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

In the Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45 /

Access Charge Reform)

RECEIVED

CC Docket No. 96-262

AUG 6 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS

BELLSOUTH CORPORATION

M. Robert Sutherland
Richard M. Sbaratta

Its Attorneys

Suite 1700
1155 Peachtree Street, N. E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Date: August 6, 1999

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REPLY COMMENTS

BellSouth Corporation, on behalf of itself and its subsidiaries (“BellSouth”), hereby submits its reply comments on the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) regarding the implementation of a new federal universal service fund.¹

I. INTRODUCTION AND SUMMARY

As BellSouth and other parties noted in their comments, a two-pronged approach is being pursued by the Commission in its efforts to establish a federal universal service funding mechanism. The Commission differentiates between the implicit support contained in interstate access charges and the additional explicit support that states should be afforded through a new, federal Universal Service Fund (“USF”) that is necessary to ensure reasonably comparable intrastate rates. While the majority of the Commission’s May 28 *FNPRM* in this docket focused on the aspects of additional state funding, issues dealing with the implicit subsidies embodied in current interstate access rates were also raised. In order to implement the federal USF on January

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking*, FCC 99-119, released May 28, 1999.

1, 2000, as currently planned by the Commission, the issues pertaining to implicit subsidies and additional state funding must be resolved in a timely manner.

With this filing, BellSouth responds to specific points made by the parties commenting on rate comparability issues and additional federal funding for states. BellSouth strongly disagrees with parties such as CompTel² and the West Virginia Public Service Commission³ that continue to tie the level of competition to the implementation of a federal USF. The Commission should move forward to establish a federal USF that provides for competitive neutrality and encourages market entrance. Contrary to West Virginia's assertions, arbitrage opportunities are not beneficial to the marketplace⁴ and the Commission should target support solely to high cost areas.

In order to move forward the issue of removing implicit subsidies from access charges and reforming the access charge structure, members of the interexchange carrier and local telephone company communities recently filed a comprehensive proposal ("Coalition Proposal").⁵ This Coalition Proposal represents an historic joint proposal to reform interstate universal service high cost support and access charge rates and rate structure for price cap local exchange carriers in a comprehensive, unified, and timely manner. The recommendations contained in the Coalition Proposal will address MCI's and others' concerns about quantifying

² CompTel, p. 4.

³ West Virginia Public Service Commission, p. 7.

⁴ West Virginia Public Service Commission, p. 8.

⁵ Letter from Harris, Wiltshire & Grannis on behalf of the Coalition for Affordable Local and Long Distance Services, to the Honorable Kennard, Ness, Furchtgott-Roth, Powell and Tristani, regarding Universal Service and Access Reform Proposal, filed July 29, 1999.

the amount of federal implicit subsidies in access charges and replacing these subsidies by explicit USF funding.

Both GTE⁶ and the Texas Office of Public Utility Counsel, Consumer Federation of America, National Association of State Utility Consumer Advocates, and Consumers Union (“Joint Commenters”)⁷ urge the Commission to provide more direction for the states. BellSouth agrees that the Commission must proactively encourage the states to establish procedures that remove implicit support mechanisms from intrastate rates, especially in light of other pro-competitive actions it has taken.

II. SPECIFIC ISSUES RAISED BY THE COMMISSION’S FNPRM

A. Level Of Disaggregation

There is substantial support for calculating costs on the basis of no higher a level of disaggregation than UNE cost zones among all categories of stakeholders. The Iowa Utilities Commission, Sprint, Western Wireless, GSA, MCI, GTE, as well as BellSouth, support the use of at most a UNE cost zone as the level of disaggregation. MCI states that if costs and the size of the subsidy required were calculated at the study area level, the explicit fund created would not be large enough to fund all universal service needs. This would leave some implicit support requirements.⁸ U S West also believes that study-wide rate averaging includes substantial implicit support that the Telecommunications Act of 1996 (the “Act”) sought to eliminate.⁹ Sprint points out that calculating support on a study area basis results in little more than

⁶ GTE, p. 9.

⁷ Texas Office of Public Utility Counsel, et al., p. 31.

⁸ MCI, p. 16.

maintaining the status quo.¹⁰ GSA states that calculating support on a study area level will usually not be representative of costs in most parts of a state.¹¹

Indeed, the Commission recognized in its local competition order that statewide cost averages will not be beneficial in helping competition to develop when it designated rules for the geographically deaveraged pricing of UNEs.¹² The Commission should avoid inconsistency between its interconnection rules and its USF rules. Since the Commission has mandated that the states deaverage UNEs within six months of a final universal service order, a consistent approach predicated upon UNE zones is logical. GTE also finds it reasonable to determine USF support based on the same geographic units that ultimately are used for UNE retail and wholesale service rates.¹³

The Commission has correctly noted that deaveraged support could encourage efficient competitive entry in high cost areas. In its comments, Sprint points out that the use of statewide cost averages poses a barrier to entry and will continue the subsidization of high cost areas within the study area by low cost areas. Sprint also points out that study area costs are not competitively neutral since a company serving high cost areas in a state with average costs below the threshold level will not receive support while another carrier will receive support because it serves a study area in a state where the overall costs are higher than the national average.¹⁴

⁹ U S West, p. 10.

¹⁰ Sprint, p. 10.

¹¹ GSA, p. 4.

¹² *In The Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Order*, 11 FCC Rcd 15499 (1996).

¹³ GTE, p. 23.

¹⁴ Sprint, p. 13.

Many of the commenting parties that urge the Commission to adopt a study area approach do so because it will limit the size of the fund. For example, Cincinnati Bell states that averaging costs over a study area produces a smaller fund size¹⁵ and AT&T believes that the use of a level of disaggregation below the study area would contravene the Commission's intent to limit federal support.¹⁶ Even parties such as the New York Public Service Commission¹⁷ and the California PUC¹⁸ which support a calculation at study area level believe that support must be distributed at a more deaveraged level. It should be noted that Bell Atlantic argues in favor of using a study area level simply as a means of reducing the cost model's shortcomings. While BellSouth cannot deny that the model contains major flaws (as discussed in the companion Comments and Reply Comments in CC Docket 97-160), it is nonsensical to attempt to correct one mistake by adopting another.

As BellSouth pointed out in its Comments in this proceeding filed on July 23, 1999, it is inappropriate to use the level of cost aggregation as a mechanism to limit the size of the federal universal service fund.¹⁹ The appropriate level of disaggregation is unrelated to the size of the fund. The Commission's preliminary determination that the amount of the fund should not exceed current support levels is a public policy determination, not a cost consideration.²⁰ GTE agrees that the Commission cannot permit its goal of limiting the size of the fund to dictate the

¹⁵ Cincinnati Bell, p. 4.

¹⁶ AT&T, p. 12.

¹⁷ New York Public Service Commission, p. 9.

¹⁸ California Public Utilities Commission, p. 10.

¹⁹ BellSouth, p. 7.

²⁰ BellSouth, p. 8.

calculation of support on a highly averaged basis. GTE suggests that if the use of a more targeted support produces a fund size that the Commission considers unacceptable, then the Commission should adopt some other, more neutral constraint on the size of the fund.²¹ Indeed, GSA suggests that if the total program cost using a finer level of aggregation yields an unacceptable result, the requirements can be reduced by increasing the support threshold.²² MCI also suggests setting the threshold cost differential percentage fairly high as a means of limiting any increase in fund size due to increased disaggregation.²³ Western Wireless states that a system of geographic averaging that would thwart competitive entry cannot be the means for imposing limits on the overall size of the fund, particularly given that competitively neutral measures are available to accomplish the same objective.²⁴ Thus, there are other means available to the Commission to limit the size of the fund.

B. Benchmark and Sizing the Fund

While various parties suggest numeric benchmarks and/or formulas in their comments, BellSouth has shown in its Comments that the benchmark can be adjusted to size the fund to meet public policy considerations. Indeed, as MCI points out, there are no analytically or objectively correct values.²⁵ Whatever benchmark is selected, however, is secondary to two other decisions the Commission must make. First, as discussed above, the appropriate geographical level must be selected. More importantly, however, the cost model must be carefully constructed

²¹ GTE, p. 27.

²² GSA, p. 4.

²³ MCI, p. 19.

²⁴ Western Wireless, p. 6.

²⁵ MCI, p. 5.

to produce accurate and sufficient results. Arbitrarily adjusting the cost inputs or methodology to achieve an ever smaller support requirement is a disservice to the very consumers that Congress wants to protect.

MCI, one of the companies most involved in assisting in the development of the Commission model, points out that simulations show the model as a “blunt, inflexible instrument incapable of achieving its stated goals in a rational manner.”²⁶ U S West points to the misguided effort to reduce the size of the fund by reducing the level of cost generated by the model.²⁷

BellSouth believes that the Commission could use the model to determine cost relationships between states. The Commission should be very clear about the limited use and application of the model. As US West notes, there may be temptations to use the model and its understated costs inappropriately in upcoming access reform and UNE price proceedings. Certainly AT&T’s suggestion that the Commission use the proxy model to determine the level of implicit support inherent in interstate access is rendered moot by the Coalition Proposal.

C. Distribution And Application Of Support

It is not necessary for the Commission to direct the manner in which the states incorporate any additional federal USF into intrastate ratemaking. There is no single approach that states have used in the past to maintain reasonable affordable universal service and approaches will continue to vary. The Commission should, however, require that any new explicit funding targeted towards intrastate rate comparability be used to remove implicit

²⁶ MCI, p. 18.

²⁷ U S West, p.12.

subsidies in the intrastate jurisdiction. Since many intrastate services provide implicit support for basic local services, Sprint's requirement that any increase in federal USF be used to decrease intrastate access charges should be denied.²⁸

Any certification program that is adopted should be technologically and competitively neutral. Western Wireless believes that competitive entrants should not be required to comply with regulatory measures since market forces will constrain their rates. It urges the Commission, however, to adopt regulatory measures to prevent ILECs from misusing universal service support or pocketing such support while charging "excessive rates" for the supported services and using such support to cross-subsidize other offerings.²⁹ Western Wireless' argument is nonsensical—if ILECs were able to charge cost-based rates for the supported services (much less "excessive" ones), there would be little need for a universal service funding mechanism.

D. Hold-Harmless

Most of the commenting parties do not address the underlying reason why the Commission should implement a transitional "hold harmless" funding mechanism. Under the current High Cost Fund, federal support is provided to companies with higher than average costs. The existing USF amounts were determined on a carrier-by-carrier basis on a study area basis. These carriers have adjusted specific intrastate rates to reflect such support. As BellSouth points out in its Comments, if this approach is abandoned, the disruption that the Commission seeks to

²⁸ Sprint, p. 8.

²⁹ Western Wireless, p. 14.

avoid can still occur.³⁰ Since this funding has been applied to carrier specific rates, any hold-harmless amounts should be distributed on a carrier specific basis.

While several parties argue that any hold-harmless support is unnecessary (see, e.g., Iowa, NYPSC), some parties believe that such support will artificially favor incumbents. MCI believes that if a carrier is held harmless, it will continue to receive the same level of universal service funding even if it is no longer serving all the high-cost customers whose rates the universal service fund was designed to keep affordable.³¹ MCI does not seem to understand that high cost support will be portable. BellSouth supports applying the hold-harmless provision in a competitively neutral manner. Certainly no carrier should receive hold-harmless support for a customer it no longer serves. New entrants must be eligible to receive the same level of support as an incumbent receives for serving a customer. This tenet is also supported by AT&T and the California Public Service Commission.

Indeed, the original “hold harmless” amount should be directed to study areas and should be converted to per line amounts. As the incumbent carrier loses a line, it loses the associated support.

With respect to making hold-harmless support transitional, most commenting parties suggest a one-to three-year transition period. As this period nears expiration, the Commission should determine whether the hold-harmless mechanism is no longer necessary.

³⁰ BellSouth, p. 10.

³¹ MCI, p. 14.

E. Adjusting Interstate Access Charges To Account For Explicit Support

As MCI asserts in its Comments, access charges are a major source of current implicit subsidy flows.³² BellSouth believes that most of the switched access issues raised by the Commission in its *FNPRM* are addressed and resolved by the Coalition Proposal. Adoption of the Proposal would negate the need for more time-consuming exercises and endless debate about the size of this aspect of the federal USF. By targeting the Common Line basket for reductions, states that require mirroring of federal switched access rates will not suffer the type of rate instability that Wisconsin fears.³³ The Coalition Proposal provides dollar-for-dollar reductions in switched access charges and detailed guidelines for adjusting rates under price cap formulas. Through a combination of end user surcharges and universal service funding, the proposal also provides a responsible way to remove a substantial amount of implicit support from interstate access rates.

The State Members of the Joint Board ("State Members") argue that the primary residence and single-line business subscriber line charge should be reduced and reference Section 254(k) of the Act as the rationale for doing so. The State Members have apparently misconstrued the meaning of Section 254(k) of the Act. This Section of the Act forbids the subsidization of services that are subject to competition by those services that are not competitive. Furthermore, the primary residence and single line business subscriber line charges recover costs associated with the loop and would be higher, rather than lower, if not constrained

³² MCI, p. 3.

³³ Wisconsin, pp. 4-5.

by Commission rules. Given that subscriber line charges are generally below cost rather than above it, they cannot be subsidizing other services. However, even if the subscriber line charges were above cost, there would only be a subsidy flow if some competitive service were priced below cost.

In addition, the State Members are incorrect in their assertion that the costs associated with the local loop are joint and common costs. Proponents of this assertion fail, or refuse, to recognize that the loop represents a standalone service, independent of any capability to make long distance calls or to provide call waiting. Therefore, under the principle of cost-causation, a cost can be uniquely identified with the loop. Cost causation, not usage pattern or benefits received, should drive cost allocation and cost recovery. As long as a residential loop (or access to the public switched network) is an independent service, the cost of which cannot be avoided by consuming none of the usage-based services, its cost should not be allocated.

III. CONCLUSION

BellSouth believes that no interim approach to the federal USF is required. The Commission should move forward with implementing its federal USF and put a stop to the endless rounds of debate. The Commission cannot expect that the new federal High Cost Fund will remain intact for perpetuity, nor should the Commission be frozen into inaction. The Coalition Proposal sets forth a method for moving forward with the removal of implicit subsidies from interstate switched access rates, and it should be implemented in its entirety.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 
M. Robert Sutherland
Richard M. Sbaratta

Its Attorneys

Suite 1700
1155 Peachtree Street, N. E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Dated: August 6, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of August 1999 served the following parties to this action with a copy of the foregoing REPLY COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



Karen S. Bullock

Service List CC Docket Nos. 96-45 and 96-262

Alfred G. Richter Jr.
Roger K. Toppins
Hope Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3023
Dallas, Texas 75202

Edward Shakin
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

Jay C. Keithley
Leon Kestenbaum
Sprint Corporation
1850 M Street N. W., 11th Floor
Washington, DC 20036-5807

Sandra K. Williams
Sprint Corporation
4220 Shawnee Mission Parkway
Suite 303A
Westwood, KS 66205

Jonathan Chambers
Sprint PCS
1801 K Street N. W.
Suite M112
Washington, D. C. 20006

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

Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge, MS HQ-E03J43
P. O. Box 152092
Irving, Texas 75015-2092

Jeffrey S. Linder
Suzanne Yelen
GTE Service Corporation
Wiley, Rein & Fielding
1776 K Street, N. W.
Washington, D.C. 20006

Benjamin H. Dickens, Jr.
Mary J. Sisak
Omnipoint Communications, Inc.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N. W.
Suite 300
Washington, DC 20037

Joe D. Edge
Tina M. Pidgeon
Puerto Rico Telephone Company
Drinker Biddle & Reath LLP
1500 K Street, N. W.
Suite 1100
Washington, D.C. 20005

Samuel E. Ebbesen
President & Chief Executive Officer
Virgin Islands Telephone Corporation
P. O. Box 6100
St. Thomas, USVI 00801-6100

John F. Jones
Director of Government Relations
CenturyTel, Inc.
100 Century Park Drive
Monroe, Louisiana 71203

Karen Brinkmann
Richard R. Cameron
CenturyTel, Inc.
Latham & Wakins
1001 Pennsylvania Avenue, N. W.
Washington, DC 20004

Angela E. Giancarlo
Director, Federal Regulatory Affairs
Personal Communications
Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Personal Communications
Industry Association
Hogan & Hartson, LLP
555 Thirteenth Street, N. W.
Washington, DC 20004

Gene DeJordy
Executive Director of Regulatory Affairs
Western Wireless Corporation
3650 – 131st Avenue, S. E., Suite 400
Bellevue, WA 98006

Michele C. Farquhar
David L. Sieradzki
Steven F. Morris
Ronnie London
Western Wireless Corporation
Hogal & Hartson, L.L.P.
Columbia Square, 555 Thirteenth St., NW
Washington, DC 20004-1109

George Y. Wheler
United States Cellular Corporation
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, NW
Washington, DC 20036

Robert B. McKenna
Kathryn E. Ford
Steven R. Beck
U S West, Inc.
Suite 700
1020 19th Street, N. W.
Washington, DC 20036

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie L. Rones
United States Telephone Association
Suite 600, 1401 H Street, NW
Washington, DC 20005

Margot Smiley Humphrey
NRTA
Koteen & Naftalin, L.L.P.
Suite 1000
1150 Connecticut Avenue, N.W.
Washington, DC 20036

L. Marie Guillory
Jill Canfield
NTCA
4121 Wilson Blvd., Tenth Floor
Arlington, VA 22203

Kathleen A. Kaercher
Stuart Polikoff
OPASTCO
21 Dupont Circle, N. W.
Suite 700
Washington, DC 20036

George N. Barclay
Michael J. Ettner
General Service Administration
1800 F Street, N.W.
Room 4002
Washington, DC 20405

Snavelly King Majoros O'Connor
& Lee, Inc.
1220 L Street, N. W., Suite 410
Washington, DC 20005

Margot Smiley Humphrey
TDS Telecommunications Corporation
Koteen & Naftalin, L.L.P.
Suite 1000
1150 Connecticut Avenue, N. W.
Washington, DC 20036-4104

Michael S. Pabian
Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Samuel I. Loudenslager
Arkansas Public Service Commission
1000 Center
Little Rock, AK 72203

Joel B. Shifman
Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, Maine 04333-0018

Martin Jacobson
Montana Public Service Commission
1701 Prospect Avenue
P. O. Box 202601
Helena, MT 59620-2601

Gary Epler
General Counsel
New Hampshire Public Utilities Commission
8 Old Suncook road, Building No. 1
Concord, NH 03301-7319

Illona Jeffcoat-Sacco
North Dakota Public Service Commission
State Capital, 600 East Boulevard
Department 408
Bismarck, ND 58505-0480

George Young
Vermont Public Service Board
112 State Street
Montpelier, Vermont 05602

Steve Hamula
Staff Attorney
West Virginia Public Service Commission
201 Brooks Street
Post Office Box 812
Charleston, WV 25323

Stephen Oxley
Secretary and Chief Counsel
Wyoming Public Service Commission
Hansen Building, Suite 300
2515 Warren Avenue
Cheyenne, WY 82002

Peter Arth, Jr.
Lionel b. Wilson
Ellen S. Levine
People of the State of California & The
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Carol Ann Bischoff
Executive Vice President &
General Counsel
1900 M Street, N. W., Suite 800
Washington, DC 20036

Robert J. Aamoth
Paul Madison
Competitive Telecommunications Association
Kelley Drye & Warren LLP
1200 19th Street, N. W., Suite 500
Washington, DC 20036

Christopher J. Wilson
Corporate Attorney
Cincinnati Bell Telephone Company
201 East 4th Street, Room 102-620
Cincinnati, Ohio 45201

Tara S. Becht
ITCS, Inc.
Irwin Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N. W.
Suite 200
Washington, DC 20036

Chuck Goldfarb
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N. W.
Washington, DC 20006

Lawrence G. Malone General Counsel
Public Service Commission of the
State of New York
Three Empire State Plaza
Albany, New York 12223-1350

Mark C. Rosenblum
Judy Sello
Room 324511
295 North Maple Avenue
Basking Ridge, NJ 07920

Laurie Pappas
Texas Office of Public Utility Counsel
1701 N. Congress Avenue
Suite 9-180
Austin, TX 78701

Michael Travieso
Chair, Telecommunications Committee
NASUCA
1133 15th Street, N. W., Suite 550
Washington, DC 20005

Mark Cooper
Director of Research
Consumer Federation of America
504 Highgate Terrace
Silver Spring, MD 20904

Gene Kimmelman
Co-Director
Consumer Union (Washington, DC)
1666 Connecticut Avenue, N. W.
Washington, DC 20009

Allan Kniep
General Counsel
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319

William H. Smith, Jr.
Federal and Legislative Programs
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319

Gerard J. Duffy
The Western Alliance
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N. W., Suite 300
Washington, DC 20037

Gene W. Lafitte, Jr.
Consumer Advocate Division
Public Service Commission of West Virginia
700 Union Building
723 Kanawha Blvd., East
Charles, West Virginia 25301

Kenneth T. Burchett
GVNW Consulting, Inc.
8050 SW Warm Springs Street
Tualatin, Oregon 97062

The Honorable Susan Ness, Chair,
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Room 8-B115
Washington, D.C. 20554

The Honorable Patrick H. Wood, III,
Chairman
Texas Public Utility Commission
1701 North Congress Ave.
Austin, Texas 78701

The Honorable Harold Furchtgott-Roth,
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Room 8-A302
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth,
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Room 8-A302
Washington, D.C. 20554

The Honorable Gloria Tristani,
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
Room 8-C302
Washington, D.C. 20554

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

The Honorable Julia Johnson, State Chair,
Chairman
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509-4927

The Honorable David Baker,
Commissioner
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701

James Casserly
Federal Communications Commission
Commissioner Ness' Office
The Portals, 445 Twelfth Street, S. W.
Room 8-B115
Washington, D.C. 20554

The Honorable Laska Schoenfelder,
Commissioner
South Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

Rowland Curry
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78701

Ann Dean
Maryland Public Service Commission
16th Floor, 6 Saint Paul Street
Baltimore, MD 21202-6806

Bridget Duff, State Staff Chair
Florida Public Service Commission
2540 Sumard Oak Blvd.
Tallahassee, FL 32399-0866

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

Irene Flannery, Federal Staff Chair
Federal Communications Commission
Accounting and Audits Division
Universal Service Branch
2100 M Street, N.W., Room 8922
Washington, D.C. 20554

James Bradford Ramsey
National Association of Regulatory Utility
Commissioners
1100 Pennsylvania Ave., N.W.
P.O. Box 684
Washington, D.C. 20044-0684

Paul Gallant
Federal Communications Commission
Commissioner Tristani's Office
The Portals, 445 Twelfth Street, S. W.
Room 8-C302
Washington, D.C. 20554

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

The Honorable James M. Posey, Commissioner
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1963

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0866

*Sheryl Todd
Federal Communications Commission
Universal Service Branch
The Portals, 445 Twelfth Street, S.W.
Room 5-A523
Washington, D.C. 20554

Sandra Makeef
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Kevin Martin
Federal Communications Commission
Commissioner Furchtgott-Roth's Office
The Portals, 445 Twelfth Street, S.W.
Room 8-A302E
Washington, D.C. 20554

*Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

*International Transcription Service
1231 20th Street, N.W.
Washington, DC 20036

* **VIA HAND DELIVERY**