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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

ORDER

Adopted: July 8, 2004 **Released:** July 20, 2004

By the Commission:

I. INTRODUCTION

1. In this Order, we grant, in part, waiver requests filed by AT&T Corp. (AT&T), SBC Communications Inc. (SBC), and the Verizon telephone companies (Verizon) (collectively Petitioners) regarding the true-up process for universal service contributions based on 2003 revenues.[1] The Petitioners assert that this process unfairly disadvantages them by requiring them to pay true-up amounts in excess of their appropriate contributions for second through fourth quarter 2003. The current true-up process for 2003 contributions was adopted to address the transition from contributions based on historical billed to projected collected revenues, which occurred on April 1, 2003. We grant, in part, the Petitioners' requests and direct the Administrator[2] to utilize Petitioners' historical gross billed revenues for first quarter 2003 reported on their Form 499-Qs filed May 1, 2003, adjusted to reflect the annual uncollectible rate reported on their FCC Form 499-As filed April 1, 2004, when truing up Petitioners' 2003 contributions.

II. BACKGROUND

2. On December 12, 2002, the Federal Communications Commission (Commission) adopted modifications to the revenue-based universal service assessment system to ensure the sufficiency and predictability of universal service while it considers reforms to sustain the universal service fund for the long term.[3] Among other things, the Commission determined that beginning with second quarter

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[1] AT&T Petition for Waiver, CC Docket No. 96-45, (filed Jan. 27, 2004); SBC Petition for Waiver, CC Docket No. 96-45, (filed Feb. 27, 2004); Verizon Petition for Waiver, CC Docket No. 96-45, (filed Feb. 27, 2004).

[2] *See* 47 C.F.R. § 54.701 (stating that the Universal Service Administrative Company is the Administrator of the universal service support mechanisms).

[3] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – 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 with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number* (continued....)

2003, universal service contributions would be based on contributor-provided projections of collected revenues, rather than historical gross-billed revenues.[4] As a result of this change to the assessment system, two quarters of historical revenues were not utilized to calculate universal service contributions – fourth quarter 2002 and first quarter 2003. The Commission also adopted an annual true-up designed to ensure that carriers accurately project their revenues and thereby pay appropriate universal service contributions.

3. In the *Order and Second Order on Reconsideration*, the Commission slightly modified the true-up process for universal service contributions to take into account the transition to the new revenue-based methodology on April 1, 2003.[5] The Commission stated "the [Administrator] will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003. [The Administrator] will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate."[6]

4. Petitioners' actual collected revenues for first quarter 2003 exceeded their projections of collected revenues for first quarter 2003.[7] Thus, even if their projections for the second through fourth quarters of 2003 were completely accurate, and they made appropriate contributions for those quarters, Petitioners would be billed additional contribution amounts in the true-up process, because they under-projected collected revenues for the first quarter of 2003. Petitioners assert such a result is unfair, because first quarter 2003 revenues were not used to calculate universal service contributions. Accordingly, Petitioners ask the Commission to modify the true-up process for them and subtract their actual collected revenues for first quarter 2003, rather than their projections.

5. In addition to SBC and Verizon, Verizon Wireless and Cingular Wireless LLC (Cingular) submitted comments in response to AT&T's petition for waiver.[8] Verizon Wireless opposed

(Continued from previous page)
Portability, Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

[4] *See id.*, 17 FCC Rcd at 24970, para. 29.

[5] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – 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 with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (*Reconsideration Order*).

[6] *Id.*, 18 FCC Rcd at 4825, para. 17.

[7] *See* AT&T Petition for Waiver at 5; SBC Petition for Waiver at 4; Verizon Petition for Waiver at 3.

[8] The Commission requested comments on AT&T's petition. *See* Wireline Competition Bureau Seeks Comment on AT&T Corp. Waiver Regarding the Annual True-Up Process for 2003 Universal Service Contributions, CC Docket No. 96-45, *Public Notice*, DA 04-241 (rel. Jan. 30, 2004). *See also* Opposition of Verizon Wireless, CC Docket No. 96-45 (filed Feb. 27, 2004); Cingular Comments, CC Docket No. 96-45 (filed Feb. 27, 2004).

AT&T's waiver, asserting that AT&T failed to present unique circumstances justifying a waiver. Instead, Verizon Wireless supported modifying the true-up process for all contributors. Cingular supported AT&T's waiver request and asked that the Commission extend the waiver to all similarly situated carriers. No other party submitted comments in response to the petitions for waiver.

III. DISCUSSION

6. As discussed below, we grant, in part, Petitioners' request for waiver of the Commission's universal service true-up procedures for 2003 and conclude that Petitioners have demonstrated good cause to justify the waiver. Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown."[9] Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.[10] The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[11] The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.[12]

7. Applying this standard for waiver, we find that Petitioners have demonstrated that they are experiencing special circumstances that warrant grant of a waiver. Section 254 of the Communications Act of 1934, as amended (Act), requires that interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.[13] Consistent with section 254 of the Act, the purpose of the annual true-up process is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms.[14] As a consequence of the transition to the modified revenue-based assessment system in 2003, however, Petitioners would contribute more than an equitable share, because they would be assessed a larger true-up amount under the current true-up process than would otherwise occur, because they under-projected their first quarter 2003 revenues. We conclude that the Petitioners have demonstrated special circumstances that warrant deviation from the Commission's universal service true-up procedures for 2003. We further conclude that this result is consistent with the public interest, because first quarter 2003 revenues were not utilized to calculate universal service contributions. Accordingly, we find that the current true-up procedures for 2003 should be waived for the Petitioners. We disagree with Verizon Wireless that AT&T failed to demonstrate special circumstances warranting a waiver because other contributors may have experienced similar circumstances. Such arguments are speculative, given the record before us. [15]

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[9] 47 C.F.R. § 1.3.

[10] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

[11] *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[12] *WAIT Radio*, 418 F.2d at 1159.

[13] *See* 47 U.S.C. § 254(d).

[14] *Interim Contribution Methodology Order*, 117 FCC Rcd at 24972; *see also Reconsideration Order*, 18 FCC Rcd at 4824, para. 15.

[15] We decline to extend this waiver to all similarly situated parties, as requested by Cingular. Individual carriers may seek similar waiver relief, and such petitions would be evaluated consistent with the precedent established in this Order.

8. Although we conclude a waiver is appropriate, we adopt an alternative methodology to that proposed by the Petitioners to determine an appropriate contribution. We do so to lessen implementation burdens for the Administrator, while providing adequate relief to the Petitioners. We direct the Administrator to subtract Petitioners' historical gross billed revenues for first quarter 2003 reported on their Form 499-Qs, adjusted to reflect their annual uncollectible rates for 2003 reported on their Form 499-As, when conducting true-ups for the Petitioners. Although these amounts may not precisely equal the Petitioners' collected revenues for the quarter, they will yield significantly more accurate true-up results than would their projections. Moreover, allowing Petitioners to submit the new data that they request – actual collected revenues for first quarter 2003 – to the Administrator would create administrative difficulties, because the Administrator would have to develop new systems to accept and process this data. Using data that is currently in the Administrator's database will pose little additional burdens to the Administrator and will minimize delay in the true-up process. We conclude that granting Petitioners' waiver in this manner will further the public interest by improving the accuracy of the 2003 true-up process for these Petitioners without creating significant administrative burdens.[16]

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 254 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 254, and 405, and sections 1.3, 1.429 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, that the Petitions for Waiver filed by AT&T Corp., SBC Communications Inc., and Verizon telephone companies ARE GRANTED, IN PART, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

[16] In an *ex parte* filed with the Commission, AT&T states that, as an alternative to its proposed true-up methodology set forth in its petition, it "supports a process by which [the Administrator] would adjust the historical billed revenue from first quarter 2003 (provided in AT&T's May 1, 2003 Form 499Q) for uncollectible rates taken from the Form 499A filed on April 1, 2004." *See* Letter from Amy L. Alvarez, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, at 2 (filed June 18, 2004). We note that this alternative approach is the same methodology that we adopt herein.