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Filed Electronically

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

Re: Comments of the Information Technology Association of America in Response to Second Further Notice of Proposed Rulemaking, FCC 02-329, Federal-State Joint Board on Universal Service, CC Docket 96-45

Dear Secretary Dortch:

The Information Technology Association of America ("ITAA") hereby files this letter, in lieu of comments, in response to the Second Further Notice of Proposed Rulemaking ("*Second Further Notice*") in the above-captioned docket.

In the *Second Further Notice*, the Commission requested comments regarding three "connection-based" approaches for determining the amount that telecommunications providers must pay to the Universal Service Fund ("USF"). *Second Further Notice* ¶ 69. At the same time, however, the Commission made clear that, in this proceeding, it is *not* considering any proposal that would extend to Internet and other information service providers ("ISPs") the obligation to make direct payments to the USF. *See id.* ¶ 76 ("Whether and how connections that provide broadband Internet access . . . would be assessed would be deferred pending action in the current proceeding regarding classification of wireline broadband Internet access."); *id.* ¶ 86 n.181 ("We . . . are not proposing to directly assess Information Service Providers . . . ."); *id.* ¶ 87 ("[W]e do not propose at this time to directly assess information service providers."). Nonetheless, in comments filed in response to the *Second Further Notice,* a few commenters sought to use this proceeding as a vehicle to press the Commission to reverse its long-standing conclusion that ISPs are not obligated to make direct USF payments. *See, e.g.,* Comments of the United States Telecom Association at 10 (filed Feb. 28, 2003) ("[T]he Commission should broaden the contribution base for universal service by assessing all broadband service providers and Internet service providers.").

In its comments in the previous phase of this docket, ITAA urged the Commission to adopt a connection-based approach. *See* Comments of the Information Technology Association of America at 3-9 (filed Apr. 22, 2002). Doing so, ITAA explained, would benefit ISPs and their subscribers in three ways. First, it would create a stable and sufficient funding base, thereby discouraging ill-conceived proposals to require ISPs to make direct payments to the USF. *See id.* at 4-5. Second, a connection-based approach would promote broadband migration by eliminating the "broadband penalty" that customers incur when they migrate from dial-up Internet access services (which are provided via jurisdictionally intrastate telecommunications services that do not generate a USF contribution obligation by the carrier that provides the telecommunications service) to broadband Internet access service (which are provided via jurisdictionally interstate telecommunications services that do generate a USF contribution obligation by the carrier that provides the telecommunications service). *See id.* 5-8. Third, a connection-based approach would reduce the potential for anti-competitive abuse by eliminating the need for a carrier to determine the proper amount of end-user telecommunications revenue to recognize when it provides telecommunications service to an affiliated ISP, or when it markets a bundled offering containing telecommunications and information services to its customers. *See id.* at 8-9. ITAA continues to support adoption of a connection-based assessment approach.

ITAA subsequently filed reply comments in which it responded to proposals, made by USTA and several of the Bell Operating Companies ("BOCs"), in which ITAA expressed its unwavering opposition to the carriers' proposals to require ISPs to make direct payments to the USF. *See* Reply Comments of the Information Technology Association of America (filed May 13, 2003). ITAA explained that because ISPs are *users* – rather than providers – of telecommunications services, Section 254 of the Communications Act does not authorize the Commission to require ISPs to make direct payments to the USF. *See id.* at 4-7. ITAA also demonstrated that the BOCs had failed to provide any policy justification for imposing direct USF payment obligations on ISPs. As ITAA explained, there is no evidence that ISPs are facilitating significant "bypass" of the ILECs' voice networks. *See id.* at 7-8. Nor is there any basis to conclude that the current regime – in which ISPs contribute to universal service through the payments they make to the carriers from which they obtain telecommunications service – violates the statutory competitive neutrality requirement. *See id.* at 9-10. Finally, ITAA explained that adoption of the BOCs' proposals would artificially reduce demand for information services, while giving carrier-affiliated ISPs an unfair competitive advantage. *See id.* at 11-12.

Because the Commission has indicated that the question whether ISPs can and should be required to make direct payments to the USF will be addressed in the *Broadband Wireline ISP* docket,[1] the Commission should decline to consider that issue in the present docket. Nonetheless, because the issue has been raised, ITAA requests that the Commission incorporate the comments and reply comments that ITAA filed in response to the first *Notice of Proposed Rulemaking* into the record of this phase of the docket. In addition, ITAA requests that the Commission include pages 39-54 of ITAA's comments in the *Broadband Wireline ISP* docket, which address the universal service issue, in the record of this docket. A copy of each of these pleadings is attached.

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[1] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33.

Please contact the undersigned, if you have any questions.

Sincerely,

__/s/ Jonathan Jacob Nadler_____
Jonathan Jacob Nadler
Counsel for the
Information Technology Association
of America

Attachments (3)