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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 2 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

United Native American )  
Telecommunications, Inc. ) CC Docket No. 96-45  
)  
Request for Waiver ) DA 98-949

OPPOSITION OF AT&T CORP.

Pursuant to the Commission's Public Notice, DA 98-949, released May 19, 1998, AT&T Corp. ("AT&T") opposes the petition filed by United Native American Telecommunications, Inc. ("UNAT") seeking a waiver of the Commission's rules for a complete exemption from the requirement to contribute to the Universal Service Fund ("USF").<sup>1</sup>

UNAT provides private line circuits, as a reseller and aggregator, to the United States government and to a non-government commercial customer.<sup>2</sup> UNAT contends that it should be granted an exemption from the USF contribution requirements established in the Universal Service Order<sup>3</sup> because allegedly "the requirement to pay the

<sup>1</sup> See UNAT Petition, dated March 27, 1998.

<sup>2</sup> UNAT at 1-2.

<sup>3</sup> 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

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USF contribution places the burden of collecting or recovering the costs on [its] 'sole' commercial customer."<sup>4</sup> As AT&T demonstrates below, UNAT fails to show good cause for a waiver of the Commission's rules, and, therefore, its waiver request should be denied.<sup>5</sup>

In the Universal Service Order, the Commission determined that under Section 254(d) of the Telecommunications Act of 1996, all interstate telecommunications service providers offering service for a fee directly to the public on a common carrier basis are mandatory contributors to the federal USF.<sup>6</sup> UNAT does not

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v. FCC, Nos. 97-60421 et al. (5<sup>th</sup> Cir.) ("Universal Service Order").

<sup>4</sup> UNAT at 2.

<sup>5</sup> 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).

<sup>6</sup> Universal Service Order at para. 777 ("To be considered a mandatory contributor to universal service under Section 254(d): (1) a telecommunications carrier must offer 'interstate' 'telecommunications'; (2) those interstate telecommunications must be offered 'for a fee'; and (3) those interstate telecommunications must be offered 'directly to the public, or to such classes of users as to be effectively available to the

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dispute the fact that its provision of interstate telecommunications service, as a reseller of private line service, meets the Commission's definition of a mandatory contributor to USF. Therefore, notwithstanding the fact that the majority of UNAT's customers are government entities, UNAT is required to contribute to USF based on its total interstate telecommunications revenues. There is no exemption from USF contribution obligations of mandatory contributors on account of the fact that such a party serves government entities. Nor, contrary to UNAT's suggestion, is there a restriction on its ability to collect its USF contribution from its government customers.

Perhaps for these reasons, UNAT asserts that it is entitled to exemption based on the Commission's treatment of "other providers of interstate telecommunications."<sup>7</sup> In that vein, the Commission has held that government entities that "purchase services to serve

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public.") See 47 U.S.C. §§ 153(22), 153(43), 153(44), 153(46).

<sup>7</sup> Section 254(d) states that the Commission may require "[a]ny other provider of interstate telecommunications" to contribute to universal service, "if the public interest so requires." 47 U.S.C. § 254(d).

only their internal needs"<sup>8</sup> need not contribute to the USF as other providers of telecommunications.<sup>9</sup> The Commission extended this exemption to entities that performed the same function for the government; that is, purchased telecommunications services in bulk exclusively on behalf of the government. It further stated that "[i]f an entity exclusively provides interstate telecommunications to public safety or government entities and does not offer services to others, that entity will not be required to contribute".<sup>10</sup>

UNAT claims that it should be entitled to this exemption. However, UNAT is not purchasing services on behalf of the government; rather, it is providing service to the government. Moreover, even if UNAT were an "other provider of interstate telecommunications" (rather than a common carrier), it is not providing services exclusively to government entities, which is a prerequisite to the exemption it seeks. To the contrary, UNAT acknowledges (at 2) that it provides services to both government and non-government, commercial customers. Consequently, UNAT

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<sup>8</sup> Universal Service Order at para. 800.

<sup>9</sup> Id.

<sup>10</sup> Id.

does not satisfy the Commission's clear and unambiguous requirements for exemption from USF contribution.

UNAT's further assertion (at 2) that it should be treated as offering service exclusively to government entities, because its one commercial customer is a "de minimis" customer, must fail. UNAT argues that because its monthly average revenue from its commercial customer (\$5,585) is significantly less than its average monthly revenue from its government customers (\$418,440), it is entitled to a *de minimis* exemption. There is no such *de minimis* exception. The Commission's *de minimis* exemption from USF contribution obligations applies "[i]f a contributor's annual contribution would be less than \$10,000."<sup>11</sup> UNAT has not, and apparently cannot, show that its annual contribution is less than \$10,000. To the contrary, it has demonstrated (at 1) that for a three-month period its contribution has exceeded \$10,000 per month. Based on its own data, UNAT does not qualify for the *de minimis* exemption.

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<sup>11</sup> Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Report and Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, para. 297 (1997).

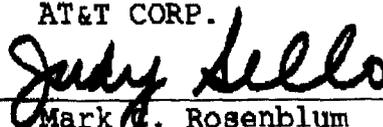
Moreover, if the Commission were to grant UNAT a waiver, it would be transgressing Congressional intent. In mandating that all interstate telecommunications carriers shall contribute to the USF, Congress recognized that a broad contribution base is necessary to support universal service. If some carriers are exempted from this requirement, the obligations of all remaining contributors increases, contrary to the public interest and competitive neutrality. There is no public interest benefit from shifting the contribution obligation among carriers. Similarly, there is no bases for expanding the government-only exemption that applies to "other providers of interstate telecommunication."

For all the reasons stated above, the Commission should deny UNAT's request for a waiver.

Respectfully submitted,

AT&T CORP.

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June 2, 1998

CERTIFICATE OF SERVICE

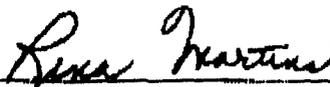
I, Rena Martens, do hereby certify that on this 2nd day of June, 1998, a copy of the foregoing "Opposition of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

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