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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petitions for Waiver of Section 54.703	)	
Filed By:	)	CC Docket No. 96-45
Gateway USA Holding Company, Inc. Cosmos Telecom Marketing, Inc. Sitel, Inc. Microdevices Worldwide, Inc., and Startec Global Communications Corp.	)	

OPPOSITION OF AT&T CORP.

Pursuant to the Commission's Public Notice, DA 98-865, released May 8, 1998, AT&T Corp. ("AT&T") opposes the petitions filed by Gateway USA Holding Company, Inc., Cosmos Telecom Marketing Inc., and Sitel, Inc. (collectively "Gateway") and Microdevices Worldwide, Inc. ("Microdevices") seeking a waiver permitting them to exclude from their individual Universal Service Fund ("USF") contribution bases, revenues derived from providing services that originate in foreign points and terminate in the United States.[1] AT&T also opposes Startec Global

[1] See Gateway Petition, filed April 22, 1998, and Microdevice Petition filed March 26, 1998. Alternatively, petitioners request that the Commission clarify Section 54.703 of its rules, 47 C.F.R. § 54.703, to allow carriers to exclude from their USF contribution base foreign-billed revenues derived from communications

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Communications Corporation's ("Startec's") petition requesting complete exemption from the contribution requirement.[2]

Microdevices and Gateway provide international callback service, which enables customers located outside the United States to access U.S.-based international lines that provide the caller with a U.S. dialtone. In addition, Microdevices and Gateway provide domestic interstate services in the United States. These petitioners claim that the USF contribution requirements established in the Commission's Universal Service Order[3] should not apply, because those "rules severely disadvantage [them] vis-à-vis [their] foreign competitors which do not contribute to Universal Service."[4] As AT&T demonstrates below, these petitioners fail to show good cause for a waiver of the

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which originate in foreign points and terminate in the United States.

[2] See Startec Petition, filed April 17, 1998.

[3] Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 (1997), pets. for review pending sub nom. Texas Office of Public Utility Counsel v. FCC, Nos. 97-60421 *et al.* (5th Cir.) ("Universal Service Order").

[4] Microdevices at 2.

Commission's rules, and, consequently, their waiver requests should be denied.[5]

In its Universal Service Order, the Commission directed carriers that provide interstate service to contribute to the USF based on both their interstate and international revenues.[6] Claiming that their contributions to USF will be more than three times their 1997 interstate revenues, Gateway (at 5) and Microdevices (at 4) contend that the Commission could not have intended that their USF contributions would be greater than their total interstate revenues. They assert that this "irrational result" will prevent them from competing with callback service providers that provide no interstate services. However, the fact that the petitioners are required to make contributions to

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[5] The Commission may exercise its discretion to waive a rule where the particular facts demonstrate some hardship to the waiver applicant and strict compliance with the rule is inconsistent with the public interest. Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

[6] Universal Service Order at 9173. Section 254(d) of the Communications Act of 1934, as amended, expressly empowers the Commission to require that every telecommunications carriers that provides interstate telecommunications services to contribute without regard to whether the revenues are interstate or international revenues.

the Universal Service Fund, when some of their competitors are not, is not a sufficient basis for a waiver.

The relationship between a carrier's interstate revenues and USF contribution is irrelevant to the amount of the carrier's contribution. The Commission's rules require all telecommunications carriers to contribute to the USF based on both their interstate and international revenues, if the carrier provides interstate service, regardless of the amount of the carrier's interstate revenues.

If the Commission were to grant the requested waiver on the basis that a carrier's interstate revenues are less than its USF contribution, it would be transgressing Congressional intent. In mandating that all interstate telecommunications carriers shall contribute to the USF, Congress recognized that a broad contribution base is necessary to support universal service. If some carriers are exempted from this requirement, the obligations of all remaining contributors increases, contrary to the public interest and competitive neutrality. There is no public benefit from shifting the contribution obligation among carriers.

Moreover, all competitors that offer callback services and have domestic interstate revenues are subject

to the same contribution requirements, and are therefore competing on a level playing field. Each such provider, including AT&T, contributes to the USF based on total interstate and international revenues.

Microdevices and Gateway further claim that they cannot compete effectively with foreign callback carriers, because those carriers do not provide interstate services and, therefore, do not contribute to USF. To the extent that the petitioners are concerned that their ability to compete is hampered as a result of the Commission's rules,[7] the solution is not a waiver, but rather for the petitioners to adjust the way they do business. These firms offer domestic interstate services as a courtesy to their foreign customers, which then subjects them to the USF contribution requirements. The competing foreign-based callback providers do not offer a similar option, and thus are not required to make contributions to the USF.

If the petitioners want to compete on what they perceive to be an equal basis with foreign providers, they could forego offering those courtesy interstate services. This is a business decision that can only be made by the

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[7] Microdevices at 7-10; Gateway at 7-11.

petitioners, and the petitioners should not look to the Commission to make the decision for them.[8]

Microdevices (at 10-12) and Gateway (at 11-13) request, in the alternative, that the Commission clarify Section 54.703 of its rules to allow carriers to exclude from their USF contribution base revenues derived from foreign-billed services which originate in foreign points and terminate in the U.S. The requested clarification is unnecessary, as the Commission's rule is clear and unambiguous -- there is no exclusion for foreign-billed revenues. Any other reading would be inconsistent with Section 254(d) and the Universal Service Order which require that every telecommunications carrier that provides interstate service contribute to USF based on both their interstate and international revenues. As noted above, permitting the exclusion would adversely affect other USF contributors by increasing their obligations.

Startec, a provider of dial-around long distance services to international locations, seeks (at 1) forbearance or an exemption from the USF contribution

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[8] The petitioners acknowledge that their domestic interstate revenues account for less than one percent of their total yearly revenues. Microdevices at 4; Gateway at 3, n.7 ("[a]pproximately .3% of the . . . revenues for 1997 are derived from interstate services").

requirement, because contributing to USF "would limit Startec's ability to provide low-cost service." As noted above, the Commission's rules apply to all providers of interstate services. It is not clear from Startec's filing whether or not it also provides some domestic interstate telecommunications services. Presumably it does, because if it were providing purely international services, the USF contribution issue would not arise. Startec's claim (at 1) that it is "not economically viable" for it to absorb the cost of USF is not sufficient to justify a waiver of the Commission's rules and, consequently, its waiver request should be denied. If Startec is exempted from the USF requirement, the remaining contributors' obligations would increase, contrary to the public interest.

For the reasons stated above, the Commission should deny the petitioners' requests for a waiver of the Commission's requirement that carriers that provide interstate service contribute to the USF based on both their interstate and international revenues.

Respectfully submitted,

AT&T CORP.

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May 22, 1998

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 22nd day of May, 1998, a copy of the foregoing "Opposition of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

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