

**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

**OPPOSITION OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits the following opposition to AT&T Corp.’s March 13, 2003, Petition for

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including

Reconsideration (“Petition”) of the Commission’s January 30, 2003, Order & Order on Reconsideration (“*First Reconsideration Order*”)² in the above-captioned docket. As an initial matter, CTIA notes that the Petition for Reconsideration is not timely. AT&T had an opportunity, after the release of the Commission’s December 13, 2002, Order and Second Further Notice (“*Universal Service Contribution Order*”)³ to timely challenge the use of company-specific CMRS traffic studies as a proxy for determining CMRS carriers’ Universal Service Fund (“USF”) contributions. Having failed to make a timely challenge at that opportunity, AT&T now seeks a second bite at the apple with its current Petition. The Commission’s rules, however, clearly prohibit such post-hoc collateral attacks. Furthermore, the Petition presents no legal or policy reasons for reversal of the Commission’s determinations regarding CMRS carriers’ use of either the safe harbor proxy or individual company-specific studies as the best method for determining USF contributions. Accordingly, the AT&T Petition should be dismissed.

I. THE AT&T PETITION WAS NOT TIMELY FILED

In its Petition, AT&T argues that the *First Reconsideration Order* “backtracked” from statements in the Commission’s *Universal Service Contribution Order* that “precluded any carrier . . . from averaging the recovery of contribution costs against all

cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Federal-State Joint Board on Universal Service, Order & Order on Reconsideration*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 03-20 (rel. Jan. 30, 2003) (hereinafter “*First Reconsideration Order*”).

³ *Federal-State Joint Board on Universal Service, Order & Order on Reconsideration*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 02-329 (rel. Dec. 13, 2002) (hereinafter “*Universal Service Contribution Order*”).

end users.”⁴ Furthermore, AT&T claims that the *First Reconsideration Order* “granted what amounts to a special exemption from this requirement for CMRS providers.”⁵

Neither statement is accurate. The issues AT&T claims the Commission “backtracked” on – the use of the revised safe harbor or company traffic studies to calculate end user bills – were clearly discussed in the *Universal Service Contribution Order*, and should have been addressed in a Petition for Reconsideration of that Order. Accordingly, the Commission should reject the instant Petition for failure to comply with Section 1.429 of the Commission’s rules.⁶

In 1998, the Commission initially adopted a “safe harbor” for CMRS carriers to use when reporting interstate revenues for the purpose of Universal Service contributions.⁷ In adopting the safe harbor, the Commission specifically noted the unique nature of CMRS network architecture, and the difficulty that many CMRS providers had in determining the exact jurisdictional nature of calls made on their networks.⁸

⁴ Petition at 4.

⁵ *Id.*

⁶ 47 C.F.R. § 1.429(d) (stating that a “petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action”).

⁷ *See Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252, 21258 (1998) (establishing a “safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent of their total cellular and broadband PCS revenues”) (hereinafter “CMRS Safe Harbor Order”).

⁸ *See id.* at 21255.

CMRS providers explained that because they often use a single switch to serve areas located in more than one state, calls originating and terminating in one state may be transported to a switch in another state. These providers suggested that the mobile nature of CMRS makes it

Accordingly, for the purpose of establishing the initial safe harbor percentage the Commission looked to the wireline Dial Equipment Minutes (“DEM”) weighting program to set the initial 15 percent safe harbor based on “the nationwide average percentage of interstate wireline traffic.”⁹ However, the Commission also allowed carriers to report interstate revenues less than the safe harbor, provided that they documented “the method by which they arrived at their reported percentage of interstate telecommunications revenue,” and suggested that the use of carrier “traffic studies” would be one method sufficient to document the jurisdictional breakdown.¹⁰

In the *Universal Service Contribution Order*, the Commission modified the wireless safe harbor amount – raising it from 15% to 28.5% – but again specifically stated that CMRS carriers “still have the option of reporting their actual interstate telecommunications revenue” so long as they provided “documentation to support the actual reporting of actual interstate telecommunications revenues upon request.”¹¹ In addition, the *Universal Service Contribution Order* contained a prohibition on USF recovery line-items “above the relevant contribution factor.”¹² For CMRS providers, the *Universal Service Contribution Order* stated that “the portion of the total bill that is

difficult to determine whether the calls made by their customers should be classified as interstate or intrastate. Even if they were able to identify the jurisdictional nature of each call, CMRS providers noted that the jurisdictional nature of the call could change during the course of the call.

Id.

⁹ *Id.* at 21258-59.

¹⁰ *Id.* at 21258.

¹¹ Universal Service Contribution Order at ¶ 24.

¹² *Id.* at ¶ 51.

deemed interstate will depend on whether the carrier reports actual revenues or utilizes the safe harbor.”¹³ The *Universal Service Contribution Order* also stated that when CMRS providers “avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill.”¹⁴ Since the vast majority of CMRS carriers’ have used either the safe harbor or company-specific traffic studies since 1998 to determine USF contributions, the clear inference in the *Universal Service Contribution Order* was that the use of either the safe harbor or company-specific traffic studies was permissible under the new line-item recovery restrictions.

In order to obtain confirmation of this issue, CTIA filed an *ex parte* letter with the Commission on January 16, 2003, requesting that the Commission confirm that CMRS carriers could continue to use company-specific traffic studies to calculate the USF line-item on end user bills.¹⁵ AT&T was also aware of this issue, and filed an *ex parte* letter with the Commission on January 24, 2003, challenging CTIA’s request, urging the Commission “not to act on these requests based on *ex parte* submissions” and stating that “any reconsideration (or clarification) should be based on fully-briefed petitions for reconsideration and replies, as contemplated under the Commission’s rules.”¹⁶

¹³ *Id.* at ¶ 51, n.131.

¹⁴ *Id.*

¹⁵ See Letter from Michael Altschul, Senior Vice President and General Counsel, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (filed Jan. 16, 2003).

¹⁶ See Letter from Robert W. Quinn, Vice President – Federal Government Affairs, AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Jan. 24, 2003).

However, when AT&T filed its January 29, 2003, “Petition for Expedited Reconsideration and Clarification” (“*January Petition*”) of the *Universal Service Contribution Order*, it inexplicably left this issue out.¹⁷ The *January Petition* did, however, request that the Commission clarify whether carriers could recover “administrative and other related costs” through the use of a “separate line-item that also includes USF-related administrative costs.”¹⁸ This request, along with AT&T’s January 24 *ex parte* letter, clearly shows that while AT&T apparently had questions about the overall operation of the Commission’s prohibition on line-item “mark ups,” they apparently chose to raise only certain issues that would benefit AT&T in the *January Petition*, and did not pursue any request for clarification or reconsideration of CMRS carriers’ line-item recovery of USF costs.

Furthermore, the instant Petition’s claims that the *First Reconsideration Order* gave CMRS carriers “a permanent exemption from the requirement placed on all other carriers to charge only customer-specific USF recovery line-items,”¹⁹ along with the Petition’s request for Commission action to “limit [CMRS] universal service recovery line-items to the amount of interstate end user telecommunications revenue derived from service to that particular customer times the contribution factor” essentially represent a back-door challenge to the overall wireless safe harbor.²⁰ After all, the only way to

¹⁷ See AT&T Petition for Expedited Reconsideration and Clarification (filed Jan. 29, 2003) (hereinafter “*January Petition*”).

¹⁸ *January Petition* at 4-5.

¹⁹ *Petition* at 9.

²⁰ *Id.* at 9-10. In fact, the Petition contains two footnotes that directly criticize the revised safe harbor established in the *Universal Service Contribution Order*. See

mandate customer-specific charges would be to get rid of both company-specific traffic studies *and* the wireless safe harbor. AT&T, however, also failed to raise any challenge to the revised wireless safe harbor in the *January Petition*. Accordingly, since AT&T challenged neither the wireless safe harbor itself nor the Commission's use of the safe harbor or company-wide traffic studies to facilitate line-item recovery in the *January Petition*, it should not now be given a second, out-of-time bite at the apple.²¹

II. THE PROPOSALS IN THE AT&T PETITION ARE ILLOGICAL AND UNWORKABLE

Even assuming, *arguendo*, that the Petition was timely filed, it presents no new issues for the Commission to consider. The main thrust of the Petition appears to center around AT&T's assertion that the wireless safe harbor and the USF line-item recovery provision are somehow unjustified and discriminatory and, therefore, CMRS carriers should be required to report interstate usage on a customer-specific basis. Such assertions, however, ignore the history of the wireless safe harbor, and the Commission analysis in the *Universal Service Contribution Order*.

As noted above, the Commission implemented the wireless safe harbor in 1998 after making a number of findings regarding the fact that CMRS network architecture differs markedly from landline networks, and the difficulty that many CMRS carriers were having differentiating intrastate traffic from interstate traffic for purposes of making

Universal Service Contribution Order at n.11 and n.22. Again, these arguments should have been raised in AT&T's *January Petition*.

²¹ See, e.g. *Carl N. Davis, Memorandum Opinion and Order*, 15 FCC Rcd 11896, 11897 (2000) (stating that an application for review in a broadcast license case which raised issues addressed in an earlier rulemaking was "effectively a petition for reconsideration of the rulemaking proceeding" and concluding that "the application for review is an untimely petition for reconsideration of the decisions made in the prior rulemaking proceedings").

USF contributions.²² The Commission specifically noted these findings in the *Universal Service Contribution Order* when it set the revised wireless safe harbor.²³ In setting the revised safe harbor, however, the Commission was careful to balance the goal of encouraging reporting of actual interstate revenues with the realization that some wireless carriers are unable to report the exact jurisdictional breakdown of traffic. Accordingly, the Commission set the wireless safe harbor at the “highest estimate of minutes of use provided by the wireless carriers,” while noting that this level was set to “provide mobile wireless providers an incentive to report their actual interstate telecommunications income *if they are able to do so.*”²⁴ In light of the competing interests involved and the unique technical issues presented by CMRS networks, this policy represents a supported, reasoned approach to ensure that CMRS providers pay a fair and equitable share of Universal Service contributions, as required by Section 254(d) of the Act.

The AT&T Petition, however, argues that the Commission should “require wireless carriers, like all other carriers, to limit their universal service recovery line-items to the amount of interstate end user telecommunications revenue derived from service to that particular customer times the contribution factor, or it should permit all carriers to average universal service line-item recovery charges.”²⁵ If implemented, a requirement tying the line-item to a specific CMRS user’s interstate usage would go far beyond the issues presented in the *First Reconsideration Order*, and would prohibit not only the use of company-specific studies, but also completely eliminate use of the wireless safe

²² See CMRS Safe Harbor Order, 13 FCC Rcd at 21255.

²³ See Universal Service Contribution Order at ¶ 20.

²⁴ See *id.* at ¶ 22.

²⁵ Petition at 9-10.

harbor. In turn, wireless carriers that are unable to calculate the exact amount of each end user's interstate usage (or engage in extremely expensive operational and billing upgrades that would allow them to do so) would likely have to report all usage as interstate revenue, and contribute to the USF accordingly. Such a drastic change in CMRS USF contribution reporting requirements would go squarely against the record the Commission has built since 1998, and would undercut the Commission's choice to preserve the revenue-based system – while continuing the review the overall USF contribution methodology – by making it impossible for wireless carriers, given their unique requirements, to comply with a revenue-based system.

III. NEW REQUIREMENTS FOR COMPANY-SPECIFIC STUDIES ARE UNNECESSARY

After apparently arguing throughout the first portion of the Petition against the use of either company-specific traffic studies or the wireless safe harbor as methods for CMRS carriers to determine USF contribution responsibilities and end-user line items, the Petition then shifts in its final section to argue that the Commission “must establish requirements for CMRS company-specific traffic studies and a process for public review to ensure that those studies will, in fact, result in an equitable and nondiscriminatory assessment of universal service contributions.”²⁶

Putting aside the fact that this appears to contradict AT&T's earlier assertions that company-specific studies should not be used at all, CTIA notes that this request, like the rest of the Petition, appears geared more towards increasing the administrative burden on CMRS carriers rather than solving any specific problem or achieving a specific goal. It is important to note that AT&T's Petition points out no structural flaws in CTIA's informal

²⁶ Petition at 10.

report of six carriers' traffic studies. Instead, AT&T claims that there is "substantial variation" between the studies and that these studies, as well as future studies, "will be subject to gross manipulation."²⁷ This, of course, ignores the fact that different CMRS carriers serve different demographic groups. For example, some carriers market more towards business users, who may generate more interstate traffic than carriers that market towards residential customers or "piece of mind" users. In addition, certain carriers may also have differing abilities to track interstate traffic due to network architecture or billing systems, which may also explain the variations in interstate traffic among carriers.

In the absence of any evidence of erroneous traffic studies submitted by CMRS carriers, the Commission should continue its current policy of requiring documentation to support the reporting "upon request," if the Commission detects any irregularities.

CONCLUSION

For the aforementioned reasons, the Commission should reject AT&T's Petition for Reconsideration.

Respectfully submitted,

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²⁷ *Id.* at 10-11.

CERTIFICATE OF SERVICE

I, Marlea Leary, hereby certify that a copy of the foregoing "Opposition of the Cellular Telecommunications & Internet Association" was sent on this 24th day of April, 2003, by first class U.S. Mail, postage prepaid, to the following:

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