



Richard Juhnke
General Attorney

401 9th Street, Northwest, Suite 400
Washington, D.C. 20004
Voice 202 585 1912
Fax 202 585 1897
richard.juhnke@mail.sprint.com

April 2, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE PRESENTATION
CC Docket Nos. 96-45 and 96-262

Dear Ms. Salas:

Sprint Corporation wishes to address the petitions for reconsideration and clarification, filed by BellSouth Corporation and Arya International Communications Corporation on December 6, 1999, of the Commission's order in the above-referenced dockets on remand from the Fifth Circuit in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*").¹

Sprint opposes these petitions to the extent they seek retroactive application of *TOPUC* with respect to the funding base for universal service contributions, which would, *inter alia*, result in refunds to carriers for their contributions that were based on intrastate revenues. BellSouth's concession (at 13) that "undoing these past assessments ... is a bit like unscrambling eggs" is a vast understatement, even more so considering the time that has passed since these petitions were filed. The assessments in question were imposed on hundreds of carriers, and the resulting funds were disbursed to thousands of separate entities. Many carriers that had intrastate revenues and contributed to USF programs may have merged or exited from the market, and sorting all these issues out would be a massive and complex undertaking.

AT&T, in comments filed in response to these petitions, argued that, contrary to BellSouth's seemingly reluctant legal analysis that retroactivity was required as a matter of law, the Court in *TOPUC* did not appear to have intended its decision to be given retroactive effect, since it declined to order refunds even though a petitioner in the case expressly asked it to do so. AT&T also cited Supreme Court precedent acknowledging that retroactivity of judicial decisions is not compelled if it would result in "grave disruption or inequity" to the parties. *See* AT&T Corp. Comments on Petitions for

¹ 15 FCC Rcd 1679 (1999) ("Remand Order").

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Reconsideration and Clarification, April 24, 2000, at 4. Clearly, retroactivity in this case would result in "grave disruption" at a minimum. BellSouth itself concedes that the Commission should not undertake to establish a refund program without conducting a further notice and comment rule making. *See* BellSouth Corporation Reply to Oppositions and Comments, May 8, 2000, at 4. And, depending on how the Commission were to administer the refund, it could cause considerable "inequity" as well. Thus, Sprint opposes retroactive application of *TOPUC*.

Sprint also shares AT&T's view (at 5-6) that if the Commission were to undertake such refunds, it would have to require ILECs to refund the previous "flowback" of their intrastate-related contributions that were passed on to IXCs through interstate access charges. Otherwise, the ILECs would unlawfully double-recover the amounts in question. Nor could the Commission retroactively increase the assessment on interstate revenues for periods prior to November 1, 1999 to fund the shortfall that would be created by refunds of intrastate-based revenues. *Id.* at 6.

On the other hand, like AT&T, Sprint agrees with BellSouth's assertion that the ability of CMRS carriers to recover their USF contributions through rates charged for all of their services was not challenged or called into question in the *TOPUC* case. Thus, Sprint supports BellSouth's request for clarification as to that issue.

An electronic copy of this letter is being filed in each of the referenced dockets.

Respectfully submitted,



Richard Juhnke

cc: Linda Armstrong
Katherine Schroder
Irene Flannery