

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 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	)	CC Docket No. 90-571
Individuals 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

**AT&T PETITION FOR INTERIM, LIMITED WAIVER**

Pursuant to Section 1.3 of the Commission’s Rules,<sup>1</sup> AT&T Corp. (“AT&T”) hereby requests that the Commission grant it an interim, limited waiver from Section 54.712(a) of the

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<sup>1</sup> 47 C.F.R. § 1.3.

Commission's rules,<sup>2</sup> as it will be effective April 1, 2003, pending the Commission's disposition of AT&T's Petition for Expedited Reconsideration and Clarification ("AT&T Petition for Reconsideration," attached as Exhibit A).<sup>3</sup>

AT&T requests this waiver because, for the reasons stated in its reconsideration petition, AT&T does not have the ability in all cases to implement selective, geographically deaveraged service rates or separate non-USF line-items by April 3, 2003, the effective date of the *Interim USF Order*.<sup>4</sup> Implementing selective, geographically deaveraged service rates or separate non-USF line-items will itself require substantial and costly billing changes—changes that may be rendered unnecessary if the Commission adopts a connections- or numbers-based contribution mechanism that does not "split" the assessment between access providers and interstate transport providers; the Commission sought further comment on such connections- or numbers-based contribution mechanisms in its *Second Further Notice of Proposed Rulemaking* accompanying the *Interim USF Order*.<sup>5</sup> AT&T also requests an interim waiver to permit it, when necessary because of billing system limitations, to round the USF factor up to no fewer than three decimal

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<sup>2</sup> 47 C.F.R. § 54.712.

<sup>3</sup> In addition to AT&T, the following parties filed petitions for reconsideration and/or clarification: Ad Hoc Telecommunications User Committee ("Ad HOC"); National Exchange Carrier Association ("NECA"); Nextel Communications, Inc. ("Nextel"); SBC Communications, Inc. ("SBC"); The United States Telecom Association ("USTA"); Verizon Wireless; and WorldCom, Inc. ("WorldCom").

<sup>4</sup> *In re 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*, Report & Order & Second Further Notice of Proposed Rulemaking, FCC No. 02-329 (rel. Dec. 13, 2002) ("*Interim USF Order*").

<sup>5</sup> *Interim USF Order* at ¶¶ 75-85, 96-100.

places (*i.e.*, tenths of a percent), again pending disposition of the AT&T Petition for Reconsideration.<sup>6</sup>

Section 1.3 provides that the Commission may waive its rules “if good cause therefor is shown.”<sup>7</sup> Generally, a waiver is appropriate if “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”<sup>8</sup> Because of the important “safety valve” function that waivers perform, it is well established that the Commission must give requests for waivers a “hard look.”<sup>9</sup>

New Rule 54.712(a) is difficult to implement because certain local exchange carriers that perform billing for AT&T refuse to bill the universal service recovery line-item at an economically feasible rate. In its *Interim USF Order*, the Commission ruled that a carrier such as AT&T cannot increase its USF line-item to other customers to average the recovery of unbillable USF contributions across all other AT&T customers.<sup>10</sup> The Commission was of the view that AT&T could recover these unbillable contributions by combining its service-related and universal service recovery charges in a single charge, even if that total charge (including the universal service recovery component) was geographically deaveraged.<sup>11</sup>

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<sup>6</sup> The AT&T Petition for Reconsideration also sought a clarification that unbillables may be recovered through a separate unbillables line-item or a line-item that recovers unbillables and other USF-related administrative expenses without violating Rule 54.712(a). To the extent that the Commission deems it necessary, AT&T also asks that the Commission grant a waiver of Rule 54.712(a) for this purpose.

<sup>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>9</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>10</sup> *Interim USF Order* at ¶¶ 56-58.

<sup>11</sup> *Id.*

Because AT&T does not have sufficient time to make the modifications to its billing systems necessary to implement this combined service-related and universal service recovery charge by April 1, 2003, the effect of revised Rule 54.712(a) is to deny AT&T a reasonable opportunity to recover the universal service contributions associated with unbillable accounts. Under these circumstances, a deviation from the general rule is warranted, especially pending the Commission's disposition of the AT&T Petition. Accordingly, AT&T requests a limited waiver to allow it (and any similarly situated party) to average the recovery of these unbillable USF contributions across other customers pending the Commission's disposition of the AT&T Petition for Reconsideration.

AT&T notes that implementation of Rule 54.712(a) is apparently causing a host of administrative and billings systems difficulties across the industry. For example, Verizon, SBC and BellSouth have sought various waivers of this rule because of implementation problems related to the Commission's restriction on universal service recovery fees. The Commission should ensure that it considers all requests for interim waivers in a coordinated manner, so that any relief is competitively neutral.

In addition, AT&T seeks an interim waiver of revised Rule 54.712(a) to permit AT&T (and any similarly situated carrier) to round the contribution factor as applied to customers' bills up where necessary to accommodate billing system limitations, at least pending the Commission's disposition of the AT&T's Petition for Reconsideration. AT&T would not need to round up to fewer than three decimal places (*i.e.*, tenths of a percent), but not all of its billing systems (many of which are not operated by AT&T) can accommodate the full six decimal places (*i.e.* ten thousandths of a percent) used by the Commission. As strictly written, revised Rule 54.712(a) would appear to prevent AT&T from rounding up. Rounding down, however,

would deny AT&T a reasonable opportunity to recovery its universal service assessments, so the Commission must permit AT&T (and any similarly situated carrier) to round the universal service recovery fee up to no fewer than three decimal places when billing systems cannot apply the full six decimal place FCC contribution factor, pending disposition of the AT&T Petition for Reconsideration.

Accordingly, AT&T requests that the Commission grant it (and any similarly situated party) the limited waiver discussed herein.

Respectfully submitted,

AT&T Corp.

By: \_\_\_\_\_/s/  
Mark C. Rosenblum  
Lawrence J. Lafaro  
Judy Sello  
AT&T CORP.  
Room 3A229  
One AT&T Way  
Bedminster, New Jersey 07921  
(908) 532-1846

John T. Nakahata  
Michael G. Grable  
HARRIS, WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 730-1345

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# **EXHIBIT A**

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Number Resource Optimization	)	CC Docket No. 99-200
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Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

**AT&T PETITION FOR EXPEDITED RECONSIDERATION AND  
CLARIFICATION**

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. (“AT&T”) petitions the Commission for expedited reconsideration and clarification of three aspects of the Commission’s *Report and Order*, FCC 02-329, released December 13, 2002 (“*Interim USF Order*”), in this proceeding. Specifically,

AT&T requests the Commission to: (1) allow carriers that cannot bill the USF line-item to certain customers an 18-month transition period during which they would be permitted to recover these “unbillables” via the Universal Service Fund (“USF”) line-item charged to customers whom they can bill, (2) clarify that unbillables may be recovered in a separate line-item or combined in a separate line-item that includes other USF-related administrative expenses, and (3) clarify that carriers may round up their USF line-item on end-user customers’ bills in all instances when their billing systems are not able to reflect the precise contribution factor released by the Commission. As an alternative to the third request, the Commission could always release a contribution factor that, when expressed as a ratio factor, has no more than three digits so that all carrier billing systems could reflect the precise published factor.

Grant of these requests is necessary to preclude a shortfall in carrier recovery of their USF contributions from end users. The first request would allow sufficient time for carriers, such as AT&T, that have USF unbillables to transition to other permitted recovery mechanisms. The second request would provide guidance to carriers as to separate line-items other than the USF line-item. And, the third request is necessary to preclude a systematic underrecovery of carriers’ USF contributions permitted by the line-item. Because action on this petition is essential to allow compliance with the *Interim USF Order* commencing April 1, 2003 without certain carriers experiencing a shortfall in permitted recovery amounts, AT&T respectfully requests the Commission to address these issues expeditiously.

## BACKGROUND

On December 13, 2002, the Commission released its *Interim USF Order* in which it adopted various measures aimed at maintaining the viability of the USF pending consideration of a permanent solution. Among other critical changes, the Commission prohibited carriers from “marking up federal universal service line-item charges above the relevant assessment amount.” *Id.* ¶ 49. It held that “beginning April 1, 2003, carriers that elect to recover their contribution costs through a separate line item may not mark up the line item above the relevant contribution factor.” *Id.* ¶ 51.

It further held expressly that carriers that are unable to bill the USF line-item to particular sets of customers, because certain local exchange carriers that perform billing for these carriers refuse to bill the line-item at an economically feasible rate, may not mark-up their USF line-item to other customers for these unbillables. *Id.* ¶¶ 56-58. In its ruling, the Commission acknowledged that “carriers, such as AT&T, that are not rate regulated remain free to recover fully their universal service contributions from their customers.” *Id.* ¶ 57. For example, the Commission held that they may “consistent with sections 201 and 254(g), charge customers a combined charge that includes service-related and federal universal service recovery charges.” *Id.* ¶ 58. As another option, the Commission permitted a separate “line-item” so long as the carrier does not describe the separate line-item as recovering “regulatory fees or universal services charges.” *Id.* ¶ 54.

### **I. THE COMMISSION SHOULD ALLOW AN 18-MONTH TRANSITION PERIOD FOR UNBILLABLES.**

The *Interim USF Order* clearly contemplates that carriers, such as AT&T, would not experience a shortfall because of an unbillables problem and identified recovery

mechanisms other than the USF line-item that they could utilize. However, AT&T (and potentially other similarly-situated carriers) do not necessarily have the ability to implement the alternatives suggested by the Commission – *i.e.*, selective, geographically deaveraged service rates or separate non-USF line-items – by April 3, 2003, the effective date of the *Interim USF Order*. Accordingly, to avoid a shortfall in USF recovery, AT&T requests that the Commission reconsider its *Interim USF Order* and allow an 18-month transition period until October 3, 2004 (or until carriers are able to introduce alternative recovery mechanisms, whichever comes first), before AT&T and other carriers are required to remove unbillables from their USF line-item charges. Grant of this request is necessary to enable carriers experiencing unbillables to recover their legitimate USF contributions.

**II. THE COMMISSION SHOULD CLARIFY THAT UNBILLABLES MAY BE RECOVERED IN A SEPARATE LINE-ITEM, INCLUDING IN A COMBINED LINE-ITEM THAT RECOVERS OTHER USF-RELATED ADMINISTRATIVE EXPENSES.**

In the *Interim USF Order*, the Commission expressly indicated that “[c]arriers that are not rate-regulated by this Commission, namely, interexchange carriers, CMRS providers, and competitive local exchange carriers, will have the same flexibility that exists today to recover legitimate administrative and other related costs. In particular these costs can always be recovered through these carriers’ rates or through other line items.” *Id.* ¶ 55. AT&T believes that the Commission thus left IXCs with the option of recovering unbillables through either a stand-alone line-item *or* a line-item that combines unbillables with other USF-related administrative expenses. AT&T’s interpretation is further confirmed by the Commission’s holding that “[c]ontributing carriers still will have the flexibility to recover their contribution costs through their end-user rates if they

so choose and to recover any administrative *or other costs* they currently recover in a universal service line-item through their customer rates or through another line item.”

*Id.* ¶ 40 (emphasis added).

AT&T seeks clarification to ensure that carriers may recover unbillables either through a stand-alone line-item or a separate line-item that also includes USF-related administrative costs. This clarification is requested because the Commission specifically discussed carriers’ rights to impose geographically deaveraged rates that includes service-related and federal universal service recovery charges for customers to whom the carrier may not have the ability to bill any sort of line-item. The requested clarification would help ensure that both carriers and their end-user customers understand that recovery of unbillable amounts through geographically deaveraged rates is not the only option available to carriers.

### **III. THE COMMISSION SHOULD ALLOW ROUNDING OF THE OF THE USF LINE-ITEM WHEN A CARRIER CANNOT BILL THE PRECISE CONTRIBUTION FACTOR.**

The *Interim USF Order* prohibited carriers from “marking up federal universal service line-item charges above the relevant assessment amount.” *Id.* ¶ 49. Absent clarification, this language appears to prohibit any upward rounding of the contribution factor on the end-user bill.

However, the Commission’s quarterly contribution factor, when expressed as a ratio factor, is typically carried out to the sixth decimal point.<sup>1</sup> Some of AT&T’s billers can only accommodate a factor of three digits beyond the decimal point. Accordingly,

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<sup>1</sup> For example, the contribution factor for the first quarter 2003 is 7.2085% = .072085, which, when expressed as a ratio factor, has six digits to the right of the decimal point. See [http://www.fcc.gov/wcb/universal\\_service/quarter.html](http://www.fcc.gov/wcb/universal_service/quarter.html)

unless the Commission clarifies that carriers may round up the contribution factor, AT&T and other similarly-situated carriers would be forced to drop those digits after the decimal that they cannot bill, which will mean that carriers will necessarily lose revenues which they are entitled to recover through the USF line-item.

For AT&T billing systems that cannot accommodate a factor that extends beyond three decimal places, if the contribution factor were, for example, .098765 (9.8765%), AT&T would have to present the factor on its bill as 9.8% for customers served by these billing systems. The downward adjustment in this example means that AT&T would undercollect its USF obligation by .0765%. Because the Commission did not intend to force carriers to undercollect (nor could it have lawfully done so), AT&T requests the Commission to clarify that a carrier may round the contribution factor to the next digit whenever it cannot display the contribution factor precisely. Thus, AT&T would round the third digit upwards for billers that cannot accommodate more than three digits beyond the decimal. Consequently, in this example, AT&T would present a .098765 contribution factor as 9.9% on the end-user bill. Absent the ability to round-up in this manner, carriers that are unable to bill the precise USF contribution factor issued by the Commission will always undercollect. To the extent that rounding results in overcollection by the carrier (*i.e.*, collection of amounts greater than the actual contribution factor times actual revenues), this would be adjusted in the true-up process. *Interim USF Order*, ¶¶ 36, 77.

Alternatively, the Commission could always issue a USF contribution factor that when expressed as a ratio factor is never more than three digits (for example, .099), which all billers should be able to accommodate. This would avoid the need for

individual carriers to round, would ensure that all customers see the identical USF contribution factor on their bill, and any overcollection would be addressed by the Commission in sizing subsequent USF contribution factors.

### CONCLUSION

For the foregoing reasons, the Commission should reconsider and clarify its *Interim USF Order*: (1) to allow an 18-month transition period before unbillables must be removed from AT&T's and other similarly-situated carriers' USF line-items and recovered via deaveraged rates or non-USF line-items, (2) to specify that, in addition to geographically deaveraged rates, unbillables may be recovered via a separate line-item or combined in a separate line-item with other USF-related administrative expenses, and (3) to the extent that a carrier's billing system cannot reflect the actual USF contribution factor on end-user bills, permit the carrier to round-up the factor on end-user bills. As an alternative to rounding, the Commission should hold that its published USF factor will be no more than three digits when expressed as a ratio factor.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello  
Mark C. Rosenblum  
Lawrence J. Lafaro  
Judy Sello

Room 3A229  
One AT&T Way  
Bedminster, New Jersey 07921  
(908) 532-1846

Its Attorneys

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