

**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 COMMENTS ON PETITIONS FOR RECONSIDERATION AND  
CLARIFICATION**

Pursuant to Section 1.429 of the Commission’s Rules,<sup>1</sup> AT&T Corp. (“AT&T”) provides these comments on other parties’ petitions for reconsideration and/or

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<sup>1</sup> 47 C.F.R. § 1.429.

clarification<sup>2</sup> of certain aspects of the Commission's *Interim USF Order* in this proceeding.<sup>3</sup> AT&T agrees with the suggestions of SBC<sup>4</sup> and Verizon Wireless<sup>5</sup> that the Commission defer implementation of its universal service contribution recovery rules<sup>6</sup> pending adoption of a permanent USF contribution mechanism—provided that such relief is granted across the board in a nondiscriminatory manner, and not by picking and choosing among affected carriers or industry segments. AT&T also agrees with NECA that the Commission should switch from annual to quarterly true-ups and eliminate the punitive aspects of the true-up mechanism,<sup>7</sup> and with WorldCom that an annual true-up should at least not include the first quarter of 2003.<sup>8</sup> Finally, AT&T strongly urges the

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<sup>2</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>3</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>4</sup> See Petition for Reconsideration of SBC Communications, Inc., filed Jan. 29, 2003, at 2-3, 7-8 (“SBC Petition”).

<sup>5</sup> See Petition for Reconsideration of Verizon Wireless, filed Jan. 29, 2003, at 3-5 (“Verizon Wireless Petition”).

<sup>6</sup> See 47 C.F.R. § 54.712(a).

<sup>7</sup> See Petition for Reconsideration of the National Exchange Carrier Ass'n, filed Jan. 29, 2003, at 3-4 (“NECA Petition”).

<sup>8</sup> See Petition for Reconsideration of WorldCom, Inc., filed Jan. 29, 2003, at 2-4 (“WorldCom Petition”).

Commission to reject Ad Hoc's proposal for further rate regulation in the form of a limitation on administrative cost recovery;<sup>9</sup> such regulation is wholly unjustified and inconsistent with prior Commission precedent on the proper regulation of non-dominant carriers.

**I. The Commission Should Defer Implementation of USF Line-Item Limitations Pending Completion of the Final Contribution Mechanism.**

A number of parties have suggested that the Commission refrain from imposing the requirement that no universal service line-item charge may exceed the relevant interstate telecommunications portion of the customer's bill times the relevant contribution factor, currently scheduled to commence on April 1, 2003. For example, SBC and Verizon Wireless contend that the Commission should defer implementation of this requirement until it adopts a permanent (*e.g.*, numbers- or connections-based) USF mechanism, both to avoid costly billing changes and customer confusion and to accommodate the fact that they would be unable to eliminate some averaging of flat-rate charges that occurs in their current USF recovery mechanism.<sup>10</sup> In a similar vein, AT&T has identified the need to allow carriers that cannot bill the USF line-item to particular customers an 18-month transition period during which they would be permitted to recover these "unbillables" via the USF line-item charged to customers whom they *can* bill. USTA contends that price cap carriers should be allowed to continue to recover their administrative costs via the USF line-item.<sup>11</sup> Nextel and Verizon Wireless broadly attack

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<sup>9</sup> See Petition for Limited Reconsideration of the Ad Hoc Telecommunications Users Committee, filed Jan. 29, 2003, at 2 ("Ad Hoc Petition").

<sup>10</sup> See SBC Petition at 7-8; Verizon Wireless Petition at 3-5.

<sup>11</sup> See Petition for Reconsideration of the United States Telecom Ass'n, filed Jan. 29, 2003, at 6-8 ("USTA Petition").

the FCC's limitation on the USF line-item as an impermissible wireless rate prescription that is inconsistent with the record and with the Commission's policy of limited regulation of CMRS carriers.<sup>12</sup>

For many of the same reasons given by SBC and Verizon Wireless, AT&T supports delaying implementation of the requirements related to recovery of USF assessments through a USF line-item—so long as *all* carriers' requests can be accommodated in an equitable and nondiscriminatory manner. Implementation of the new limitations on recovery through a line-item on the customer's bill will require significant and costly billing changes.<sup>13</sup> Many of these billing changes, and problems created by how to address unbillable amounts—or the PIC change and PICC charges identified by SBC and USTA—will not be necessary if the Commission moves to a connection-based assessment mechanism along the lines of the CoSUS proposal, or the modified numbers-based contribution mechanism proposed by AT&T and Ad Hoc.

As SBC points out,<sup>14</sup> the Commission can avoid these significant and perhaps unnecessary costs—costs that, in the end, will be borne by consumers—by eliminating the restrictions imposed by the *Interim USF Order* on the USF line-item so as to allow all carriers to bill their USF contribution amounts, associated unbillables and administrative costs via the USF line-item, pending adoption of a permanent mechanism. This would provide equitable and nondiscriminatory relief to all carriers.

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<sup>12</sup> See Petition for Reconsideration or Clarification of Nextel Communications, Inc., filed Jan. 29, 2003, at 7-17 (“Nextel Petition”); Verizon Wireless Petition at 5-13.

<sup>13</sup> See SBC Petition at 8; Verizon Wireless Petition at 4-5.

<sup>14</sup> See SBC Petition at 7-9.

If, however, the Commission is not willing to grant this equitable relief across the board, it would be patently discriminatory for the Commission to allow special treatment only for some carriers. It is not true that the new limitation on the USF recovery line-item “does not present a problem for universal service line-item charges that are assessed as a percentage amount.”<sup>15</sup> In advancing this argument, SBC makes the same mistake it accuses the Commission of making—assuming away real-world implementation complexities. SBC points out, for example, that in order to recover all of its USF assessments, it needs to be able to average recovery of assessments for “occasional” and usage-based interstate charges that are subject to federal USF contribution.<sup>16</sup> This is really no different than the situation AT&T faces with unbillable assessments, which AT&T needs to be able to average in order to have a reasonable opportunity to recover all of its universal service assessments.

Nor is the situation posed by AT&T’s unbillable assessments really different from the claims—now accepted by the Commission<sup>17</sup>—that CMRS carriers cannot track individual customer interstate usage, and so must average recovery of universal service

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<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *See 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, Order & Order on Reconsideration, FCC No. 03-20 (rel. Jan. 30, 2003), at ¶ 8.*

assessments across all customers.<sup>18</sup> Like CMRS carriers, AT&T cannot bill USF recovery fees to some customers to reflect their actual usage. There is no justification for treating AT&T differently—and less favorably—than the CMRS carriers with whom AT&T competes.

Nor does the historical “light regulation” of wireless carriers<sup>19</sup> justify exempting them from prohibitions against averaging USF recovery line-items across customers, while continuing to apply such a prohibition to IXC. It is true that the Commission has forborne from rate regulation of wireless carriers. But the Commission also does not engage in rate regulation of non-dominant IXCs, and in fact has detariffed IXCs much like CMRS carriers. AT&T agrees with Nextel that the limitation on the USF recovery line-item is unwarranted, but it is equally unwarranted for both non-dominant IXCs and CMRS providers.

Finally, although AT&T agrees with USTA that all carriers should be permitted to recover their administrative costs through the USF recovery line-item,<sup>20</sup> the Commission should not limit such relief only to price cap LECs. Doing so would be discriminatory, as AT&T and other CLECs would be forced to recover administrative costs through other line-items or rates, but the incumbent price cap LECs would not. Moreover, the

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<sup>18</sup> *See, e.g.*, Nextel Petition at 6 (“There simply is no evidence in the record that any wireless carrier could measure interstate revenues for contribution purposes other than through aggregated traffic studies or that CMRS carriers can determine the proportion of interstate traffic on a customer-specific basis to recover contribution costs from customers.”).

<sup>19</sup> *See id.* at 7-9.

<sup>20</sup> *See* USTA Petition at 5-6.

problems cited by USTA—such as the undesireability of adding additional line-items to already lengthy consumer bills<sup>21</sup>—afflict all carriers, not just price cap LECs.

All carriers face difficulty implementing the Commission’s order. There is no principled basis for granting relief to some carriers and not to others. Like AT&T, SBC, USTA, Nextel and Verizon Wireless all set forth reasons why the implementation of the order’s limitations of USF recovery line-items should be deferred until it is clear that it will be necessary to undertake the costly steps needed to implement the Commission’s requirements.

## **II. Ad Hoc’s Proposed Limitation on Administrative Cost Recovery Is Unnecessary.**

Ad Hoc contends that the Commission should establish a 1 percent safe harbor for administrative costs billed through a separate non-USF line-item.<sup>22</sup> Contrary to Ad Hoc’s assertions, the Commission should not restrict recovery of administrative costs billed through a separate line-item for carriers, such as IXC’s and wireless carriers, who are not rate-regulated.

Ad Hoc wholly fails to establish that any such limitation on administrative costs is necessary or consistent with the Commission’s treatment of rates charged by non-dominant carriers. As with CMRS carriers, the Commission does not regulate the rate structure of non-dominant carriers and, with the sole exception of limiting the amount that can be charged on a federal universal service line-item, does not dictate the presentation of a bill or the amount that can be included in each line-item. The

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<sup>21</sup> *See id.* at 3.

<sup>22</sup> *See* Ad Hoc Petition at 8. As noted above, AT&T supports the notion that carriers should be allowed to continue to recover administrative expenses and unbillables through the USF line-item.

interexchange market is highly competitive, and any additional fees will be subject to competitive pressure and market discipline.

In any event, any limitation that the Commission might adopt concerning administrative costs should not preclude carriers from including unbillables in a combined separate line-item that includes other USF-related administrative expenses, as requested in AT&T's petition for waiver. Unbillable USF assessments are a legitimate cost for AT&T to recover, and AT&T must have a reasonable opportunity to do so.

**III. The Commission Should Perform a Quarterly True-Up, and Should Eliminate the Punitive Aspects of the True-Up.**

AT&T agrees with NECA that the Commission should true-up on a quarterly basis any variation between a carrier's quarterly projections and its corresponding quarter's actual revenue, with any difference assessed or refunded at the contribution factor for that quarter.<sup>23</sup> AT&T believes this is both feasible and administratively preferable. AT&T also agrees with NECA<sup>24</sup> that the Commission should, in any event, eliminate the punitive aspect of the current computation of carrier underpayments and overpayments. With an annual true-up, the Commission could use an average annual contribution factor to determine the amount of carrier underpayments and overpayments, which would tend to smooth out fluctuations in both carrier revenues and the contribution factor.

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<sup>23</sup> See NECA Petition at 4.

<sup>24</sup> See *id.* at 3-4.

**IV. The Annual True-Up Should Not Include the First Quarter of 2003.**

If the Commission rejects NECA's suggested quarterly true-up, then AT&T agrees with WorldCom<sup>25</sup> that the true-up should be applicable only to the second, third and fourth quarters of 2003, as those are the relevant quarters of 2003 during which the system will be in effect. It would be arbitrary and capricious to apply the new true-up mechanism to a quarter with a different contribution mechanism.

\* \* \*

Accordingly, the Commission should defer implementation of the limitations on USF line-items pending a determination of the final contribution mechanism, grant any relief from those limitations on an equitable and nondiscriminatory basis, modify the true-up mechanism to operate quarterly instead of annually and eliminate its punitive facets, and—if an annual true-up is retained—grant WorldCom's petition with respect to exclusion of the first quarter of 2003 from the true-up. The Commission should also reject as unnecessary Ad Hoc's proposed limitation on administrative cost recovery.

Respectfully submitted,

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<sup>25</sup> See WorldCom Petition at 2-4.

**CERTIFICATE OF SERVICE**

I, Hagi Asfaw, do hereby certify that a copy of the foregoing AT&T Comments on Petitions for Reconsideration and Clarification was served by U.S. first class mail, postage prepaid, this 27<sup>th</sup> day of February 2003, upon the following parties:

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