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ATTORNEYS AT LAW

October 31, 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 Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-16, 98-170,  
and NSD File No. L-00-72

Dear Ms. Dortch:

On October 30, Staci Pies of Level 3, Brian Moir representing eTUG, Rick Whitt and Alan Buzacott of WorldCom, and Chris Wright, representing CoSUS, met with Eric Einhorn, Diane Law Hsu, Paul Garnett, Jon Secrest, and Vickie Byrd of the Wireline Competition Bureau. They discussed the recent filing by SBC and BellSouth modifying their proposal with respect to bandwidth capacity tiers and the recent letter from Verizon Wireless and others stating that the Commission is moving too quickly to overhaul the universal service contribution system in light of recent adjustments to various parties' positions. The representatives of CoSUS and its members explained that the SBC/BellSouth modified proposal is flawed because it distorts purchasing decisions since the multipliers used in the modified proposal are inaccurate. They also stated that, contrary to Verizon Wireless *et al.*, a robust record exists on which the Commission could and should adopt a connection-based proposal like that supported by CoSUS. Indeed, there is no record basis upon which to conclude that the wireless safe harbor could be set non-discriminatorily at 20% or 25%. We elaborate on those comments below.

As an initial matter, as CoSUS has contended from the initiation of this proceeding, the current system is broken and cannot be fixed by making minor modifications. On account of the wireless safe harbor and the partial international exemption, the current system is discriminatory in violation of section 254(d). As the attached chart shows, if a customer spends \$10 to buy minutes used for interstate long distance from a wireline carrier, the carrier currently will contribute 73 cents to the universal service fund.<sup>1</sup> If the same customer instead spends \$10 for the same service from a wireless carrier, that carrier will contribute only 11 cents to the fund. Yet Verizon Wireless *et al.* propose to solve the

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<sup>1</sup> See CoSUS *ex parte* filing dated October 21, 2002 in this docket (submitted Oct. 22) at 7.

discrimination by raising the safe harbor from 15% to 20%, which would increase the wireless carriers' contribution by only a few cents. Maintaining the current system, even with modifications such as moving to a collect-and-remittance system or an increased wireless safe harbor, obviously would benefit wireless carriers but continuing to give them a competitive advantage: it does not make the system nondiscriminatory as required by section 254(d).

Moreover, maintaining a revenues-based system, even with an increased wireless safe harbor and collect-and-remittance, will still give business users an incentive to negotiate with carriers to structure their contracts to minimize the amount of interstate telecommunications revenue, and to attribute revenues to other types of services. If the Commission proceeds as Verizon Wireless *et al.* suggest, it is predictable that business users will have to protect themselves against the possibility that the Commission will make no substantial change to the revenue-based system, and will therefore have to take universal service payments into consideration in their negotiations. In addition, the current state of the telecommunications industry presents business users with opportunities to purchase their own fiber facilities at substantial discounts, which a continuation of the revenue-based contribution mechanism would further encourage. Both of these marketplace reactions by business users would clearly accelerate the already existing decline in the contribution base. In addition, the contribution factor is already at record levels, and even with increases in the wireless safe harbor is virtually certain to increase above its present level. Only by moving forward now to adopt a connection-based contribution mechanism can the Commission avoid this erosion in the contribution base and associated further increase in the already high contribution factors.

In addition, the record is clear that maintaining the current system will have the most detrimental impact on consumers of any of the proposals under serious consideration. In fact, we have shown that the current system will result in higher charges to households than the CoSUS proposal across all income groups and that the CoSUS proposal will result in the lowest charges to households across all income groups.<sup>2</sup> Notably, CoSUS has provided this analysis to the Commission with respect to its modified proposal, as well as its initial proposal. Verizon Wireless *et al.* claim that more time is needed to further develop the record with respect to the impact of various proposals on different classes of consumers without challenging that evidence presented by CoSUS. But delay that benefits them – and, as the record shows, harms consumers – is not warranted, nor is it statutorily permissible.

Verizon's suggestion<sup>3</sup> that CoSUS' proposal that the residential assessment be set at one-third of the multiline business DS-0 assessment is a substantial revision of the CoSUS proposal is simply wrong. In fact, this was a relatively minor revision, which CoSUS projects will result in a residential assessment of \$1.10-1.15 and a multiline business DS-0 assessment of \$3.30-3.45, and the basis for these projections is already in the record.<sup>4</sup> CoSUS proposed this revision in part to address concerns raised by Verizon, among others, that calculating the initial multiline business assessment as a residual subjected multiline business users to too great a range of charges. By proposing use of a 3:1 ratio between multiline business and residential/wireless/single line business, the potential variation in the multiline

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<sup>2</sup> *Id.* at 9 and 10.

<sup>3</sup> Letter of Scott Randolph, Verizon, to Marlene Dortch, FCC, dated October 29, 2002, in this docket.

<sup>4</sup> See *CoSUS October 21 ex parte filing*.

business assessment would be substantially reduced. This modification proposed by CoSUS is clearly a logical outgrowth of comments with respect to the Commission's *FNPRM*.

The notion advanced by Verizon Wireless *et al.* that the Commission needs to take additional comment ignores the fact that this proceeding has already had an *NPRM* and an *FNPRM*, and that the *FNPRM* set forth a detailed proposal for comment. Although the proposal in the *FNPRM* differed in some respects from CoSUS's original proposal, parties had clear notice of the essential elements of the proposal, and it is those essential elements that are still the subject of debate. Parties such as Verizon Wireless *et al.* submitted comments, as did CoSUS. Only CoSUS, however, provided real analysis as to the effect of the proposals before the Commission on various consumer segments, and CoSUS went even further, submitting draft rules so that Commission could see exactly what CoSUS was contemplating. To a great extent, Verizon Wireless *et al.* have sandbagged this process, first by declining to submit anything other than superficial comments, and then coming to the Commission at the eleventh hour to seek an additional round of comments in order to file analysis that they should have submitted in their initial comments. The Commission has an adequate record to adopt the modified CoSUS proposal, and it should do so.

We also understand that the Commission is considering the adoption of a minimum contribution requirement. As we have explained previously,<sup>5</sup> we do not think such a requirement is necessary. Indeed, the *de minimis* provision in section 254 makes clear beyond dispute that not all carriers providing interstate telecommunications service must contribute to the fund, and the current system does not require contributions from carriers' carriers. If the Commission none-the-less adopts a minimum contribution requirement, it must make sure that the minimum is not so large that it creates problems of discrimination among providers of computing services. Discrimination problem can best be avoided if the minimum contribution requirement is just that – a requirement that carriers with significant interstate revenues make a contribution slightly in excess of that required from carriers at the *de minimis* threshold if they provide no connections. If constructed in that manner, a minimum contribution requirement will have a minor impact on the system as a whole. As we have explained, very few carriers with significant interstate revenues do not provide a significant number of connections, so the minimum contribution requirement would affect a small number of carriers. And if the required contribution were minimal, it would not affect those few carriers to a significant degree. As such, it would be a logical outgrowth of the plans discussed in the notice of proposed rulemaking, which included both connection-based proposals and proposals to continue the current revenue-based system with modifications, and therefore would require no further delay.

With respect to the most recent proposal from SBC and BellSouth, delay is not warranted on account of that proposal because it is plainly flawed. As CoSUS has previously explained, the capacity tiers under a connections-based approach should be designed to ensure that the customer's choice of connection and capacity is not distorted by universal service considerations. In order to achieve that objective, CoSUS has structured its plan to ensure that the relative universal service burden was approximately the same as the relative prices for the connections in the absence of universal service. In particular, the CoSUS plan's 5:1 ratio between the T1 assessment and the basic business assessment

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<sup>5</sup> See CoSUS *ex parte* filing of August 22, 2002 in this docket.

approximates the ratio between T1 rates and basic business line rates.<sup>6</sup> The CoSUS proposal thus ensures that the relative universal service burden on T1 and basic business connections is similar enough that universal service considerations would not cause customers to select one connection type over the other. By contrast, the modified SBC/BellSouth proposal would place a universal service burden on T1 lines that is 38 times greater than the burden placed on basic business lines, even though the underlying price of T1 lines is only about 5 times greater.<sup>7</sup> The SBC/BellSouth plan therefore would artificially shift demand from T1 connections to lower-bandwidth connections. Similarly, SBC/BellSouth propose assess a DS-0 used for special access a 25 times higher universal service contribution assessment than an a DS-0 used for switched voice service, altering the crossover point between purchases of special and switched access services.

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

Sincerely,

/s/

John T. Nakahata  
*Counsel to the Coalition for Sustainable Universal Service*

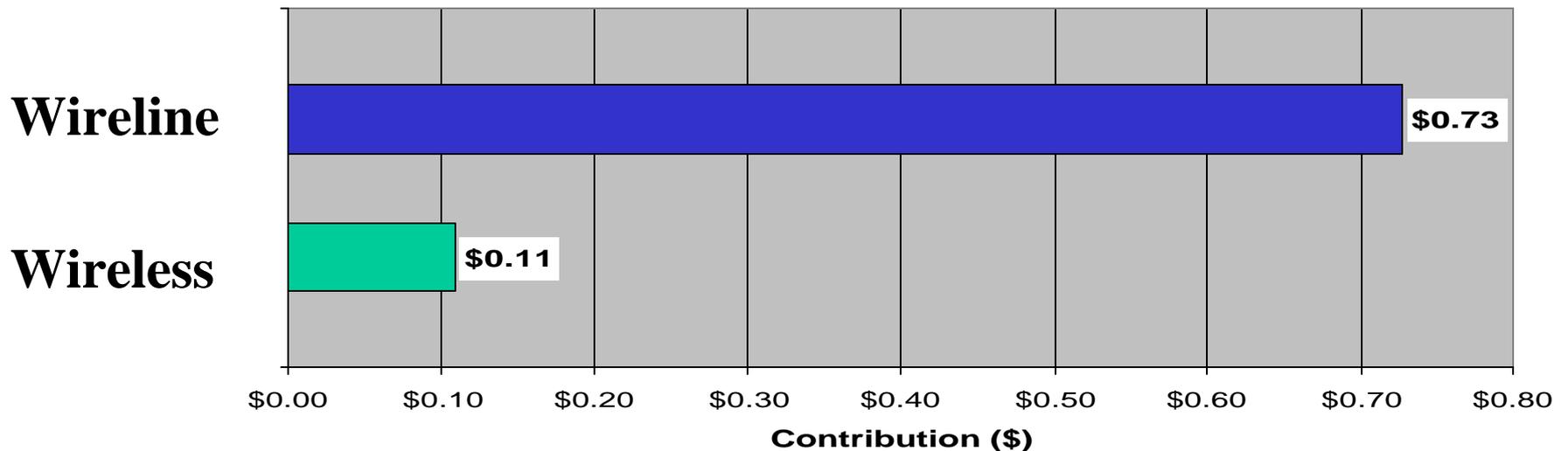
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<sup>6</sup> T1 prices vary depending on the circuit length and term and volume discounts, from about \$100 for a “zero mileage” circuit purchased under a term plan to \$500 or more for longer circuits or circuits not purchased under a term or volume plan. SBC/BellSouth’s October 10, 2002 *ex parte* assumes an average T1 price of \$226 per month, which is a reasonable approximation of the average cost of a T1. That amount is approximately four times the business line rates shown in the Commission’s July, 2002 Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Tables 1.13-1.15. It is therefore close to the 5:1 ratio proposed by CoSUS (and currently used for ISDN PRI SLCs) and nowhere near the 38:1 ratio now proposed by SBC/BellSouth.

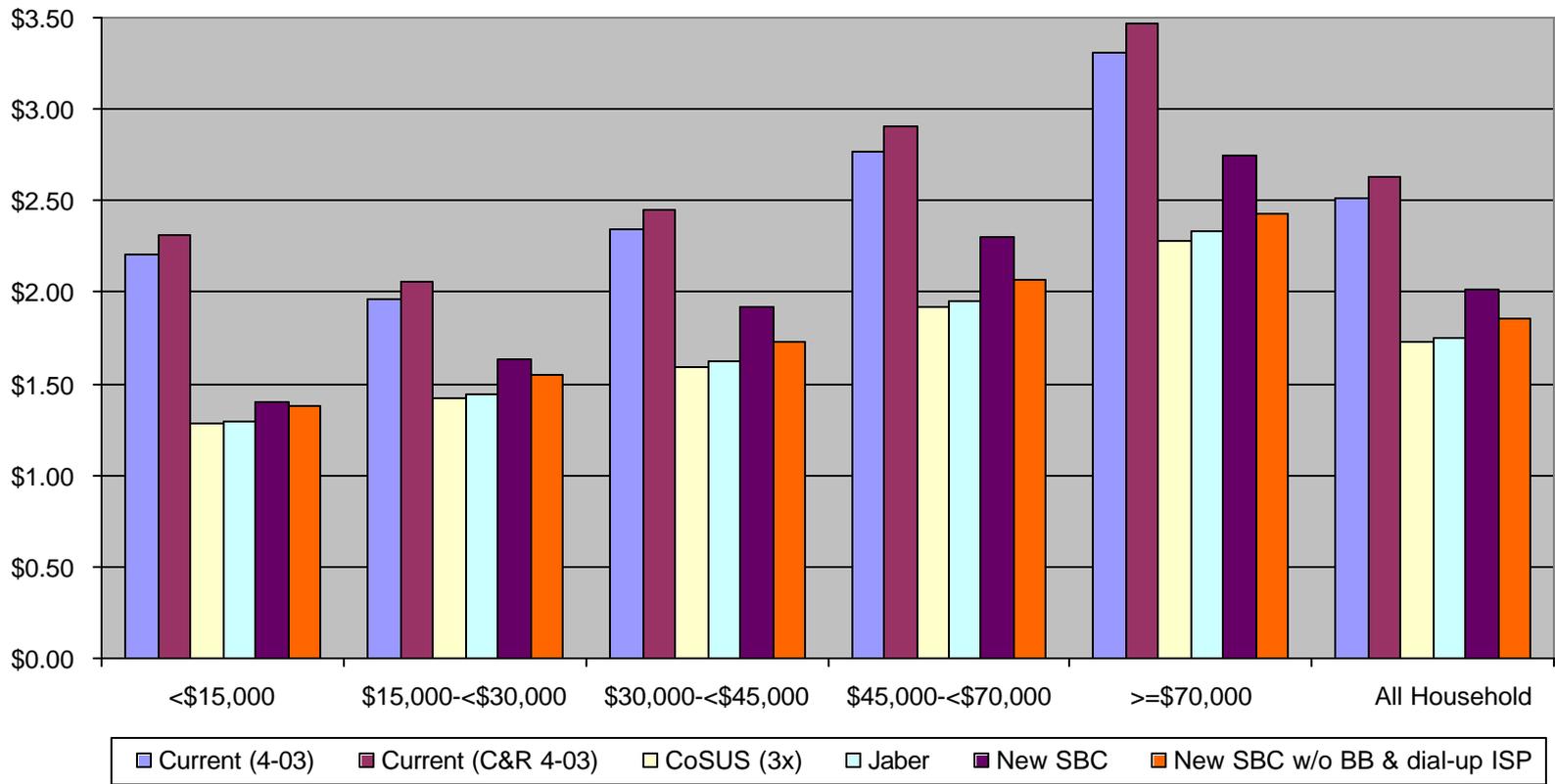
<sup>7</sup> SBC-BellSouth derived the 38:1 ratio by dividing the universal service contribution associated with a representative T1 special access circuit’s interstate revenues (\$226) by the universal service contribution associated with a basic business line’s interstate revenues (the approximately \$6.00 in SLC revenues). *Id.*, Attachment at 1. Thus, they compare the total cost of a T1 to the partial cost of a basic business line.

# Wireline v. Wireless LD Today – A Discriminatory Result

If a customer spends \$10 to buy minutes used for interstate long distance, how much gets contributed to USF today?

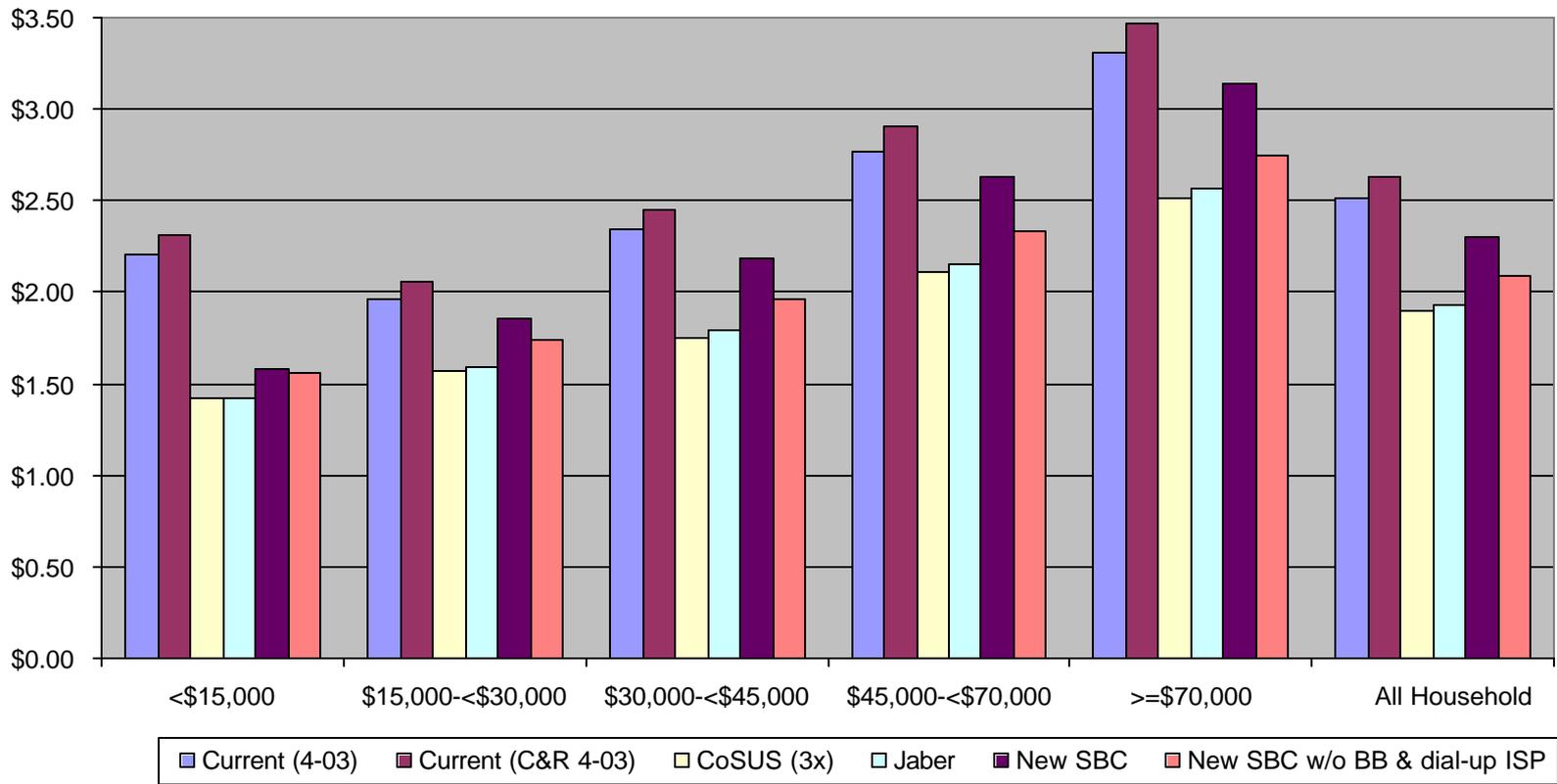


# Household Impact – Status Quo v. Connection Proposals\*



\* Estimates for connection proposals do not include possible carrier mark-ups

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