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

In the Matter of

Access Charge Reform)	CC Docket No. <u>96-262</u>
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
End User Common Line Charges)	CC Docket No. 95-72
)	

PETITION FOR RECONSIDERATION OR CLARIFICATION

Puerto Rico Telephone Company ("PRTC") requests that the Commission reconsider its Access Charge Reform Order to the extent that it requires carriers to apply any universal service support it receives from the federal solely fund to the reduction of its interstate access charge revenue requirements.¹

I. INTRODUCTION

In its Access Charge Reform Order, the Commission adopted significant changes to the way in which access charge rate elements are developed and applied for price cap carriers, and to a limited extent, applied certain reforms to rate of return carriers as well. These reforms were adopted in the context of the concomitant overhaul of the federal universal service program, such that the Access Charge Reform Order also addressed

¹ Access Charge Reform Order, First Report and Order, CC Docket No. 96-262, FCC 97-158 (rel. May 16, 1997), recon. Order on Reconsideration by Commission Motion, FCC 97-247 (rel. July 10, 1997) ("Order").

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access charge issues that were characterized as related to the new universal service mechanism.² In this regard, the Commission has found that "any universal service support" distributed to a carrier from the new fund must be used to reduce or satisfy that carrier's interstate access requirement.

In the Order, the Commission states:

Consistent with our decision in the Universal Service Order to fund only interstate costs through the federal universal service fund, we direct incumbent LECs to use any universal service support received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges.³

This finding is fundamentally inconsistent with the plain language of Section 254 of the Communications Act, which requires that telecommunications services — not limited to interstate toll services — be made affordable through universal service support established by the Joint Board and the FCC under the Act.⁴ Certainly, any restriction upon universal service funds received under the new program, should at least be limited to those support mechanisms that previously were and continue to be determined solely with respect to interstate costs, i.e., LTS and DEM weighting.

In addition, the restriction imposed by the Commission on universal service support is at odds with the Commission's own definition of the basic services that are to be supported by the

² See id. at ¶¶ 367-87.

³ Id. at ¶ 381.

⁴ See 47 U.S.C. § 254(b)(3).

universal service fund. Therefore, PRTC requests that the Commission remove this restriction upon the application of universal service support such that a carrier may appropriately apply such receipts to ensure the affordability of any telecommunications service included within the definition of universal service under Section 254 of the Act. If, however, the Commission has not imposed such a restriction for rate of return carriers, PRTC requests clarification of this point.

II. SECTION 254 REQUIRES THAT TELECOMMUNICATIONS SERVICES BE MADE AVAILABLE AT AFFORDABLE RATES

The Commission's directive that LECs apply universal service support to their interstate revenue requirement is contrary to the goals of universal service. The guiding principal of the Commission's universal service mandate is that "quality services should be available at just, reasonable, and affordable rates."⁵ Congress further described that all customers in all regions should have access to "telecommunications and information services, including interexchange service and advanced information services" at rates comparable to those in urban areas.⁶ According to these statutory provisions, it is not appropriate for the Commission to limit arbitrarily the benefits of universal service support solely to the rates for access charges paid by interexchange carriers.

The plain language of the statute makes clear that Congress

⁵ 47 U.S.C. § 254(b)(1).

⁶ 47 U.S.C. § 254(b)(3) (emphasis added).

intended the universal service fund to provide support for a range of telecommunications services included within the definition of universal service. The Commission's decision breaches this principle by limiting the applicability of federal universal service support to the interstate access revenue requirements. Although it is clear that support for interexchange service did not have to be excluded from receipt of any universal service support, interexchange service certainly cannot be supported to the explicit exclusion of what the Joint Board and the Commission have indicated to be a primary objective — the affordability of basic (i.e., local) services for all consumers.

However, limiting the benefits of federal USF to the interstate access revenue requirement does not satisfy the statute or the Commission's stated goals. Instead, it will have the effect of lowering access charges to interexchange carriers that may or may not pass such savings through to local consumers. Even if such a flow-through could be guaranteed, however, it will never reach those consumers who rarely, if ever, initiate interstate long distance calls. Yet, these are the customers to whom universal service support truly makes a difference between subscribing to basic phone service or not. In this regard, the Commission has not explained how USF support delivered through a reduction in access charges will "ensure" that universal service is "affordable."

III. THE APPLICATION OF FEDERAL USF SUPPORT TO INTERSTATE ACCESS REVENUE REQUIREMENTS IS CONTRARY TO THE COMMISSION'S DEFINITION OF SUPPORTED BASIC SERVICES

Section 254(c) of the Communications Act requires the Commission to define the telecommunications service that comprise the availability of universal service.⁷ Thus, the Commission has adopted a detailed definition of universal service to establish the services to be supported.⁸ The "core" or "designated" services to receive universal service support are: single-party service; voice grade access to the public switched network; touchtone, access to emergency services; access to operator service; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income customers.⁹ By definition, this list of services involves basic, primarily local service functions, and includes merely as one aspect of these services access to interexchange service. However, by its restriction of universal service in the Access Charge Reform Order, the Commission arbitrarily has limited support to this single "core" service such that support for any other "core" service included within the Commission's definition is effectively precluded.

The Commission has indicated more specifically that universal service funds are intended, at least in part, to

⁷ 47 U.S.C. § 254(c)(1).

⁸ Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) at ¶¶ 56-107 ("Universal Service Order").

⁹ Id. at ¶ 56.

support local services. The Universal Service Order contemplates that recipients of universal service support could be required to provide some minimum amount of local usage that would presumably be reflected in some per-minute rate reduction.¹⁰ Although this specific subject is designated to be addressed in a Further Notice of Proposed Rulemaking, it clearly suggests that the Commission recognizes that federal universal service funds must be available to support usage of local telecommunications services, and certainly are not restricted from doing so based on jurisdictional grounds. The restriction imposed on such universal service funds, however, would clearly prohibit the furtherance of any such policy.

Finally, in assessing the issue of whether or not current rates are affordable, the Joint Board and the Commission have consistently focused upon local rates. Indeed, the Commission has determined that states are in a better position than the Commission to determine whether rates are affordable, which could only be the case if it is the affordability of local rates that is at issue.¹¹ The reason for this focus by the Commission, the Joint Board, and commenters is clear — universal service is intended to ensure that basic service is available to subscribers at affordable rates, not that interstate access charges are available to IXCs at reduced rates. In this regard, the Commission's universal service restriction in the Access Charge

¹⁰ Id. at ¶ 67.

¹¹ Id. at ¶ 118.

Reform Order is contrary to the core statutory requirement of Section 254, that "[t]he Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable,"¹² and should be reconsidered.

IV. IN THE ALTERNATIVE, THE COMMISSION SHOULD CLARIFY WHETHER THIS RESTRICTION APPLIES TO NON-RURAL, RATE OF RETURN CARRIERS

In many respects, the Access Charge Reform Order applies only to price cap carriers, and the Commission has reserved reform for rate of return carriers to a future NPRM.¹³ It is possible, therefore, that the Commission's restriction on the application of universal service support does not reach rate of return carriers. If this is the case, PRTC requests that the Commission clarify this point.

The Commission finds in the Order that because the universal service distribution mechanisms will not change for non-rural LECs until January 1, 1999, "it is not necessary at this time to determine the manner in which non-rural carriers should adjust their interstate access charges to reflect a difference in universal service support."¹⁴ The Commission does not indicate whether it is referring only to price cap incumbent LECs or all incumbent LECs. Indeed, it is plausible that the Commission has not included in its consideration of this issue those carriers

¹² 47 U.S.C. § 254(i) (emphasis added).

¹³ Order at ¶ 330.

¹⁴ Id. at ¶ 382.

that are neither price cap carriers nor rural carriers.¹⁵ Therefore, if the restriction upon universal service funds has not yet been considered for rate of return, non-rural incumbent LECs, PRTC requests that the Commission clarify this point.

V. CONCLUSION

For these reasons, the Commission should reconsider its blanket restriction upon the applicability of universal service support to interstate access revenue requirements so that universal service distributions may be used to ensure affordable local rates as needed. In the alternative, the Commission should clarify that it has not yet considered the application of such a restriction to non-rural, rate of return carriers.

Respectfully submitted,



Joe D. Edge
Richard J. Arsenault
Tina M. Pidgeon
DRINKER BIDDLE & REATH
901 15th Street, N.W., Suite 900
Washington, D.C. 20005
(202) 842-8800

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¹⁵ PRTC, for example, is a rate of return, non-rural incumbent LEC.

CERTIFICATE OF SERVICE

I, Tina M. Pidgeon, do hereby certify that a copy of the foregoing Petition for Reconsideration was sent by hand-delivery and first-class mail this 11th day of July, 1997, to the following:

William F. Caton*
Secretary
Federal Communications
Commission

1919 M Street, NW, Room 222
Washington, DC 20554

Chief*

Competitive Pricing Division
Federal Communications
Commission

1919 M Street, N.W., Rm. 518
Washington, D.C. 20554

ITS*

1231 20th St., N.W., Room 102
Washington, DC 20037

Public Service Commission
of the District of Columbia

Lawrence D. Crocker, III

Acting General Counsel

717 14th Street, N.W.
Washington, D.C. 20005

Northern Arkansas Telephone
Company, Inc.

Steven G. Sanders, President
301 E. Main Street
Flippin, AR 72634

American Library Association
Carol C. Henderson, Ex. Dir.

Ala Washington Office
1301 Penn. Ave., NW, Ste. 403
Washington, D.C. 20004

Allied Associated Partners LP
Allied Communications Group

Geld Information Systems
Curtis T. White
4201 Conn. Ave., NW, Ste. 402
Washington, D.C. 20008-1158

Edward Hayes, Jr., Esq.
1155 Conn. Ave., N.W., 3rd Fl.
Washington, D.C. 20036

Ronald Dunn, President
Information Industry Assn.
1625 Mass. Ave., NW, Ste. 700
Washington, D.C. 20036

Daniel J. Weitzner
Alan B. Davidson
Center for Democracy & Tech.
1634 Eye St., N.W., Ste. 1100
Washington, D.C. 20006

Joseph S. Paykel
Andrew Jay Schwartzman
Gigi S. Sohn
Media Access Project
1707 L St., N.W., Ste. 400
Washington, D.C. 20036

Gary M. Epstein
James H. Barker
Latham & Watkins
Counsel for Bellsouth Corp. &
Bellsouth Telecomm. Inc.
1001 Penn. Ave., NW, Ste. 1300
Washington, D.C. 20004-2505

Citizens Utilities Company
Richard M. Tettelbaum
Associate General Counsel
1400 16th St., NW, Ste. 500
Washington, D.C. 20036

Jack Krumholtz
Law and Corporate Affairs
Microsoft Corporation
5335 Wisc. Ave., NW, Ste. 600
Washington, D.C. 20015

National Cable Television
Association, Inc.

Daniel L. Brenner
David L. Nicoll
1724 Mass. Ave., N.W.
Washington, D.C. 20036

Excel Telecommunications, Inc.
Thomas K. Crowe
Michael B. Adams
2300 M St., N.W., Suite 800
Washington, D.C. 20037

Cable & Wireless, Inc.
Rachel J. Rothstein
8219 Leesburg Pike
Vienna, VA 22182

Danny E. Adams
Edward A. Yorkgitis, Jr.
Kelley Drye & Warren, LLP
1200 19th St., N.W., Ste. 500
Washington, D.C. 20036

Timothy R. Graham
Robert G. Berger
Joseph Sandri
Winstar Communications, Inc.
1146 19th Street, N.W.
Washington, D.C. 20036

Dana Frix
Mark Sievers
Swidler & Berlin Chartered
Winstar Communications, Inc.
3000 K St., N.W., Suite 300
Washington, D.C. 20007

Dana Frix
Tamar Haverty
Swidler & Berlin Chartered
Telco Comm. Group, Inc.
3000 K St., N.W., Suite 300
Washington, D.C. 20007

William Burrington
Jill Lesser
Counsel for America Online,
Inc.
1101 Conn. Ave., NW, Ste. 400
Washington, D.C. 20036

Counsel for America On Line
Mintz Levin Cohn Ferris
Glovsky and Pofeo, P.C.
701 Penn. Ave., N.W., Ste. 900
Washington, D.C. 20004

Michael J. Shortley, III
Attorney for Frontier
Corporation
180 South Clinton Avenue
Rochester, NY 14646

Michael S. Fox
Director Regulatory Affairs
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

Robert S. Tongren
Consumers' Counsel
Ohio Consumers' Counsel
77 South High St., 15th Floor
Columbus, OH 43266-0550

National Exchange Carrier
Association, Inc.

Joanne Salvatore Bochis
Perry S. Goldschein
100 South Jefferson Road
Whippany, NJ 07981

Ozarks Tech. Community College
P.O. Box 5958
Springfield, MO 65801

Charles D. Gray
James Bradford Ramsay
Nat. Assn. of Regulatory
Utility Commission
1201 Constitution Avenue
Suite 1102
P.O. Box 684
Washington, D.C. 20044

Michael S. Pabian
Larry A. Peck
Counsel for Ameritech
Room 4H82
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60195

TCA, Inc.
Telecommunications Consultants
F. Stephen Lamb, Manger
3617 Betty Drive, Suite 1
Colorado Springs, CO 80917

Scott L. Smith
Vice President of Alaska
Telephone Association
4341 B Street, Suite 304
Anchorage, AK 99503

Wayne Leighton, Ph.D.
Senior Economist
Citizens for A Sound Economy
Foundation
1250 H St., N.W., Suite 700
Washington, D.C. 20005

Betty D. Montgomery
Steven T. Nourse
Public Utilities Section
180 E. Broad Street
Columbus, OH 43215-3793

ICG Telecom Group, Inc.
Cindy Z. Schonhaut
9605 E. Maroon Circle
Englewood, CO 80112

Albert H. Kramer
Dickstein Shapiro Morin &
Oshinsky, LLP
Attorney for ICG Telecom
Group, Inc.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Ronald J. Binz, President
Debra R. Berlyn, Ex. Dir.
John Windhausen, Jr., GC
Competition Policy Institute
1156 15th St., N.W., Suite 310
Washington, D.C. 20005

General Communications, Inc.
Kathy L. Shobert, Director
Federal Affairs
901 15th S., N.W., Suite 900
Washington, D.C. 20005

MCI Telecommunications Corp.
Bradley C. Stillman
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Sprint Corporation
Leon M. Kestenbaum
Jay D. Keighley
H. Richard Juhnke
1850 M St., N.W., 11th Floor
Washington, D.C. 20036

Worldcom, Inc.
Catherine R. Sloan
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036-3902

Worldcom, Inc.
Richard J. Heitmann
515 E. Amite
Jackson, MS 39201-2702

Alex J. Harris
Worldcom, Inc.
33 Whitehall St., 15th Floor
New York, NY 10004

Peter A. Rohrbach
David L. Siebadzki
E. William Lebeau
Hogan & Hartson, LLP
555 13th St. NW, Ste. 500 West
Washington, D.C. 20004-1109

Ad Hoc Telecommunications
Users Committee
Levine Blaszak Block & Boothey
1300 Conn. Ave., NW, Ste. 500
Washington, D.C. 20036

Competitive Telecomm. Assoc.
Genevieve Morelli
Executive Vice President
1900 M St., N.W., Suite 800
Washington, D.C. 200036

Robert J Aamoth
Jonathan E. Canis
Reed Smith Shaw & McClay
Attorneys for CTA
1301 K Street, N.W.
Suite 1100-East Tower
Washington, D.C. 20005

Charles C. Hunter
Catherine M. Hannan
Hunter & Mow, P.C.
Telecomm. Resellers Assoc.
1620 I St., N.W., Suite 701
Washington, D.C. 20006

Bell Atlantic Telephone Co.
Edward Shakin
1320 N. Courthouse Rd.
8th Fl.
Arlington, VA 22201

Nynex Telephone Companies
Joseph Dibella
1300 I St., NW, Suite 400 West
Washington, D.C. 20005

U.S. Telephone Association
Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
1401 H St., N.W., Suite 600
Washington, D.C. 20036

ACC Long Distance Corporation
Dana Frix
Tamar Haverty
Swidler & Berlin Chartered
3000 K St., N.W., Suite 300
Washington, D.C. 20007

IXC Long Distance, Inc.
Gary L. Mann
98 San Jacinto, Suite 700
Austin, TX 78701

AT&T Corp.
Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
295 N. Maple Ave., Rm. 3245G1
Basking Ridge, NJ 07920

AT&T Corporation
Gene C. Schaerr
David L. Lawson
Scott M. Bohannon
1722 Eye Street, N.W.
Washington, D.C. 20006

Robert M. McDowell
Brian A. Cute
Helen & Associates, P.C.
Counsel for Telecomm. Assoc.
8180 Greensboro Dr., Suite 700
McLean, VA 22102

Telecon, LLC
Fay E. Harris
Kieran T. Mays
America's Carriers Telecomm.
Assoc.
8180 Greensboro Dr., Suite 700
McLean, VA 22102

Anne U. Macclintock, V. P.
Reg. Affairs and Public Policy
The Southern New England
Telephone Company
227 Church Street, N.W.
New Haven, CT 06510

Thomas E. Taylor
Christopher J. Wilson
Attorneys for Cincinnati Bell
Telephone Company
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45402

Robert B. McKenna
Richard A. Karre
Colleen Megan Helmreich
Attorneys for U.S. West
1020 19th St., NW, Suite 700
Washington, D.C. 20036

Pacific Telesis Group
Marlin D. Ard
Nancy C. Woolf
140 New Montgomery Street
San Francisco, CA 94105

Pacific Telesis Group
Margaret E. Garber
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

GSA
Emily C. Hewitt, GC
18th & F S., N.W., Room 4002
Washington, D.C. 20405

Office of the Judge Advocate
General
U.S. Army Litigation Center
901 N. Stuart Street, Ste. 712
Arlington, VA 22202-18374

John Rother, Esq.
Dir. Legis. and Public Policy
AARP
601 E Street, N.W.
Washington, D.C. 20049

Mary Rofuleau
Dr. Mark N. Cooper
Consumers Union
1666 Connecticut Avenue, N.W.
Washington, D.C. 20036

James Love, Director
Consumer Project on Technology
P.O. Box 19367
Washington, D.C. 20036

Int'l. Comm. Assoc.
Brian R. Moir
Moir & Hardman
2000 L St. N.W., Suite 512
Washington, D.C. 20036-4907

Alliance for Public Technology
Dr. Barbara O'Connor, Chair
Gerald Dep, President
901 15th Street, N.W.
Washington, D.C. 20005

David J. Newburger
Newburger & Vossmeier
One Metropolitan Square
Suite 2400
St. Louis, MO 63102

Martha S. Hogerty
Office of the Public Counsel
P.O. Box 7899
Jefferson City, MO 65102

Jack Shreve
Office of the Public Counsel
111 W. Madison St., Suite 812
Tallahassee, FL 32399-1400

Mike Travieso
Office of People's Counsel
6th St. Paul St., Suite 2102
Baltimore, MD 21202

Irwin A. Popowsky
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Blossom Peretz
Division of Ratepayer Advocate
P.O. Box 46005
Newark, NJ 06101

James Maret
Office of Consumer Advocate
Lucas State Office. Bldg.
4th Floor
Des Moines, IA 50319

Elizabeth A. Noel
Office of the People's Counsel
1133 15th St. N.W., Suite 500
Washington, D.C. 20005

Rob Manifold
Assistant Attorney General
9800 4th Ave., Suite 2000
Seattle, WA 98164

Regina Costa
Toward Utility Rate
Normalization
625 Polk Street, Suite 4503
San Francisco, CA 94102

Eric Swanson
Office of Attorney General
445 Minnesota Street
WCL Tower, Suite 1200
St. Paul, MN 55101-2130

Anne Becker
Ofc. of Utility Consumer
Counselor
100 N. Senate Ave., Room 501
Indianapolis, IN 46204-2208

Peter Arth, Jr.
Lionel & Wilson
Mary Mack Adu
505 Van Ness Avenue
San Francisco, CA 94102

Alabama Pub. Serv. Comm.
Mary Newmeyer
Federal Affairs Adviser
P.O. Box 991
Montgomery, AL 36101

Counsel for the Commonwealth
of the Northern Mariana
Islands
Law Ofc. of Thomas K. Crow, PC
2300 M Street, N.W., Suite 800
Washington, D.C. 20037

Maureen O. Helmer
NY State Dept. of Pub. Serv.
Three Empire Plaza
Albany, NY 12223-1350

Ofc. of Public Utility Counsel
Laurie Pappas
Deputy Public Counsel
1701 N. Congress Avenue, 9-180
P.O. Box 12397
Austin, TX 78711-2397

James A. Burg
Pam Nelson
SD Public Utilities Commission
Sate Capitol
Pierre, SD 57504-5070

R. Michael Senkowski
Jeffrey S. Linder
Gregory J. Vogt
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

GTE Service Corporation
Ward W. Wueste
Gail L. Polivy
1850 M St. N.W., Suite 1200
Washington, D.C. 20036

Richard Hemstad
William R. Gillis
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive
P.O. Box 47250
Olympia, WA 98504-7250

Michael T. Skrivan
Harris Skrivan & Associates,
LLC
8801 S. Yale, Suite 220
Tulsa, OK 74137

Airtouch Communications, Inc.
Kathleen Q. Abernathy
David A. Gross
1818 N Street, N.W.
Washington, D.C. 200036

Pamela J. Riley
Airtouch Communications, Inc.,
One California St., 9th Floor
San Francisco, CA 94111

Personal Communications
Industry Association
Mark J. Golden
Robert J. Hoggarth
Mary Madigan
500 Montgomery St., Suite 700
Alexandria, VA 22314-1561

Centennial Cellular Corp.
Christopher W. Savage
Cole Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Association for Local
Telecommunications Services
Richard J. Metzger
Emily M. Williams
1200 19th St., N.W. Suite 560
Washington, D.C. 20036

Teleport Commun. Group, Inc.
Teresa Marrero
Senior Regulatory Counsel
Two Teleport Drive
Staten Island, NY 10311

Spectranet International, Inc.
Glenn B. Manishin
Christine A. Mailloux
Blumenfeld & Cohen
Technology Law Group
1615 M Street N.W., Suite 700
Washington, D.C. 20036

Brian Conboy
Thomas Jones
Gunnar Halley
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20036

Tele-Communications, Inc.
Randall B. Lowe
Piper & Marbury, LLP
1200 19th Street N.W.
Washington, D.C. 20036

Rural Telephone Finance Coop.
John J. List, Sr. V. P.
2201 Cooperative Way
Herndon, VA 20170

Western Alliance
Benjamin H. Dicken, Jr.
Gerald J. Duffy
Blooston Mordkofsky Jackson &
Dickens
2120 L Street N.W., Suite 300
Washington, D.C. 20037

TDS Telecomm. Corporation
Margot Smiley Humphrey
Kotten & Naftalin, LLP
1150 Conn. Ave., NW, Ste. 1000
Washington, D.C. 20036

ITC
David A. Irwin
Tara S. Becht
Irwin, Campbell & Tannenwals
1739 Rhode Island Ave., N.W.,
Suite 200
Washington, D.C. 20036-3101

Independent Telephone
Telecommunications Alliance
Diane Smith
655 15th St. N.W., Suite 220
Washington, D.C. 20005-5701

Kent Larsten
Cathey Hutton and Associates
2711 LBJ Freeway, Suite 560
Dallas, TX 75234

Alltel Telephone Serv. Corp.
Carolyn C. Hill
655 15th St. N.W., Suite 220
Washington, D.C. 20005

Frederick & Warinner, LLC
Clink Frederick
10901 W. 84th Terr., Suite 101
Lenexa, KS 66214-1631

Rosevill Telephone Company
George Petrutsas
Paul J. Feldman
Fletcher Heald & Hildreth PLC
1300 N. 17th St., 11th Floor
Rosslyn, VA 22209

Minn. Independent Coalition
Richard J. Johnson
Michael J. Bradley
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

NRTA
Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Conn. Ave., NW, Ste. 100
Washington, D.C. 20036

NTCA
David Cosson
L. Marie Gullory
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

Aliant Communications Company
Robert A. Mazer
Albert Shuldiner
Vinson & Elkins
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1007

Compuserve, Inc. & Prodigy
Services Corporation
Randolph J. Mayu
Bonding Yee
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2404

Illuminet
Stephen G. Kraskin
Slyvia Lesse
Thomas J. Moorman
Kraskin & Lesse
2120 L St., N.W., Suite 530
Washington, D.C. 20037

The Interactive Serv. Assoc.
Edward N. Lavergne
J. Thomas Nolan
Ginsburg Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Microsoft Corporation
Jack Krumholtz
Law & Corporate Affairs Dept.
5335 Wisc. Ave., NW, Suite 600
Washington, D.C. 20015

Microsoft Corporation
Stanley M. Gorinson
William H. Davenport
Preston Gates Ellis & Rouvelas
Meeds
1735 New York Ave., N.W.
Washington, D.C. 20006

Commercial Internet Exchange
Association
Robert D. Collet
Barbara A. Dooley
Piper & Marbury, LLP
1200 19th St. N.W., Suite 700
Washington, D.C. 20036

Bankers Clearing House
Mastercard Intl., Inc.
and Visa USA, Inc.
Henry D. Levine
Laura R.H. McDonald
1300 Conn. Ave., NW, Suite 500
Washington, D.C. 20036

LCI International Corp., Inc.
Gregory M. Casey
Douglas W. Kinkoph
8180 Greensboro Dr., Suite 800
McLean, VA 22102

Terry Michael Banks
ICG Telecom Group
1303 Sawbridge Way
Reston, VA 22094

The Rural Telephone Coalition
Margo Smiley Humphrey
Caption & Naftalin, LLP
1150 Conn. Ave., NW, Suite 100
Washington, D.C. 20036

The Rural Telephone Coalition
David Cosson
L. Marie Guillory
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

The Rural Telephone Coalition
Lisa M. Zaina
Kenneth Johnson
21 DuPont Circle, NW, Ste. 700
Washington, D.C. 20036

Tennessee Regulatory Authority
Christopher Klein, Chief
Utility Rate Division
460 James Robertson Parkway
Nashville, TN 37243-0505

David J. Brown
E. Molly Leahy
Newspaper Assoc. of America
529 14th St., N.W., Suite 440
Washington, D.C. 20045

Lesla Lehtonen
Attorney for California Cable
Television Association
4341 Piedmont Avenue
Oakland, CA 94611

Nysernet, Inc.
James Brennan
Assoc. Dir. of Gov. Services
Rensselaer Technology Park
Troy, NY 12180-7698

Cynthia B. Miller
Senior Attorney
Florida Public Service Comm.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Sonetech, Inc.
W. Fred Seigneur, President
2109 Kale Avenue
Sterling, VA 20164

David J. Newburger
Newburger & Vossmeier
Counsel for American
Association for Adult and
Continuing Education
One Metropolitan Sq. Ste. 2400
St. Louis, MO 63102

Catherine R. Sloan
David Porter
Richard L. Fruchterman, II
Worldcom, Inc.
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036-3902

Richard J. Heitmann
Worldcom, Inc.
15 E. Amite
Jackson, MS 39201-2702

Alex J. Harris
Worldcom, Inc.
33 Whitehall St., 15th Floor
New York, NY 10004

Attys. for Worldcom, Inc.
Peter A. Rohrbach
David L. Sieradzki
F. William Lebeau
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109

Comm. Workers of America
Morton Bahr, President
501 3rd Street, N.W.
Washington, D.C. 20001

Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Industry Analysis Division*
Common Carrier Bureau
2033 M Street, N.W., Room 500
Washington, D.C. 20554

James Schlichting*
Chief Tariff Division
FCC
1919 M St., N.W., Room 518
Washington, D.C. 20554

John C. Smith
General Counsel
Aeronautical Radio, Inc.
2551 Riva Road
Annapolis, MD 21401

W. Theodore Pierson, Jr.
Richard J. Metzger
Douglas J. Minster
Attorneys for Association for
Local Telecom Services
1200 19th St., NW, Suite 607
Washington, D.C. 20036

M. Robert Sutherland
Counsel for Bellsouth
Telecommunications, Inc.
1155 Peach St., NE, Suite 1700
Atlanta, GA 30309-3610

California Cable Television
Association
Donna N. Lampert
Christopher J. Harvie
James J. Valentino
Glovsky and Popeo, P.C.
702 Penn. Ave., NW, Suite 900
Washington, D.C. 20004

Walter G. Bolter, Ph.D.
Bethesda Research Institute,
Ltd.
P.O. Box 4044
St. Augustine, FL 32085

Allan J. Arlow
President and CEO
Computer Y Communications
Industry Association
666 11 Street, N.W.
Washington, D.C. 20001

Charles A. Zielinski
Rogers & Wells
Attorneys for Computer
& Comm. Industry Association
607 14th Street, N.W.
Washington, D.C. 20005

Henry Mrivera
Attorney for the Council of
Chief
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

James E. Keith, President
AMBOX Incorporated
6040 Telephone Road
Houston, TX 77087

Barry Gorsun, President
Summa Four, Inc.
25 Sun Dial Avenue
Manchester, NH 03103

Charles W. Trippe
Chairman and CEO
AMPRO Corporation
525 John Rodes Blvd.
Melbourne, FL 32934

Joseph J. Lahoud, President
LC Technologies, Inc.
9455 Silver King Court
Fairfax, VA 22031

Paul Pandian, President
Axes Technologies, Inc.
3333 Earhart
Carrollton, TX 3220

Fred Van Veen, Vice President
Teradyne, Inc.
321 Harrison Avenue
Boston, MA 02118

James B. Wood, President
Inovonics, Inc.
1304 Sair Avenue
Santa Cruz, CA 95060

Frank Tripi, Vice President
Perception Technology Corp.
40 Shawnut Road
Canton, MA 02021

L. Paul Knoerzer
Vice President
OK Champion Corporation
P.O. Box 585
Hammond, IN 46320

John E. Lingo, Jr.
President
Lingo, Inc.
P.O. Box 1237
Camden, NJ 08105

William H. Combs, III,
President
Tamaqua Cable Products Corp.
P.O. Box 347
300 Willow Street
Schuylkill Haven, PA 17972

J.R. Panholzer, Vice President
Rhetorex, Inc.
200 E. Hacienda Avenue
Campbell, CA 95008

George Sollman
President and CEO
Centigram Comm. Corporation
91 E. Tasman Drive
San Jose, CA 95134

Stephen B. Kaufman
President and CEO
Healthtech Services Corp.
255 Revere Drive, Suite 101
Northbrook, IL 60062

David L. Deming, President
Senecom Vocie Processing
Systems
6 Blossomwood Court
St. Louis, MO 63033-5202

Lucile M. Moore, Chairman
Intellect, Inc.
1100 Exeuctive Drive
Richardson, TX 75081

Tenley A. Carp
Personal Property Division
GSA
18th & F Sts., NW, Room 40002
Washington, D.C. 20405

Vincent L. Crivella
Personal Property Division
GSA
18th & F Sts., NW, Room 40002
Washington, D.C. 20405

Michael J. Ettner
Personal Property Division
GSA
18th & F Sts., NW, Room 40002
Washington, D.C. 20405

Richard McKenna, Esq.
GTE Service Corporation
HQE03136
P.O. Box 152092
Irving, TX 75015-2092

Jonathan E. Canis
Swidler & Berlin Chartered
Counsel for Intermedia Comm.
of Florida, Inc.
3000 K Street N.W., Suite 300
Washington, D.C. 20007

Robert A. Mazer
Nixon Hargrave Devans & Doyle
Counsel for the Lincoln
Telephone & Telegraph Co.
One Thomas Cir., NW, Ste. 800
Washington, D.C. 20005

Andrew D. Lipman
Russell M. Blau
Attorneys for MFS Comm. Co.
Inc.
3000 K Street, N.W.
Washington, D.C. 20007

Margot Smiley Humphrey
Koteen & Naftalin
Attorneys for National Rural
Telecom Association
1150 Conn. Ave., NW, Ste. 1000
Washington, D.C. 20036

David C. Bergmann
Yvonne T. Ranft
Associate Consumers' Counsel
Ofc. of the Consumers' Counsel
State of Ohio
77 S. High Street, 15th Floor
Columbus, OH 43266-0550

James P. Tuthill
John W. Bogy
Attorneys for Pacific Bell and
Nevada Bell
140 New Montgomery Street
Room 1530-A
San Francisco, CA 94105

James L. Wurtz
Margaret E. Garber
Attorneys for Pacific Bell and
Nevada Bell
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Lucille M. Mates
Sarah Rubenstein
Attorney for Pacific Bell and
Nevada Bell
140 New Montgomery Street
Room 1522A
San Francisco, CA 94105

Paul B. Jones
Janis A. Stahlhut
Regulatory Affairs
Time Warner Communications
300 First Stamford Place
Stamford, CT 06902-6732

Lawrence P. Keller
Cathey Hutton & Assoc., Inc.
Counsel for USTA
3300 Holcomb Bridge Road
Suite 286
Norcross, GA 30092

Peter A. Rohrback
Linda L. Oliver
Attorney for Wiltel, Inc.
Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004-1109

Dr. Jerome R. Ellig
Center for Market Processes
4084 University Dr., Suite 208
Fairfax, VA 22030

Danny E. Adams
Jeffrey S. Linder
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Janet Reno
U.S. Attorney General
Department of Justice
10th & Constitution Ave., NW
Room 4400
Washington, D.C. 20530

Janice Myles*
Policy & Program Planning Div.
Common Carrier Bureau
1919 M St., N.W. Room 518
Washington, D.C. 20554

Comcast Cable Comm. Inc.
Cox Enterprises, Inc.
Leonard J. Kennedy
Laura H. Phillips
Steven Morris
1255 23rd St., NW, Suite 500
Washington, D.C. 20037

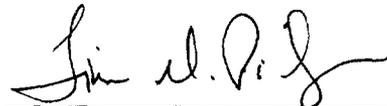
Jody B. Burton
Personal Property Division
GSA
18th & F Sts., N.W.
Washington, D.C. 20405

Philip L. Verveer
Thomas Jones
Attorneys for National Cable
Television
Willkie Farr & Gallagher
1155 21st Street, N.W.
Washington, D.C. 20036

Daniel Kelley
Economic and Technology
Consultants
National Cable Television
Association, Inc.
757 29th Street, Suite 200
Boulder, CO 80303

Maureen O. Helmer
General Counsel
NY Dept. of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Information Technology and
Telecomm. Association
R. Michael Seneowski
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006



Tina M. Pidgeon

*By Hand Delivery