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ATTORNEYS AT LAW

August 9, 2002

**EX PARTE – Via Electronic Filing**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: CC Dockets No. 96-45, 98-171, 90-571, 92-237, 99-200,  
95-116, 98-170, and NSD File No. L-00-72

Dear Ms. Dortch:

On August 8, 2002, Colleen Boothby (representing Ad Hoc Telecommunications Users Committee), Brian Moir (representing e-TUG), Joel Lubin and Pat Merrick (of AT&T), Chuck Goldfarb and Rick Whitt (of WorldCom), Staci Pies (of Level 3), and Christopher Wright and I (representing the Coalition for Sustainable Universal Service (“CoSUS”)) met with Commissioner Kathleen Abernathy and Matthew Brill, Legal Adviser to Commissioner Abernathy, to discuss the above-captioned dockets. We discussed the reasons that the CoSUS proposal is fully consistent with Sections 254(d) and 2(b) of the Communications Act, which are set forth fully in the Comments and Reply Comments previously filed by CoSUS in these dockets.

We explained that section 254(d) requires every carrier providing interstate telecommunications service to contribute to the universal service fund unless its contribution would be *de minimis*, and that our proposal is fully consistent with that requirement. Some commenters have focused on the first clause of section 254(d) and read it in isolation from the rest of the provision, arguing that the statute plainly provides that every carrier providing interstate telecommunications service must be required to make a minimum contribution. As the United States Court of Appeals for the D.C. Circuit recognized in *Bell Atlantic v. FCC*, 131 F.3d 1044, 1045 (D.C. Cir. 1997): “This argument confuses ‘plain meaning’ with literalism. The meaning of a statutory provision is its use in the context of the statute as a whole.” Here, in light of the *de minimis* provision, it is not possible to read the statute to require every telecommunications carrier providing interstate telecommunications service to make a minimum contribution.

Our interpretation of the statute – under which the first sentence of Section 254(d) sets out a process that the Commission must follow in assessing universal service contributions, and does not

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require a minimum contribution for each carrier – reads the statute in context by harmonizing its provisions. The commenters opposing our proposal, in contrast, read the provisions of Section 254(d) in a manner that puts them at war with each other. Our interpretation also is consistent with the Commission’s prior actions in creating universal service contribution mechanisms. However, the current revenue-based mechanism as it has evolved over time and as it now operates in the current marketplace is inequitable and discriminatory.

In addition, we discussed the *ex parte* filed by the State members of the Federal-State Joint Board on Universal Service. In general, CoSUS appreciated the State Joint Board members’ recognition that the CoSUS proposal was the most simple and sustainable contribution mechanism, and that, as CoSUS has proposed, the contribution mechanism should not be expanded to broadband, if at all, in these dockets. CoSUS, however, believes that the proposed five year freeze on residential and wireless assessments at \$1 is both unjustifiable and is contrary to the goals set forth by the State Joint Board members. In particular, freezing assessments for one, large group of connections does not comport with the goal that “rate increase to end users should be minimized” as it merely shifts charges among end users and subjects one class of end users to possible disproportionate and large rate increases. In addition, freezing assessments for residential and wireless connections at \$1 is inconsistent with the State members’ goal that “The mechanism should have the ability to accommodate reasonable growth in the size of the fund.” With the proposed freeze in place, any increase in universal service funding that exceeds annual growth in the number of connections (ignoring year to year shifts in the mix of connections) would be absorbed wholly through assessments on fewer than 20% of the total connections. As a result, the proposed freeze would, for five years, put the Commission in the difficult position of foregoing large increases in the fund, or imposing large increases in multiline business assessments that may substantially undermine the national consensus on the importance of universal service support. Neither the current mechanism, nor any other proposal in the record, incorporates such a freeze, but instead spreads the burden of any future increases across all connections or users.

In accordance with the Commission’s rules, a copy of this letter is being filed electronically in the above-captioned dockets.

Sincerely,

/s/

John T. Nakahata

*Counsel to the Coalition for Sustainable Universal Service*

JTN/krs