

**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 Individuals)	CC Docket No. 90-571
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

PETITION FOR INTERIM WAIVER

The National Exchange Carrier Association, Inc. (NECA), the National Telecommunications Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (“the Associations”) respectfully request interim waiver of section 54.712(a) of the

Commission's rules,¹ adopted recently in the December 13, 2002 *Report and Order* in the above-captioned proceeding.²

Specifically, the Associations seek an interim waiver of section 54.712(a) so as to maintain a current flat-rated Federal Universal Service Charge (FUSC)³ for end-user recovery of universal service fund (USF) contributions, pending Commission action on petitions seeking reconsideration of this portion of the *Report and Order*. In particular, *Petitions for Reconsideration* filed respectively by the United States Telecom Association (USTA)⁴ and by SBC⁵ seek modifications that, if granted, would ameliorate certain adverse impacts of this rule on rate-of-return (ROR) incumbent local exchange carriers (ILECs). Grant of the Association's waiver would therefore preclude the need for ROR ILECs to implement the billing changes necessitated by the Commission's recent rule change by the April 1, 2003 deadline. If the Commission decides to grant the relief requested by SBC and USTA, an interim waiver will avoid the need for more than 1200

¹ 47 C.F.R. § 54.712(a).

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 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, CC Docket No. 98-171, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72, Number Resource Optimization, CC Docket No. 99-200, Telephone Number Portability, CC Docket No. 95-116, *Report and Order*, 67 Fed. Reg. 79525 (2002) (*Report and Order*).

³ See e.g. National Exchange Carrier Association, Inc., Access Service Tariff, F.C.C. No. 5, Sec. 3.9, p. 3-25, Federal Universal Service Charge.

⁴ United States Telecom Association, *Petition for Partial Reconsideration and Clarification*, CC Docket No. 96-45, (filed Jan. 29, 2003) (*USTA Petition*).

⁵ SBC, *Petition for Reconsideration*, CC Docket No. 96-45 (filed Jan. 29, 2003) (*SBC Petition*).

rural ROR ILECs to make multiple changes to their billing systems to comply with both the April 1, 2003 deadline and subsequent changes to the Commission's rules, thereby reducing implementation costs and customer confusion.

Section 54.712(a) prohibits carriers from imposing federal universal service contribution recovery charges that exceed the amount of an end-user's interstate charges times the relevant FCC contribution factor. This rule, simply put, was intended to prevent carriers from overcharging customers for federal universal service contributions.⁶ On January 29, 2003, however, USTA filed a petition stating that language within the *Report and Order* appears inconsistent with long-standing Commission policy intended to eliminate regulatory disparity in the treatment of functionally similar private branch exchange (PBX) and Centrex services.⁷

According to USTA, the Commission's policy permits local exchange carriers (LECs) to charge Centrex customers an equivalency amount of one-ninth of the full universal service contribution assessment.⁸ Today carriers exercising this option recover the difference between the Centrex contribution recovery rate and the full Centrex universal service assessment through a small increase in contribution charges assessed on remaining customers. Beginning April 1, 2003, however, the Commission will "no longer permit carriers . . . to average contribution costs across all end-user customers

⁶ *Report and Order* at ¶ 45.

⁷ *USTA Petition* at 9-10, citing Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure, *Second Order on Reconsideration and Memorandum Opinion and Order*, 12 FCC Rcd 16606 ¶ 31 (1997).

⁸ *Id.* at 9, citing price cap carrier rule 47 C.F.R. § 69.158. Section 69.153 (47 C.F.R. § 69.153) extends the Centrex equivalency rule to non-price cap carriers.

when establishing federal universal service line-item amounts.⁹ USTA expresses concern that the *Report and Order* could be read to require carriers either to charge Centrex customers a full universal service contribution for each Centrex line or forgo recovery of most of their contributions if they elect to continue to charge Centrex customers based on the one-ninth equivalency ratio.¹⁰

USTA also requested that carriers be allowed to recover universal service contributions resulting from occasional charges, *e.g.* presubscribed interexchange carrier (PIC) change charges by averaging these costs over classes of customers, rather than recovering these amounts on a customer-specific basis.¹¹ USTA explained that some LECs' billing systems are unable to identify certain interstate costs on a customer-specific basis in calculating universal service contributions, and thus, cannot add the appropriate increment to those charges to recover the contribution amount.¹²

In a separate reconsideration petition, SBC suggested that the Commission implement a transitional flat-rate surcharge mechanism to give carriers limited flexibility to average charges within customer categories, pending resolution of the Commission's consideration of further changes to the universal service contribution mechanism.¹³ SBC explained that the April 1, 2003 billing changes required by the Commission's *Report and Order* are complex and costly and could quickly become obsolete should the

⁹ *Report and Order* at ¶ 52.

¹⁰ *USTA Petition* at 4.

¹¹ *USTA Petition* at 12-13.

¹² *Id.*

¹³ *SBC Petition* at 5.

Commission decide to implement a connection-based USF contribution mechanism.¹⁴

SBC also pointed out that its transitional approach would address implementation issues that the Commission may not have considered in the *Report and Order*, such as the issues identified by USTA.¹⁵

Realizing that the Commission will most likely not take action on the *USTA* and *SBC Petitions* before the effective date of the *Report and Order*, the Associations respectfully request a waiver to preserve the *status quo* pending action on the petitions.¹⁶ Grant of an interim waiver will avoid the need for more than 1200 rural ROR carriers to make multiple changes to their billing systems to comply with both the April 1, 2003 deadline and any subsequent changes to the Commission's rules resulting from action on the *USTA* and/or *SBC Petitions*.¹⁷ Billing system changes, especially for small rural ILECs, are expensive and burdensome. Thus, grant of the waiver until issues pending reconsideration are resolved will allow rural ROR ILECs to avoid unnecessary expense and minimize customer confusion that would likely result from sequential billing changes.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 7.

¹⁶ Verizon, SBC and BellSouth filed waiver request of the *Report and Order* on February 6, 2003 addressing similar issues. *See* Verizon, SBC, and BellSouth Petition for Interim Waiver, CC Docket No. 96-45, (filed Feb. 6, 2003).

¹⁷ Even if the Commission were to act quickly on the two petitions for reconsideration, additional time would most likely be required for carriers to implement further billing system changes.

CONCLUSION

Good cause having been shown, the Commission should grant the requested interim waiver to preserve the *status quo* regarding end-user recovery of USF contributions pending the resolution of issues on reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Petition for Interim Waiver was served on this 28th day of February 2003 by electronic delivery or by first-class mail to the persons listed below.

By : /s/ Elizabeth R. Newson
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The following parties were served:

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