OPASTCO

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June 18, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**EX PARTE PRESENTATION**

**RE: June 21, 2002 public meeting on proposals to reform the Commission's Universal Service Contribution Methodology**

**CC Docket Nos. 96-45, 98-171, 90-571, 92-237, NSD File No. L-00-72, CC Docket Nos. 99-200, 95-116, 98-170**

Dear Ms. Dortch,

At the request of Commission staff, the attached written statement of the Organization for the Promotion and Advancement of Small Telecommunications Companies is being provided in preparation for the public meeting to be held on June 21, 2002 regarding proposals to reform the Commission's universal service contribution methodology.

A copy of this letter and statement is being filed in each of the above-captioned dockets.

Sincerely,

Stuart Polikoff
Director of Government Relations
OPASTCO

**STATEMENT OF**
**ROGER NISHI**
**WAITSFIELD-FAYSTON TELEPHONE CO., INC.**
**WAITSFIELD, VT**

**REPRESENTING**
**THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**PUBLIC MEETING ON PROPOSALS TO REFORM THE FCC'S UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY**

**JUNE 21, 2002**

OPASTCO is in agreement with the FCC's goals in this proceeding to ensure the stability and sufficiency of the universal service fund (USF) as the marketplace evolves; to assess contributors in an equitable and nondiscriminatory manner; and to provide certainty to market participants and minimize the regulatory costs of compliance. To that end, OPASTCO is supportive of the Commission exploring a flat-fee monthly contribution assessment mechanism. However, we do not endorse the "connection"-based assessment methodology proposed in the Further Notice of Proposed Rulemaking (FNPRM), as it fails to comply with the Telecommunications Act of 1996 Act and fails to meet the Commission's own goals.

**Any flat-fee monthly contribution assessment mechanism must require an "equitable and nondiscriminatory" share of contributions from "every" interstate carrier**

Perhaps the biggest deficiency of the end-user connection proposal is that it violates the mandate in §254(d) of the 1996 Act that "every telecommunications carrier that provides interstate telecommunications shall contribute on an equitable and nondiscriminatory basis…." A contribution assessment mechanism cannot lawfully exempt the quintessentially "interstate" operations of the interexchange carriers (IXCs)

and comply with §254(d). Specifically, the proposal would practically exempt from making contributions providers whose principal offering is the interstate transmission that actually gives any telecommunications service its interstate character. At the same time, it would impose a discriminatory and inequitable contribution obligation on carriers whose primary interstate service is merely to provide the originating and terminating exchange access.

The Coalition for Sustainable Universal Service tries unsuccessfully to justify the end-user connection proposal by misstating the plain language of the statute, setting up straw man arguments, and other contorted efforts to wrench a different meaning from the simple and precise words of the statute. It does not matter that most IXCs provide some end-user connections, that under the law's narrow, permissive de minimis exception authority, every single carrier need not pay something, or that the current system puts an unsustainable burden on some IXCs' dwindling traffic. The Act's mandate is that "every carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission" unless its telecommunications activities are limited to a specified extent. The provision cannot be truncated into the bare requirement that carriers must be subject to an equitable and nondiscriminatory formula that is also specific, predictable, and sufficient.

The words of Congress mean what they say: The class made up of the <u>only</u> carriers that provide the <u>defining,</u> physically interstate part of <u>any</u> interstate telecommunications service cannot be exempt or covered only if they also have some other role in end-to-end interstate calling. A contribution mechanism cannot lawfully

shift most of the burden to local exchange carriers (LECs), whose access service cannot even become interstate without a customer relationship with an IXC that provides the essential connection to the interstate network.

To fashion a legal flat-rate contribution assessment plan, the Commission must keep the IXCs in the list of required contributors and find a contribution metric logically connected to the provision of state-to-state telecommunications. If LECs providing end-user interstate access are to contribute, then the IXCs must, at the very least, pay monthly contributions of the same amount for each of their interstate customers. Moreover, when a carrier provides both exchange access to interstate service and the actual interstate transmission link, that carrier should contribute for each of those services to ensure equity and nondiscrimination among carriers and customers.

**Concurrent with the adoption of a flat-fee contribution assessment methodology, all facilities-based broadband Internet access providers must be required to contribute equitably**

Another serious deficiency of the end-user connection proposal is that it fails to include all facilities-based broadband Internet access providers as contributors, instead choosing to address this issue in a separate proceeding. The fallacy of this approach is that it makes impossible both the application of the statute to the facts and the Commission's evaluation of any new contribution methodology under its goals. For instance, it is impossible for the Commission to know whether any new mechanism it adopts will ensure the long-term stability and sufficiency of the USF. It also leaves open the question of whether a new plan will operate in an equitable and nondiscriminatory manner.

Section 254(d) provides the Commission with the permissive authority to require "other providers of interstate telecommunications" to contribute to the USF. The Commission has previously recognized that facilities-based Internet access providers furnish telecommunications to themselves. Thus, the Commission has the legal authority to require all facilities-based broadband Internet access providers to contribute, regardless of how they are classified.

The public interest demands that the Commission exercise its permissive authority over all facilities-based broadband Internet access providers. If the marketplace is evolving toward broadband platforms and Internet Protocol (IP) networks, then adopting a flat-fee mechanism without concurrently including all facilities-based broadband Internet access providers would not address a significant cause of the instability and unsustainability of the present system. Internet substitution for traditional interstate telecommunications services is growing at a rapid pace, and the majority of this traffic is handled by providers that presently are not required to contribute to the fund.[1] For instance, cable modem service providers, which are the current market leaders in the provision of residential broadband Internet access, are not required to contribute. By requiring facilities-based broadband Internet access providers over all platforms to contribute, the contribution base would be significantly widened. This, in turn, would lessen the contribution burden on every service provider and sustain the contribution mechanism for the long term.

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[1] For example, FCC statistics indicate that cable companies had almost 5.2 million high-speed lines in service using cable modem technology at the end of June 2001, compared to 1.4 million at the end of 1999. This is approximately a 270 percent increase in cable modem lines in service for this period. *See, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, 17 FCC Rcd 2844, 2864, para. 44 (2002).

Furthermore, the inclusion of all facilities-based broadband Internet access providers is necessary to comply with the "equitable and nondiscriminatory" contributions requirement of §254(d) as well as the Commission's universal service principle of competitive and technological neutrality. As the amount of interstate traffic that migrates to broadband platforms and IP networks grows, it becomes increasingly inequitable and discriminatory to require only wireline telecommunications carriers to contribute on revenues earned from their broadband transmission services while all other broadband providers remain free of any contribution obligation. Anticipation of growing bypass based on differing classifications and service configurations was the very reason Congress gave the Commission the power to broaden the base of contributors. There is no time to wait and allow arbitrage to skew the competitive market and technology decisions in this time of rapid broadband growth. The FCC cannot achieve its goals or Congress's intent unless it requires all facilities-based broadband Internet access providers to contribute equitably when adopting a new contribution mechanism.

**Capacity-based assessments are administratively unworkable, a potential deterrent to broadband investment, inequitable and create opportunities for gaming**

There are numerous concerns and unanswered questions regarding the FNPRM's proposal for capacity-based assessments on multi-line business customers. To begin with, the multi-line business category is a catch-all category for a broad array of services – from traditional business to special access services and including even new broadband technologies. Thus, a capacity-based scheme will grow increasingly difficult to maintain as new technologies and service offerings emerge.

Still worse is the impact that a capacity-based mechanism could have on broadband deployment in rural areas. Potential rate increases from higher contribution

requirements could be a major deterrent to business customers subscribing to high capacity services. Without business customer demand, rural carriers would have less incentive to expand broadband service offerings.

There is also concern that multi-line business contribution burdens may be inequitable and unpredictable under a capacity-based system. This is especially problematic given the significant increase in subscriber line charges (SLCs) these customers have incurred as a result of Commission mandated access charge reform. In particular, the most acute impact would be felt by the small business customers of small and mid-sized rate-of-return carriers, where the multi-line business SLC cap has recently jumped from $6.00 to $9.20 without any transition.

In addition, capacity-based assessments may skew marketplace behavior, as customers attempt to minimize the contribution assessed for their connections. For instance, the "three tiers of capacity" proposal in the FNPRM could lead some high-volume customers to purchase high-capacity connections in order to minimize their universal service obligation, which, in turn, would disproportionately burden small businesses with lower-capacity connections. Marketplace distortions could also result if the arbitrary multipliers used in conjunction with the "base factor" are poorly chosen.

All of these concerns and others will seriously complicate the task of inventing a new capacity-based system for multi-line business lines that will achieve the Commission's goals. Therefore, prudent implementation of universal service support mechanisms dictates that the Commission abandon the concept of capacity-based assessments.

**The Commission should bifurcate the contribution assessments for the high-cost program from the schools and libraries and rural health care programs**

The Commission should bifurcate the contribution assessments for the high-cost program from the contribution assessments for the schools and libraries and rural health care programs. These programs have entirely different purposes and are addressed separately in the 1996 Act. Separating the assessments would provide carriers and their customers with the knowledge of how much they are contributing to each of the programs. This would fulfill the statutory requirements for explicit support in §254(e) and be consistent with the Commission's truth-in-billing principle of providing customers with "full and non-misleading descriptions."