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June 14, 2006

BY ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service, et. al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 02-33, 95-20, and 98-10.

Dear Ms. Dortch:

As TDS Telecommunications Corp. ("TDS") explained in its June 12, 2006 *ex parte* letter in this proceeding, the Commission should not allow regulatory arbitrage to again creep into how wireline broadband Internet access offerings are treated under the universal service rules. TDS firmly believes that any changes to the universal service contribution regime should treat all entities engaged in wireline broadband Internet access transmission the same. We agree with the Commission's goal, as articulated in the *Wireline Broadband Order*, "to create a broadband regulatory regime that is technology and competitively neutral."[1] TDS's clear preference is that all entities that offer wireline broadband Internet access transmission should contribute to universal service support, and we note with approval that legislation pending in the Senate embraces that same policy. The point that we are writing to emphasize is that if the Commission decides to not require entities providing such service under Title I to contribute to universal service support, then the Commission's goal to be technology and competitively neutral argues strongly for not imposing universal service payments on revenue derived by rate-of-return carriers offering such service under Title II.

Thus, the Commission should either extend its holding in the *Wireline Broadband Order* that "facilities-based providers of wireline broadband Internet access services must continue to contribute to existing universal service support mechanisms,"[2] based on current law that the

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[1] *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14857 ¶ 4 (2005).

[2] *Id.* at 14915-916 ¶ 113.

Commission has permissive authority to require "[a]ny other provider of interstate telecommunications to contribute to universal service if required by the public interest,"[3] or it should use its authority under Section 10 of the Communications Act to forbear from applying the requirements of Section 254 of the Act and any associated regulations to rate-of-return carriers' broadband offerings.[4] If the Commission chooses to pursue the latter path, then as established in TDS' June 12, 2006 *ex parte* letter, all three elements of the forbearance test established by Section 10(a) are satisfied here.[5]

Sincerely,

Gerard J. Waldron
Matthew S. DelNero

Counsel for TDS Telecommunications Corp.

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[3] 47 U.S.C. § 254(d).

[4] *See* 47 U.S.C. § 160(a). The Commission has authority to grant the instant request regardless of whether it is raised *sua sponte* or by petition. *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands*, First Order on Reconsideration, 16 FCC Rcd 19808, 19818 ¶ 19 (2001), *citing Central Florida Enterprises v. FCC*, 598 F.2d 37, 48 n. 51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979).

[5] See Letter from Gerard J. Waldron to Marlene H. Dortch, *In the Matter of Federal-State Joint Board on Universal Service, et. al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 02-33, 95-20, and 98-10 (June 12, 2006). Although it is true, contrary to the statement in TDS' June 12 letter, that the *Wireline Broadband Order* contemplated continued universal service contributions based on broadband Internet access transmission offered as a common carrier service, the Commission has authority, as explained in the June 12 letter, to forbear from requiring such contributions and it would be in the public interest for the Commission to do so.