low usage telephone numbers to eliminate as many telephone numbers from their services as possible. They would do so either by finding alternate ways to accomplish addressing and routing functions that do not require such intensive use of telephone numbers,[6] and/or by eliminating various offered services that require the use of telephone numbers. This would cause a decline in assessable telephone numbers and an associated increase in the monthly USF fee per telephone numbers, which would start a cycle of creating greater incentives to reduce the use of telephone numbers, thereby increasing the monthly USF fee per number. In short, ATSI submits that adopting a "Numbers" contribution methodology would not in fact put universal service on a reasonably sustainable funding basis for the future, contrary to one of the important criteria set forth in the FNPRM.

ATSI recognizes, of course, that adjustments can be made in the monthly fee in a "Numbers" methodology to account for the varying value of services that utilize telephone numbers and for the varying usage burdens different services place on the network. Indeed, ATSI submits that making such adjustments would be absolutely necessary for a "Numbers" methodology to have any chance of surviving legal challenges. But making such adjustments would make a "Numbers" methodology vastly more complicated, contrary to the FNPRM's goal of a simple and efficient contribution system. In fact, ATSI submits that making such adjustments would wholly eliminate any putative advantage a "Numbers" methodology could claim over a "Revenues" system with an expanded contribution base.

---

[6] However, as explained in Appendix A of the *ATSI 2008 Comments*, ATSI members generally would not have this option, because SMDI technologies generally have been found less reliable and less robust than using DID numbers for internal routing and caller identification functions, and they can lead to inferior service experiences to the customers of ATSI members. As a result, ATSI members would be unfairly targeted for drastic cost increases under a "Numbers" contribution methodology.

Under these circumstances, ATSI respectfully submits that a "Numbers" contribution methodology should not receive any serious consideration as an alternative USF contribution system; and the Commission should so conclude as part of its decision on the FNPRM.

B. A "Revenues" Contribution Methodology Should Be Retained With an Expanded Contribution Base

ATSI's preferred alternative continues to be that a "Revenues" methodology be retained with a contribution base expanded to include wireline and wireless Internet access service as assessable services. At the same time, ATSI strongly urges that the Commission be as specific as possible in designating assessable services, and that it avoid attempting to prescribe contribution obligations in broadly-worded, general regulations.

The decisive advantage of "Revenues" in ATSI's view is that it is the best method of correlating USF contributions to the value of the network to users and to usage of the network by users. For that reason alone, ATSI believes it is the most logical and the fairest method of assessing USF contributions. By contrast, the principal defect in the contribution system to date has been the Commission's unwillingness to specify whether certain services are 'information" services not assessable for USF, rather than "telecommunications" services assessable for USF contribution purposes. This has fostered an environment in which direct contributors have every incentive to classify ambiguous services as not assessable, resulting in an erosion of the USF contribution base in recent years. As the FRPRM recognizes, that defect can be fixed without throwing out the "Revenues" contribution methodology altogether, and that is what ATSI believes the Commission should do.

ATSI has previously suggested, and reaffirms its position, that expanding the contribution base to include wired and wireless Internet access service in a "Revenues" contribution methodology is the best way to put universal service on a fair, simple and efficient, and sustainable funding basis for the foreseeable future. According to ¶20 of the FNPRM, the USF revenue requirement in 2011 was $8.1 billion, which is 12.1% of the stated USF contribution base of $67 billion. At the same time, the FNPRM at ¶71 cites a TIA estimate that wired broadband access generated $38.3 billion in revenues in 2011, and will generate an estimated $40.3 billion in 2012. The FNPRM also cites TIA's estimate that wireless data (which includes text messaging in addition to Internet access and email) generated $73.6 billion in 2011 and will generate $89.8 billion in 2012. While a minor amount of the wireless data revenues already may have been included in the reported USF revenue base for 2011, ATSI believes that a relatively small amount was so reported, given the aggressive public stance of the mobile telephony industry that text messaging revenues properly are excluded from USF assessments.[7]

Therefore, if the estimated wireless data revenues of $73.6 billion in 2011 were added to the estimated $38.3 billion in revenues generated by wired broadband access and the $67 billion in USF assessable revenues in 2011, the total USF contribution base for 2011 would have been $178.9 billion compared to the $67 billion of assessable revenue actually reported for 2011. In turn, the $8.1 USF revenue requirement for 2011 would constitute approximately 4.5% of the expanded contribution base, compared to 12.1% actually reported for 2011.[8] Since Internet access services are expected to continue growing strongly in the future, and since the Commission has imposed a soft "cap" on USF expenses, there is every reason to believe that that the USF contribution factor with an expanded contribution base would remain stable, or decline, in the future.

---

[7] *See, e.g.,* comments filed in WC Docket No. 06-122 in response to the Public Notice concerning USAC's request from guidance on whether text messaging revenues are assessable for USF purposes, DA 11-853, released May 9, 2011.

[8] ATSI has previously explained that Internet access service revenues are jurisdictionally interstate under FCC decisions and are assessable under Section 254 using the same legal theory affirmed by the Court of Appeals for interconnected VoIP providers. *See ATSI RFC #19 Comments* at pp. 8-9. So expanding the contribution base thus should be immune from serious legal challenge.

A USF revenue requirement on the order of 4.5% of the contribution base would approximate the relationship between the two during the first year of the USF, before USF revenue requirements exploded and the USF contribution base eroded.[9] Accordingly, ATSI submits that expanding the contribution base by including wired and wireless Internet access services should be sufficient by themselves to put the USF on a fiscally reasonable and sustainable basis for the foreseeable future.

C. The Commission Should Define Assessable Services as Specifically as Possible

In this regard, ATSI also strongly urges the Commission not to use general, broadly-worded regulations to define contribution obligations, such as suggested in ¶75 of the FNPRM. The core of the proposed regulation is the ambiguous concept of "provid[ing] the transmission . . . directly or indirectly . . . to end users." In ATSI's view that label arguably could be applied to virtually anyone, including competitive telemessagers,[10] that utilize(s) telecommunications in any fashion in a retail product or service offered to the public. This is especially so since "resale" of telecommunications undoubtedly would be considered an "indirect" provision of "transmission" to end users.

The potential for abuse and unreasonably broad interpretation of such a regulation is especially real since it would be interpreted and applied by USAC in the first instance, under the familiar "pay and dispute" policy. USAC's incentive is to collect as much revenue in USF contributions as possible, and the "pay and dispute" policy would require entities tabbed by USAC to pay any contributions demanded by USAC under its interpretation of the rules until such time

[9] The USF contribution factors for 1998 were 3.91% for the first quarter, 3.90% for the second quarter, 4.62% for the third quarter and 3.93% for the fourth quarter. *See* Public Notices reported at 12 FCC Rcd (CCB 1997); 13 FCC Rcd 4609 (CCB 1998); 13 FCC Rcd 9379 (CCB 1998); and 13 FCC Rcd 15588 (CCB 1998).
[10] ATSI members provide what is classified as "telemessaging service" under Section 260 of the Communications Act, 47 U.S.C. §260. Telemessaging service is defined at 47 U.S.C. §260(c) as "voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services."

as the Commission decides that a particular service is not assessable for USF purposes. Given the Commission's studied refusal to definitively classify ambiguous services to date, there is every reason to believe that broadly worded regulations would give USAC essentially unfettered discretion to classify entities such as ATSI members as direct contributors to USF, simply because telecommunications facilities have some remote relationship to the retail services they provide to the public. Such an outcome would be an egregious perversion of the deregulatory philosophy the Congress thought it was embedding in the Telecommunications Act of 1996, and should be forcefully rejected by the Commission. Instead, the Commission should define USF contribution requirements as specifically and clearly as possible for USAC's implementation.

D. A Properly Structured "Connections" Methodology Could Be an Alternative to a "Revenues" Methodology

Finally, ATSI reiterates that its second choice for a contributions methodology, after expanding the contribution base in the "Revenues" methodology, is a properly structured "Connections" methodology. ATSI recognizes that, unlike a "Numbers" methodology, basing USF contributions on the amount of network capacity subscribed to by users does at least bear some correlation to the value of services to users and usage of the network by users. Nonetheless, it is not at all obvious that a "Connections" system would do so in a better way than the "Revenues" methodology with an expanded contribution base. ATSI respectfully submits that, in the absence of a clear advantage over the current system, there is no reason to change to a new system such as "Connections".

In ATSI's view, the principal disadvantage of "Connections" is that it would have to be complex in order to be reasonably fair, and it would be difficult to enforce. To be reasonably fair, the Commission would have to "tier" USF contribution assessments based on different types and capacities of network connections. This is not an easy task, as the record from prior proceedings demonstrates. Moreover, as the FNPRM acknowledges, there really is no source other than Form 477 reports for determining how many assessable connections particular service providers have in service; and it is unclear how USAC could be expected to adequately audit contribution obligations under a "Connections" scheme. While these problems may be surmountable, the pertinent point, once again, is that a new system should have a demonstrable advantage over a "Revenues" methodology before "Revenues" is abandoned.

Respectfully submitted,

s/Maryann Wetmore
Maryann Wetmore, President

/sDarlene E. Campbell
Darlene E. Campbell, Co-Chairman

s/D. Michael Fultz
D. Michael Fultz, Co-Chairman
Government Relations Committee
of the Board of Directors
Association of TeleServices
International, Inc.
12100 Sunset Hills Road, #130
Reston, VA 20190

s/Kenneth E. Hardman
Kenneth E. Hardman
2154 Wisconsin Avenue, NW
Suite 250
Washington, DC 20007
Direct Dial: (202) 223-3772
Facsimile: (202) 315-3587
kenhardman.law@gmail.com

Attorney for Association of TeleServices International, Inc.

July 9, 2012