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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Direct: 202 429 4732
Fax: 202 887 8979
tjones@willkie.com

Thomas Jones

September 9, 2002

EX PARTE

Ms. Marlene H. Dortch
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 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 September 6, 2002, Kevin Joseph of Allegiance Telecom, Don Shepheard of Time Warner Telecom, and I met with Carol Mattey, Eric Einhorn, Diane Law Hsu, and Jessica Rosenworcel of the Wireline Competition Bureau. During the meeting, we discussed the topics outlined in the attached handout.

In particular, we argued that the Commission must construe requirement in Section 254(d) that every provider of interstate telecommunications service "shall contribute, on an equitable and nondiscriminatory basis" in a manner that gives the terms "equitable" and "nondiscriminatory" independent meanings. The proponents of the CoSUS proposal have essentially argued that "equitable and nondiscriminatory" need only be construed to require that a contribution plan be "competitively neutral."[1] Even assuming the CoSUS proposal is in fact competitively neutral, this at most satisfies the requirement that the contribution methodology be "nondiscriminatory." The fact that a plan is competitively neutral says nothing about whether it results in a contribution scheme that is "equitable."[2] Moreover, given that Section 254(d) restricts contributions to providers of interstate

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1 *See* Letter from John T. Nakahata, Counsel to the Coalition for Sustainable Universal Service to Ms. Marlene Dortch, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, and NSD File No. L-00-72 (Aug. 22 2002) at 2-5 ("CoSUS Aug. 22 *Ex Parte*").

2 For example, a methodology that requires only providers of interstate private line service to contribute might be competitively neutral, since it would impose the same contribution obligations on all competitors. But such a

telecommunications service and telecommunications, the equitable requirement is most naturally read to mean that contributions must bear some fair relationship to the amount of interstate services provided by a firm.[3] The CoSUS proposal fails this requirement. It would measure a carrier's contribution based solely on the number of physical connections provided to an end user. It would require the same contribution for a switched connection used solely for intrastate communications as it would for a connection used solely for interstate communications, and it would altogether exclude from the contribution system interstate service sold without a local connection. Such a system does not ensure that a carrier's contribution to federal universal service mechanisms would be "equitable" in relation to the amount of interstate telecommunications service or interstate telecommunications provided.[4] Nor can the Commission fall back on the CoSUS proponents' argument that their proposal must be adopted because nothing better has been proposed. The statute states that contributions "shall" be equitable.[5] Simple expediency is obviously no basis for failing to comply with this mandate. This is especially the case where the "nondiscriminatory" and "equitable" requirements are complementary and almost certainly could both be satisfied if the CoSUS members' interstate services were subject to an equitable contribution obligation.

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contribution methodology could not fairly be described as "equitable," because it would single out only a single class of interstate services for contribution while relieving all others of such contributions.

3 This interpretation is further supported by the fact that Section 254(f) states that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that state." *See* 47 U.S.C. § 254(f). This provision shows that Congress intended that contribution obligations for federal funds would bear an equitable relationship to the amount of interstate services provided by a carrier (or provider of telecommunications) while contribution obligations to state funds would bear an equitable relationship to the amount of intrastate services provided by a carrier.

4 The CoSUS proponents seem to think that the Commission's prior decision to exclude interstate access demonstrates that the Commission can adopt the CoSUS connections-based approach. *C.f.* CoSUS Aug. 22 *Ex Parte* at 8. But it is one thing to adopt a contribution mechanism that clearly ties contributions to a reasonable measure of interstate service (interstate end user revenues) that, for sound reasons, in practice results in the exclusion of certain interstate services. It is quite another thing to propose, as CoSUS has, a methodology that makes no attempt at all to tie contributions to the amount of interstate service provided by a carrier (again, under the CoSUS plan, firms would contribute equally for purely intrastate switched connections and purely interstate connections). The latter approach stretches the statute beyond the breaking point.

5 *See id.* at 5.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), a copy of this letter, the attached talking points and two copies of both are being filed for inclusion in the public record of each of the above-referenced proceedings.

Sincerely,

Thomas Jones

cc: Carol Mattey
Eric Einhorn
Diane Law Hsu
Jessica Rosenworcel

PRESENTATION REGARDING
USF CONTRIBUTION METHODOLOGY
Sept. 6, 2002

- The Federal Universal Service Contribution Methodology Must Comply With The Requirements Of Section 254(d)

  ⇒ "Every" provider of interstate telecommunications service must contribute

  ⇒ The allocation of contribution obligations among interstate telecommunications service providers must be "equitable and nondiscriminatory" -- contributions must be in some measure tied to a carrier's interstate activity

- The Cost-Benefit Analysis For Universal Service Contributions Must Account For The Costs Carriers Would Incur To Comply With A New Contribution Methodology

- A Revenue-Based Contribution Methodology Offers Considerable Advantages

  ⇒ Complies with the requirements of Section 254(d)

  ⇒ Would not impose significant new compliance costs on carriers

  ⇒ Can be altered to address many of the concerns raised with the current system

- If The Commission Adopts A Connections-Based Methodology, It Must

  ⇒ Apportion the contribution obligations of interstate carriers on an "equitable and nondiscriminatory" basis; the CoSUS Plan impermissibly eliminates interstate long distance carrier activity entirely from the contribution base

  ⇒ Allow for an adequate transition period to allow carriers to adjust their billing and other back office systems to the new regime

- If The Commission Adopts A Connections-Based Methodology, It Can Also Address Concerns Associated With IXC Participation In The SBC-BellSouth Plan By Eliminating The Need For IXCs To Obtain End User Connection Information From ILECs