

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Sharon J. Devine
Craig J. Brown
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2799

Attorneys for

QWEST COMMUNICATIONS
INTERNATIONAL INC.

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REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) hereby submits its Reply Comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*” or “*Notice*”)¹ regarding modifications to the Commission’s universal service contribution methodology.

I. INTRODUCTION AND SUMMARY

In considering fundamental changes to the contribution methodology, what is most important is for the Commission to *get it right*, rather than to rush to adopt something. In the *Order* that accompanied the *Second Further Notice*, the Commission adopted changes to the contribution methodology that both increase the contribution base and eliminate interexchange carriers’ (“IXC”) concerns about regulatory lag in the contribution system. The implementation of these changes reduces much of the urgency to complete comprehensive changes to the contribution methodology quickly, and gives the Commission breathing room to ensure that the new contribution methodology will comply with the statute and adapt to continuing changes in the industry. Indeed, a number of commenters urge the Commission to proceed carefully, particularly given the expense and disruption carriers just incurred in implementing the recent changes to the current methodology. Consequently, the Commission should ignore AT&T’s overheated rhetoric regarding a “death spiral” awaiting universal service, which purportedly will cause contributions to reach unsustainable levels.² The Commission should instead focus on

¹ *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, *et al.*, *Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 02-329, rel. Dec. 13, 2002; 67 Fed. Reg. 79543 (Dec. 30, 2002).

² In reading AT&T’s comments, one would think that the recent changes to the contribution methodology had no impact on line item charges for universal service. In fact, the changes caused AT&T’s universal service line item charges to decrease nearly 2% for consumers. *See* AT&T Website (http://www.consumer.att.com/connectivity_charge) (effective April 1, 2003, AT&T’s Universal Connectivity Charge declined from 11% to 9.1%).

adopting a methodology that is sustainable over the long term. As part of this initiative, it is critical that the Commission ensure that competing providers of broadband services, such as digital subscriber line (“DSL”) and cable modem services, are subject to the same contribution requirements.³

Of the three proposals outlined in the *Second Further Notice*, the SBC/BellSouth proposal alone deserves further consideration, because the other two proposals fail to satisfy section 254(d). Qwest recommends two significant changes from the current SBC/BellSouth “split contributions” plan.⁴ *First*, all presubscribed long distance services should be assessed on a per-connection basis, regardless of whether the service is provided as part of a local-long distance package or on a standalone basis. The record reveals that this is the fairest, most straightforward means of assessing universal service contributions for presubscribed long distance services, which are required by section 254(d). AT&T’s allegation that it lacks sufficient information to identify its own long distance customers so that it can assess per-connection charges is generally false. For the vast majority of customers, an IXC should already have enough information to identify its presubscribed customers. Where this information is lacking, it is clearly within the Commission’s power to require that it be provided. *Second*, all private line transport should be subject to contribution. While it can be difficult to determine the capacity of standalone private line transport, this problem can be avoided by assessing contributions through a “hybrid” methodology based on both connections and revenues.

³ Qwest has discussed this issue in detail in previous filings and will not repeat those arguments here. *See* Reply Comments of Qwest Communications International Inc., CC Docket No. 96-45, at 17-25 (May 13, 2002). Regardless of whether this issue is resolved here or in CC Docket No. 02-33, it must be addressed prior to, or concurrent, with the Commission’s adoption of a new contribution methodology.

⁴ *See generally* SBC/BellSouth Comments.

Both the connection-based proposal (*i.e.*, the first approach outlined in the *Notice*) and the telephone number-based proposal (*i.e.*, the third approach in the *Notice*) contravene the statute's requirement that all providers contribute to universal service on an "equitable and nondiscriminatory" basis. As the record reflects, these proposals cannot be resuscitated simply by appending a minimum contribution requirement. Even with such a requirement, contributions from IXCs will not bear a reasonable relationship to the degree of their interstate activities. Moreover, the minimum contribution requirement finds virtually no support in the record. The connection-based and number-based proposals also suffer from other significant problems that lend further support to the framework proposed by SBC and BellSouth, with Qwest's proposed modifications.

II. THE COMMISSION MUST REJECT THE CONNECTION-BASED AND NUMBER-BASED PROPOSALS

Selection of an appropriate contribution mechanism requires a careful balancing of the Commission's various policy goals, including the desire for simplicity. At the same time, the Commission's discretion in this regard is limited by the statutory language. In particular, section 254(d)'s requirement for "equitable and nondiscriminatory" contribution obligations precludes the Commission from adopting the connection-based proposal and the telephone number-based proposal outlined in the *Notice*, even if a minimum contribution requirement were included. There are also strong policy reasons for rejecting these plans. The connection-based proposal would provide an unfair competitive advantage to wireless carriers competing for multi-line business customers and require wireline business customers to subsidize all other wireless and wireline customers' universal service contributions. The number-based plan has its own problems, as it will lead to inconsistent and inequitable contribution obligations in certain circumstances.

A. Both Proposals Fail To Satisfy Section 254(d),
Even With A Minimum Contribution Requirement

In the *Notice*, the Commission proposes to add a minimum contribution requirement to COSUS' connections-based plan to address concerns that the proposal violates section 254(d). The Commission also seeks comment on whether such a requirement should be added to the number-based plan advocated by AT&T and Ad Hoc, presumably to address the section 254(d) issue. In short, a minimum contribution requirement will not change the fact that these plans are contrary to the statute, because they will not result in equitable contributions from the predominant providers of interstate telecommunications services.

Section 254(d) requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis” to federal universal service, subject to the Commission’s authority to exempt a carrier or class of carriers whose telecommunications activities are *de minimis*.⁵ Further, section 254(b)(4) specifies that “all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.” This statutory language allows no exemption for long distance and private line transport providers, given their extensive interstate activities.

AT&T and WorldCom disparagingly describe this common sense reading of the statute as a “literalist interpretation,” asserting essentially that the statute does not mean what it says. As it has done before, AT&T ignores the fact that competitive neutrality alone is not sufficient to satisfy section 254(d), which requires that contribution requirements be “equitable” as well. According to Webster, the word “equitable” refers to something that is “marked by a due

⁵ IXCs do not suggest that their provision of interstate long distance and private line transport services are generally *de minimis*.

consideration for what is fair, unbiased, or impartial.”⁶ Consistent with this definition, the Fifth Circuit concluded that section 254(d) requires “fairness in the allocation of contribution duties.”⁷ AT&T fails to explain how a contribution methodology that would exempt contributions for interstate long distance and private line transport service activities can be considered “equitable,” as required by the statute.

Even with a minimum contribution requirement, these proposals would fail to reflect the fact that, by any reasonable measure, IXCs are major -- if not *the* major -- providers of interstate telecommunications services. Prior to the recent changes to the contribution methodology, IXCs generated approximately two-thirds of assessable interstate telecommunications revenues. Of course, there is no requirement that the new contribution methodology maintain exactly the same relative contribution burden on particular classes of providers. One may expect that IXCs’ contribution requirements would decline to some extent under any of the three proposals. Nevertheless, it would be unreasonable and inequitable to eliminate contribution requirements for interstate long distance and private line transport services completely, or to limit contributions to a token contribution amount that fails to reflect the significant share of total interstate revenues these services represent.

In addition to improperly reading the phrase “nondiscriminatory and equitable” to be synonymous with “competitively neutral,” AT&T and WorldCom also erroneously contend that this standard applies only to the contribution “formula,” and does not require that particular types of carriers, such as long distance providers, contribute on a nondiscriminatory and equitable basis. This so-called “harmonious” reading of section 254(d) conflicts with the plain meaning of that provision. Section 254(d) establishes a contribution requirement that applies to “[e]very

⁶ Webster’s Revised Unabridged Dictionary (1998).

telecommunications carrier that provides interstate telecommunications services” Unless such a carrier qualifies for the *de minimis* exception in section 254(d), it is required to contribute to universal service on an “equitable and nondiscriminatory basis.” As discussed above, excluding meaningful contributions for interstate long distance and private line transport services is in no way “equitable.” The fact that “carriers’ carriers” currently do not contribute to universal service if they have no end user telecommunications revenues also does not support the exemption of interstate long distance services. In the *Universal Service Order*, the Commission concluded that collecting contributions from carriers’ carriers would not be competitively neutral, and thereby would not be “equitable and nondiscriminatory,” because it would result in double counting of revenues for certain types of carriers.⁸ Such concerns do not arise with regard to interstate long distance and private line transport services provided to end users.

Moreover, even if AT&T’s and WorldCom’s positions that the “equitable and nondiscriminatory” language of the statute applies only to the contribution “formula” were correct, it would not save their proposals. In essence, a contribution “formula” determines the amount that a carrier must contribute to universal service for particular interstate telecommunications activities. It therefore is meaningless to say that the connection-based and number-based proposals satisfy section 254(d) because the contribution formula is “nondiscriminatory and equitable,” even though the contribution obligations imposed on certain carriers do not meet this standard. Thus, AT&T’s and WorldCom’s flawed interpretations of section 254(d) fail to provide a reasonable basis for the Commission to adopt the connection-based and number-based proposals, even with a minimum contribution requirement.

⁷ *Texas Office of Public Util. Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999).

⁸ *In the Matter of Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 9207 ¶¶ 844-47 (1997).

B. Adoption Of The Connection-Based Or Number-Based Proposals Would Also Be Bad Policy

In addition to the legal infirmity discussed above, both the connection-based and telephone number-based approaches outlined in the *Notice* suffer from other serious flaws as well.

1. The Connection-Based Proposal Would Assess Contributions for Multi-Line Business Connections in a Discriminatory Manner

Like the COSUS proposal on which it is based, the connection-based proposal discussed in the *Notice* would unreasonably discriminate against wireline providers and multi-line business customers. Under this proposal, a local exchange carrier (“LEC”) providing a multi-line business switched access line would pass through to its customer a universal service charge of about \$2.62 as compared to a \$1.00 charge for residential, single-line business, and all mobile wireless connections.⁹ Thus, if a business obtains a second line from a LEC, its universal service line item charge would be nearly three times as high as if the business replaced that second line with a mobile connection. There is no principled basis for this disparate treatment, which would arbitrarily confer an advantage on commercial mobile radio service (“CMRS”) providers.

This proposal also would discriminate against small businesses that purchase multiple switched lines, but do not have sufficient traffic to justify the purchase of a high-capacity connection, which would be subject to a lower assessment rate per voice grade channel. There is also no rationale for assessing larger universal service contributions for multi-line business connections than residential and single-line business connections, which are used for the same purpose -- providing access to the public-switched network. For example, it is not clear why a

⁹ Wireline Competition Bureau Staff Study of Alternative Contribution Methodologies, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, at 6, rel. Feb. 26, 2003.

small business with two switched multi-line business connections should contribute significantly more to universal service (indirectly through line-item charges or higher service rates) than a residential customer with two residential connections. Although the Commission has in the past singled out multi-line business lines for purposes of assigning subscriber line charges (“SLCs”), this distinction makes little sense today as regulators move to rationalize rates for all services consistent with the requirements of section 254. Indeed, under the CALLS plan the gap between multi-line business and residential SLCs has steadily narrowed. Moreover, this relic of the pre-1996 Act subsidy system is not necessarily followed by competitors to incumbent LECs, who generally do not offer separately-priced single-line and multi-line business services.

2. The Number-Based Proposal Would Result in Inconsistent and Inequitable Contribution Obligations

Basing contributions on telephone numbers would result in an underassessment of universal service contributions in certain instances. For example, if a call center has 20 lines organized in a hunt group, with only one associated telephone number, the call center would be subject to a universal service charge of about \$1.00 under the telephone number-based proposal. Likewise, a telemarketing business with 20 outgoing lines could avoid all universal service charges by deploying a PBX without direct-inward dialing. In contrast, a business with 20 Centrex lines, each with an associated telephone number, would pay about \$20.00 in universal service charges under the number-based proposal. Such an outcome clearly would undermine the Commission’s longstanding, and recently invoked, policy of avoiding universal service rules that favor one competing service over another.¹⁰

¹⁰ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Second Order on Reconsideration*, FCC 03-58 (Mar. 14, 2003) (granting waiver for Centrex services).

3. Contentions that the Connection-Based and Number-Based Plans Are Simpler To Implement Are Illusory

Certain proponents of the connection-based and number-based proposals incorrectly assert that those proposals would be much simpler to implement than a plan that splits contributions between the providers of the end-user connection and transport component of a circuit. However, the connection-based and number-based proposals include their own complications. The connection-based proposal would require all carriers to keep track of and report both interstate revenues *and* interstate end-user connections. Moreover, as with the current methodology, the proposal would suffer the problem of deriving reasonable estimates of interstate telecommunications revenues, as carriers increasingly bundle interstate telecommunications services with intrastate services, Internet service provider services, and customer premises equipment.¹¹ As noted by various parties, the minimum contribution requirement also raises concerns of “double counting” revenues for wholesale services sold to resellers.¹²

The telephone number-based plan advocated by AT&T and Ad Hoc raises even more complications. Implementation of the proposal would require carriers to track and report telephone numbers in completely different ways than they do today. Thus, the Commission’s assumption that the “proposal . . . could rely upon existing reporting requirements” is incorrect.¹³ Reporting requirements would have to be significantly modified and expanded. For example, ported numbers would have to be reported by carriers that receive ported numbers, rather than

¹¹ See AT&T at 42-43 (“In order to determine whether a carrier is subject to the minimum contribution requirement, and to calculate the payment, it will still be necessary to distinguish interstate telecommunications revenues from other types of revenues.”).

¹² See, e.g., SBC/BellSouth at 16.

¹³ Notice ¶ 99.

the carriers that provide them. Similarly, telephone numbers associated with resold services would have to be reported by the carrier reselling the services, rather than the wholesale provider. Today, resellers do not even file Numbering Resource Utilization/Forecast (“NRUF”) reports.

Currently, toll free numbers are reported by Responsible Organizations, which do not provide telecommunications services. Adoption of the number-based proposal would require the carriers actually providing the toll free services to report those numbers. In addition, to the extent a toll free number is associated with a POTS [plain old telephone service] telephone number, the Commission would need to decide whether the toll free customer should be subject to universal service charges, or just one. Each of these changes would require both competitive LECs and incumbent LECs to undertake costly systems changes, and, in the case of the number-based proposal, would necessitate changes to well-established NRUF reporting processes.

III. THE COMMISSION SHOULD ADOPT THE SBC/BELLSOUTH “SPLIT CONTRIBUTIONS” PROPOSAL WITH CERTAIN MODIFICATIONS

As discussed above, the Commission must reject the connection-based and number-based proposals, because they fail to satisfy section 254(d). In contrast, the split-connections plan currently advocated by SBC and BellSouth would ensure that interstate long distance providers contribute to universal service on an equitable and nondiscriminatory basis. While the SBC/BellSouth proposal satisfies this key threshold requirement, Qwest believes that it can be improved in two significant respects. *First*, all presubscribed long distance services should be subject to the same contribution requirements, regardless of whether the services are provided along with “local” services or on a standalone basis. *Second*, all private line transport services should be subject to contribution, though the contributions should be computed differently

depending on whether the services are provided as part of an end-to-end private line circuit, or, alternatively, provided as a standalone service.

Presubscribed Long Distance. In the original SBC/BellSouth proposal, all presubscribed long distance services would have been assessed on a per-connection basis. However, SBC and BellSouth modified their plan to address complaints by IXCs that they lack sufficient information to identify their presubscribed customers. Under the modified SBC/BellSouth proposal, carriers would contribute on a per-connection basis for the presubscribed line whenever the end user's carrier for switched local service is also the end user's carrier for switched long distance service. When the local carrier is *not* the end user's primary long distance carrier, the carrier would contribute based on a combination of connections and revenues.¹⁴ While Qwest appreciates the intent of these changes, it believes that it is more important to address concerns about favoring vertically-integrated providers. Clearly, these concerns are mitigated given the general trend in the industry toward such integrated offerings by all carriers, such as WorldCom's "The Neighborhood" offering. Nevertheless it is easy to address the IXCs' concern by assessing contributions for presubscribed long distance services in the same way for all carriers.

As discussed in Qwest's initial comments, for the vast majority of presubscribed lines, IXCs already have access to the information they need to identify whether a customer is a presubscribed long distance customer. All the major incumbent LECs provide CARE information that identifies which incumbent LEC customers are presubscribed to the IXC for interstate long distance services. If such information is lacking for some LECs, the answer is to identify a uniform requirement for LECs to provide such information in an accurate, timely, and

¹⁴ See SBC/BellSouth at 9-10.

cost-effective manner. Any significant change to the Commission's contribution methodology is going to require some administrative changes to implement. As described above, that certainly is the case with AT&T's telephone number-based proposal.

Private Line Transport. Contributions can fairly easily be assessed on a connection and capacity basis when a private line circuit is provided on an end-to-end basis by one carrier. In contrast, where the "middle" of the private line circuit is provided on a standalone basis, it is very difficult to determine the capacity of the circuit, due to multiplexing and other factors. Given these complications, SBC and BellSouth have proposed to assign the entire contribution requirement to the provider of the end user connections.¹⁵ Qwest believes that a different approach is warranted for private line transport. While the SBC/BellSouth proposal simplifies the private line assessment, it could create incentives for carriers to provision private line transport on a standalone basis to avoid universal service charges. In any case, this approach raises questions regarding compliance with section 254(d).

In light of these concerns, private line transport services provided on an "integrated" basis should be subject to connection-based contributions, whereas standalone private line transport should be assessed universal service contributions based on a combination of connections and interstate revenues. In its initial comments, Qwest explains in detail the methodology that would be used to compute universal service contributions in each of these scenarios.¹⁶

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt the SBC/BellSouth proposal with certain modifications. The Commission must reject the connection-based and telephone

¹⁵ *See id.* at 9.

number-based proposals, because they would fail to assess contributions on all providers of interstate telecommunications services on an equitable and nondiscriminatory basis, as required by section 254(d).

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: Craig J. Brown
Sharon J. Devine
Craig J. Brown
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

(303) 672-2799

April 18, 2003

Its Attorneys

¹⁶ See Qwest Comments, Attachment A.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served via e-mail on the FCC's duplicating contractor Qualex International and Ms. Sheryl Todd of the Wireline Competition Bureau, and 3) served via First Class United States mail, postage prepaid, on the participating parties listed on the attached service list.

/s/ Richard Grozier
Richard Grozier

March 18, 2003

Sheryl Todd
Stodd@fcc.gov

Qualex International
Qualexint@aol.com

Cleo Fields
Rainbow/PUSH Coalition
1131 8th Street, N.W.
Washington, DC 20002

Dirck A. Hargraves
Telecommunications Research &
Action Center
POB 27279
Washington, DC 20005

Susan M. Gately.....Ad Hoc
Economics and Technology, Inc.
Suite 400
Two Center Plaza
Boston, MA 02108

James S. Blaszak.....Ad Hoc
Stephen J. Rosen
Levine, Blaszak, Block & Boothby, LLP
Suite 900
2001 L Street, N.W.
Washington, DC 20036

David M. Wilson.....Allied National Paging
Leon M. Bloomfield
Wilson & Bloomfield LLP
Suite 1630
1901 Harrison Street
Oakland, CA 94612

Kenneth E. Hardman.....American Assc. Paging Carriers
Moir & Hardman
Suite 800
1015 18th Street, N.W.
Washington, DC 20036-5204

Carolyn W. Groves.....Arch Wireless
Brian W. Higgins
Wilkinson Barker Knauer, LLP
Suite 700
2300 N Street, N.W.
Washington, DC 20036-1128

Albert H. Kramer.....APCC
Allan C. Hubbard
Robert N. Felgar
Dickstein Shapiro Morin &
Oshinsky, LLP
2101 L Street, N.W.
Washington, DC 20037-1526

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Howard J. Symons.....AT&T Wireless
Sara F. Leibman
Bryan T. Bookhard
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, PC
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921

John T. Nakahata.....AT&T Corp.
Michael G. Grable
Harris, Wiltshire & Grannis LLP
Suite 1200
1200 Eighteenth Street, N.W.
Washington, DC 20036

Harold Mordkofsky.....Concerned Paging Carriers
Douglas W. Everette.....Western Alliance
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W.
Washington, DC 20037

Michael Altschul
Cellular Telecommunications &
Internet Association
Suite 800
1250 Connecticut Avenue, N.W.
Washington, DC 20036

James A. Bachtell.....Consumers Union
Angela J. Campbell
Michael Garcia
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001

Mark Cooper
Consumer Federation of America
Suite 604
1424 16th Street, N.W.
Washington, DC 20036

Laurie Pappas
Texas Office of Public Utility Counsel
Suite 9-180
POB 12397
Austin, TX 78711-2397

Frederic G. Williamson.....Chouteau Tel.
Fred Williamson & Associates, Inc.
Suite 200
2921 East 91st Street
Tulsa, OK 74137-3355

Alan D. Mandl.....IPCA
Mandl & Mandl LLP
Suite 630
10 Post Office Square
Boston, MA 02109

Howard Segermark
International Prepaid Communications
Association, Inc.
904 Massachusetts Avenue, N.E.
Washington, DC 20002

Philip L. Verveer.....j2 Global
David M. Don
Willkie Farr & Gallagher
1875 K Street, N.W.
Washington, DC 20006

Michael C. Strand
Montana Independent
Telecommunications Systems
POB 5239
Helena, MT 59604-5239

Leonard J. Kennedy
Lawrence R. Krevor
Garnet M. Goins
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Laura H. Phillips.....Nextel
Laura S. Gallagher
Drinker Biddle & Reath LLP
Suite 1100
1500 K Street, N.W.
Washington, DC 20005-1209

Richard A. Askoff
National Exchange Carrier
Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981

L. Marie Guillory
Daniel Mitchell
National Telecommunications
Cooperative Association
10th Floor
4121 Wilson Boulevard
Arlington, VA 22203

Margot Smiley Humphrey.....NRTA
Holland & Knight LLP
Suite 100
2100 Pennsylvania Avenue, N.W.
Washington, DC 20006

Stuart Polikoff
Jeffrey W. Smith
Organization for the Promotion and Advancement
of Small Telecommunications Companies
Suite 700
21 Dupont Circle, N.W.
Washington, DC 20036

Michael A. Cox
David A. Voges
Steven D. Hughey
Michigan Public Service Commission
Suite 15
6545 Mercantile Way
Lansing, MI 48911

Gary M. Cohen
Lionel B. Wilson
Jonady Hom Sun
California Public Utilities Commission
and the People of the State of California
505 Van Ness Avenue
San Francisco, CA 94102

Joel B. Shifman
Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018

Angela N. Brown
Richard M. Sbaratta
BellSouth Corporation
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Jeffrey A. Brueggeman
Gary L. Phillips
Paul K. Mancini
SBC Communications Inc.
Suite 400
1401 Eye Street, N.W.
Washington, DC 20005

Marybeth Banks
H. Richard Juhnke
Jay C. Keithley
Sprint Corporation
Suite 400
401 9th Street, N.W.
Washington, DC 20004

Hope Halpern
Telstar International, Inc.
1 North Broadway
White Plains, NY 10601

Mitchell F. Brecher.....TracFone
Nancy E. Boocker
Greenberg Traurig, LLP
Suite 500
800 Connecticut Avenue, N.W.
Washington, DC 20006

Thomas M. Sullivan
Eric E. Menge
Radwan Saade, PH. D.
U.S. Small Business Administration
Suite 7800
409 Third Street, S.W.
Washington, DC 20416

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle
United States Telecom Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

Lawrence W. Katz
Michael E. Glover
Edward Shakin
Verizon
Suite 500
1515 North Court House Road
Arlington, VA 22201

Richard S. Whitt
Alan Buzacott
Lori Wright
WorldCom, Inc.
1133 19th Street, N.W.
Washington, DC 20036

Ruth Milkman.....WorldCom
A. Renee Callahan
Lawler, Metzger & Milkman
Suite 802
2001 K Street, N.W.
Washington, DC 20006

Peter Lurie
Virgin Mobile USA, LLC
10 Independence Boulevard
Warren, NJ 07059

Helen E. Disenhaus.....Virgin
Douglas D. Orvis II
Swidler Berlin Shereff Friedman, LLP
Suite 300
3000 K Street, N.W.
Washington, DC 20007

Jeremy Denton
Robin Landis
Industrial Telecommunications
Association, Inc.
Suite 500
1110 North Glebe Road
Arlington, VA 22201

Robert S. Tongren
Ohio Consumers' Counsel
Suite 1800
10 West Broad Street
Columbus, OH 43215-3485

David C. Bergmann
National Association of State
Utility Consumer Advocates
Suite 101
8300 Colesville Road
Silver Spring, MD 20910

John Cheek
National Indian Education Association
Suite 210
700 North Fairfax Street
Alexandria, VA 22314