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

In the Matter of	)	
	)	
OPERATOR COMMUNICATIONS, INC.	)	CC Docket No. 96-45
d/b/a Oncor Communications, Inc.	)	
	)	
Emergency Petition for	)	DA 98-1409
Partial Waiver of the	)	
Commission's Calculation	)	
Method for Universal Service	)	
Contributions	)	

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JUL 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AT&T OPPOSITION

Pursuant to the Commission's July 16, 1998 Public Notice, AT&T Corp. ("AT&T") hereby opposes the petition of Operator Communications, Inc., d/b/a Oncor Communications, Inc. ("Oncor") for a "partial waiver" of the Commission's rules and related pollicies and procedures for calculating contributions to the Universal Service Fund ("USF").

Oncor's petition states (pp. 2-3) that its current operator services revenues have declined from their 1997 levels (due to such factors as increased use of prepaid cards and customers' "dialing around" Oncor's operator services), and that as a result its USF contributions have increased from 3.7 percent of monthly 1997 revenues to 6.85 percent of monthly 1998 revenues. Based on that increase in USF contributions as a proportion of current revenues, Oncor asks the Commission to allow it to compute its USF contributions using current revenues, rather than using its 1997 revenues.

Oncor's waiver request should be denied. As AT&T showed in opposing a substantively identical waiver request filed by Affinity Corporation,[1] the fluctuations in USF contribution levels that Oncor and other similar waiver applicants rely on simply reflect the variations in year-to-year revenues that are only to be expected in the increasingly rivalrous telecommunications marketplace fostered by the Commission's procompetitive policies. The changes in their payment obligations described by the petitioners are inherent in any contribution mechanism, such as the Commission has adopted and implemented for the USF, that relies on prior period revenues as a basis for computation. In these circumstances, carriers should not be heard to complain that the "puts and takes" of a competitive marketplace provide any factual or legal basis for relief from the Commission's prescribed procedures for computing USF contributions.[2]

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1 See Public Notice, Affinity Corporation Petition for Partial Waiver, DA 98-1384, released July 13, 1998. A copy of AT&T's Opposition to Affinity's waiver petition is attached.

2 Oncor's request for such relief is especially unwarranted because it acknowledges that a principal cause of its reported decline in revenues is increasing reliance by customers on "dial around" calling to avoid Oncor's higher charges for its operator services -- precisely the result that a competitive marketplace fosters.

WHEREFORE, for the reasons stated above, the Commission should deny Oncor's petition for partial waiver of the Commission's USF contribution rules and related policies and procedures.

Respectfully submitted,

AT&T CORP.

By

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July 29, 1998

ATTACHMENT

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

In the Matter of	)	
	)	
AFFINITY CORPORATION	)	CC Docket No. 96-45
	)	
Petition for Partial Waiver of the Universal Service Contribution Requirement Contained in Section 54.703 of the FCC's Rules	)	DA 98-1384

AT&T OPPOSITION

Pursuant to the Commission's July 13, 1998 Public Notice, AT&T Corp. ("AT&T") hereby opposes the petition of Affinity Corporation ("Affinity") requesting a "partial waiver" of Section 54.703 of the Commission's Rules, 47 C.F.R. § 54.703, to permit Affinity to base its Universal Service Fund ("USF") contributions on Affinity's "actual and current" interstate revenues, rather than on its revenues earned the prior calendar year.

The waiver petition states (p. 3) that Affinity provides resold long distances services within the United States. Affinity also states (id.) that, in the conditions of its "highly competitive market," it is experiencing declining revenues compared to last year's levels and, as a result, its USF contribution assessments are larger than they would be if the contribution were computed based on its current revenue level.[3] Affinity therefore requests (p. 4) a waiver from the Commission to be allowed to base its USF contribution "on a slightly altered calculation" from the method prescribed in the Commission's rule and related decisions.

The Commission should reject Affinity's waiver request and similar efforts to dismember piecemeal the Commission's USF contribution mechanism. The Commission in the USF Order,[4] acting on a recommendation of the Federal-State Joint Board, adopted a contribution mechanism entailing assessments on carriers based on those entities' end-user telecommunications revenues from the preceding year.[5] Because the current telecommunications marketplace is becoming increasing competitive, as the Commission is well-aware (and as Affinity necessarily concedes), it is predictable that as carriers vie for business an individual carrier's demand, and

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3 Affinity fails to identify its 1997 revenues, but states (p. 4) that its average monthly revenues "for 1998 so far" have been $48,347.32. Affinity also claims (id.) that the difference in its USF contribution, if the new revenues were substituted for prior year figures, would be about $10,000 per month.

4 Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776 (1997), appeal pending sub nom. Texas Office of Public Utility Counsel v. FCC, Civ. No. 97-60421 (5th Cir.)("USF Order").

5 See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, 12 FCC Rcd 18400 (1997)(directing Universal Service Administration Company ["USAC"] to bill 1998 USF contributions based on worksheet using calendar 1997 end-user telecommunications revenues).

consequently its revenues, may fluctuate considerably from year to year. Moreover, because competition drives prices of telecommunications services closer to their underlying economic costs, carriers may experience a reduction in their annual revenues even absent any change in demand.

Such year to year fluctuations will necessarily impact the levels of a carrier's USF obligation under the Commission's revenue-based USF contribution scheme, and do not in themselves provide any basis for waiver or modification of the Commission's mechanism. Had the Commission intended to do so, it could readily have mitigated the impact of such revenue disparities. For example, in the proceedings leading up to the USF Order AT&T urged the Joint Board and the Commission to recover universal service costs through a retail surcharge on end users' bills, applied to customer-specific retail revenues. Such a contribution mechanism could, had it been adopted, ameliorate the effects on a carrier of a substantial reduction in year to year revenues, such as Affinity claims here.

However, because the Commission expressly opted instead for a revenue-based contribution methodology, Affinity and other carriers should not now be heard to claim that they are entitled to waivers of that mechanism due simply to annual variations in their revenue.[6] Such claims could equally well be made by any telecommunications competitor that may suffer a reversal of fortune in the competitive marketplace.[7] The Court of Appeals has cautioned that the Commission should not "tolerate evisceration of a rule by waivers."[8] As the Commission has previously recognized, this is precisely the prohibited result that would follow where virtually any carrier subject to a rule could at some time qualify for such relief.[9]

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6 At least two other similar petitions for waivers have already been filed by carriers to use current, rather than historic, revenue data in computing their USF obligations. See Public Notice, National Telephone & Communications, Inc., Emergency Petition for Partial Waiver, DA 98-1301, released June 30, 1998; Public Notice, Oncor Communications, Inc, Emergency Petition for Partial Waiver, DA 98-1409, released July 16, 1998.

7 Oncor's pending petition illustrates why such revenue reductions should not be deemed adequate basis for a waiver; as a provider of "alternate operator services," Oncor has long charged supracompetitive rates to customers. Increased consumer education regarding operator services providers, combined with rate disclosure requirements adopted by the Commission, can only be expected to reduce demand for Oncor's services.

8 WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1968), cert. denied, 409 U.S. 1027 (1972).

9 See, e.g., National Exchange Carrier Association (Petition for Waiver), 3 FCC Rcd 6042 (1988)(denying waiver of equal access cost recovery rules where "a waiver for 1300 [NECA] carriers would effectively undermine the validity of the rule").

WHEREFORE, for the reasons stated above, the Commission should deny Affinity's petition for partial waiver of the Commission's USF contribution rule and related orders.

Respectfully submitted,

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July 27, 1998

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 27th day of July, 1998, a copy of the foregoing "AT&T Opposition" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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Ann Marie Abrahamson

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 29th day of July, 1998, a copy of the foregoing "AT&T Opposition" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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