

**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)	
Numbering Plan and North American)	CC Docket No. 92-237
Numbering Plan Cost Recovery)	NSD File No. L-00-72
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

OPPOSITION TO PETITION FOR WAIVER

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The Commission should deny the Petition for Interim Waiver filed on February 6, 2003 by Verizon, SBC and BellSouth (hereinafter “Petitioners”) in the above-referenced proceeding.¹ Petitioners seek a waiver of the FCC’s new rule that carriers’ universal service surcharges on customer bills may not exceed the interstate telecommunications portion of a customer’s bill times the relevant contribution factor.² Petitioners seek a waiver of this rule as applied to certain charges, so that they can average the universal service costs associated with these charges across customer classes rather than applying them on an individual customer basis. In addition, in a pending petition for reconsideration, SBC requests more broadly that the Commission allow carriers that currently assess flat-rated universal service line item charges flexibility to average such charges within customer categories (i.e., business and residential customers).³ And the wireless industry has already effectively sought and received a waiver of the rule prohibiting carriers from averaging universal service charges across customer classes.⁴

If the Commission must continuously waive or reconsider its new USF surcharge rule for certain companies or segments of the industry, then it should reconsider the rule altogether, as applied to all contributors. Otherwise, there will be very few carriers left that are fully subject to the rule. Indeed there would be an “evisceration of a rule by waivers,” which the Court in *WAIT Radio v. FCC* said the Commission should not

¹ *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, et al., Petition for Interim Waiver filed by Verizon, SBC, and BellSouth, February 6, 2003 (Waiver Petition).

² *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, rel. Dec. 13, 2002 (Order) ¶¶ 45, 51.

³ *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, et al., Petition for Reconsideration filed by SBC, January 29, 2003 (SBC Petition for Reconsideration) at 6.

⁴ *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, et al., Order and Order on Reconsideration, FCC 03-20, rel. Jan. 30, 2003, at 5-6.

tolerate. The Commission has acknowledged as much, stating that “[i]t is axiomatic that the Commission ‘must not eviscerate a rule by a waiver.’”⁵ The Commission has further stated that it has been “especially reluctant to grant a waiver when to do so would ‘invite numerous other waiver requests which, if granted, would effectively circumvent the Commission’s rulemaking function.’”⁶ The Commission should either reconsider the rule for all contributors, or put its foot down now and deny the Petitioners’ waiver request.

As noted above the Commission already (improperly) granted the wireless industry’s request allowing them to average recovery costs across end-users, backing off its original conclusion in the Order that it would “no longer permit carriers – whether wireline or wireless – to average contribution costs across all end-user customers when establishing federal universal service line-item amounts.”⁷ The Commission should not also grant the BOCs’ special requests in this area. To do so would contravene the Commission’s stated intentions of its surcharge rule: alleviating end-user confusion regarding the universal service line item, fostering a more competitive market by better enabling customers to comparison shop among carriers, and promoting transparency for the end-user in order to facilitate informed customer choice.⁸ The Commission will not meet these objectives if it provides exemptions to significant portions of the industry. Providing such exemptions will undercut the Commission’s goals of promoting competition and transparency because, for example, carriers that the Commission allows to average universal service costs across customers will be better able to attract customers with relatively high interstate usage than carriers that must assess surcharges on a

⁵ *In the Matter of Nextel Communications, Inc., Requests for Waiver of 47 C.F.R. §§ 90.617(c) and 90.619(b)*, Order, DA 98-2206, rel. July 21, 1999.

⁶ *Id.*

⁷ Order ¶ 51.

customer-by-customer basis. This would be an unfair result and certainly not what was intended by the Commission in the Order.

Centrex Service. The Petitioners first ask the Commission to waive its new universal service recovery surcharge rule for Centrex service and instead allow Petitioners to continue to elect to average universal service surcharges among multi-line business customers using the Commission’s “equivalency ratio.” The Commission should deny this request. The Commission’s new cost recovery rule expressly prohibits carriers from charging universal service surcharges that exceed the interstate telecommunications portion of a customer’s bill times the relevant contribution factor.⁹ The new rule contains no exception for Centrex or any other service. Moreover, while the Commission’s new USF cost recovery rule is mandatory, application of the equivalency ratio for Centrex is entirely permissive. That is, to the extent that a LEC *elects* to recover its end-user USF surcharge on a per-line basis, it “*may* apply that charge using the ‘equivalency’ relationships established . . . for Centrex lines.”¹⁰ Thus, to the extent that the LECs desire to take advantage of the equivalency ratio, they must simply ensure that their line-item surcharge complies with the Commission’s new cost recovery rule. Accordingly, the Petitioners’ request should be denied.

PIC and PICC Charges. Petitioners also seek a waiver of the rule as applied to PIC and PICC charges, because, they argue, they would have to identify customers who have PIC or PICC charges on their bill in a particular month and assess on them the

⁸ Order ¶ 50.

⁹ 47 C.F.R. § 54.172(a).

¹⁰ 47 C.F.R. § 69.158, (emphasis added); *see also* Waiver Petition at 3 (“The Report and Order and 2d FNPRM could be read to require carriers either to charge Centrex customers a full universal service contribution for each Centrex line or to forgo recovery of most of their contributions if they *elect* to charge Centrex customers based on the one-ninth equivalency ratio.”) (emphasis added).

appropriate universal service surcharge.¹¹ As the Commission recognized in the Order, the new rules “may require modifications in billing practices for certain carriers.”¹² Indeed there is probably no carrier that is exempt from having to make process or systems changes to comply with the Commission’s new rules. Petitioners fail to demonstrate any particularly harmful burden imposed on them.

If Petitioners’ cannot make the necessary billing systems changes in the time required, they have the option, as contemplated in the Order, of recovering these costs in their rates or not at all. SBC stated in its Petition for Reconsideration that the amount of revenue generated by the occasional and usage-based PIC and PICC charges is “relatively small,” and therefore SBC does not currently assess a universal service line item charge in connection with these charges.¹³ Thus if Petitioners are unable to make the necessary billing changes to recover these costs on an individual customer basis, it should not be a terrible burden on Petitioners to either recover these costs through their rates or forego recovery.

Furthermore we note that the Commission was unpersuaded in the Order by AT&T’s arguments surrounding its inability to recover certain contribution costs, for example, where LECs refuse to include a universal service recovery charge on AT&T’s portion of the bill (the “unbillables” issue).¹⁴ The Commission required AT&T to continue contributing to universal service based on these costs and provided AT&T with no relief in recovering these costs from consumers. The FCC concluded that its decision was competitively neutral because all carriers would be “subject to the same contribution

¹¹ Waiver Petition at 6.

¹² Order ¶ 52.

¹³ SBC Petition for Reconsideration at 4.

¹⁴ Order ¶ 56.

recovery limitations.”¹⁵ The same result should apply here, where Petitioners would each be subject to the same recovery limitations, and the substance of the rule would appropriately remain applicable to all universal service contributors.

CONCLUSION

For the reasons described above, Petitioners’ request for waiver should be denied.

Respectfully submitted,

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¹⁵ Order ¶ 57.