

**Before the
Federal Communications Commission
Washington, DC 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

To: The Commission

**CINGULAR WIRELESS LLC
OPPOSITION TO PETITION FOR RECONSIDERATION OF AT&T CORP.**

Cingular Wireless LLC (“Cingular”) hereby opposes the Petition for Reconsideration (“Petition”) of the Universal Service *Order and Order on Reconsideration*¹ filed by AT&T Corp.

¹ *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of*

(“AT&T”) on March 13, 2003.² The Petition is an untimely petition for reconsideration of the original *Report and Order and Second Further Notice of Proposed Rulemaking*³ and, in any event, is without merit. The Commission should summarily deny the Petition and affirm its decision in the *Clarification Order*.

I. BACKGROUND

In the *Contribution Methodology Order*, the Commission reaffirmed prior holdings that wireless carriers have the option to utilize either the safe harbor or their actual interstate telecommunications revenues in *reporting* revenues for contribution purposes.⁴ The Commission also determined that “[t]o the extent that a carrier recovers its contribution costs through a line item, that line item may not exceed the relevant assessment rate.”⁵ For wireless carriers, the Commission clarified that:

The portion of the total bill that is deemed interstate will depend on whether the carrier reports actual revenues or utilizes the safe harbor. For wireless carriers that 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.⁶

Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Order and Order on Reconsideration, 18 F.C.C.R. 1421 (2003) (“*Clarification Order*”).

² See AT&T Petition for Reconsideration in CC Docket No. 96-45 et al., filed March 13, 2003; *Petitions for Reconsideration of Action in Rulemaking Proceedings*, Public Notice, Report No. 2603 (rel. Apr. 3, 2003), 68 Fed. Reg. 17396 (Apr. 9, 2003).

³ Federal-State Joint Board on Universal Service, *Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 96-45 et al., FCC 02-329 (rel. Dec. 13, 2002) (“*Contribution Methodology Order*” or “*Second Further Notice*” as appropriate).

⁴ *Id.* ¶ 24.

⁵ *Id.* ¶ 51.

⁶ *Id.*

The Commission expressly determined that the line-item charge may be assessed as a flat amount, holding that “that amount may not exceed the interstate telecommunications portion of the bill times the relevant contribution factor” and that

Carriers may charge *all their end-user customers the same flat federal universal service line-item charge* so long as that amount does not exceed the contribution factor times the interstate telecommunications revenues derived from any individual customer.⁷

Both wireless and wireline carriers may avail themselves of these provisions for flat-fee charges.

A number of wireless carriers sought clarification that the Commission intended that carriers continue to be able to utilize aggregated, company-specific traffic studies to measure interstate revenues for contribution and recovery purposes.⁸ In the *Clarification Order*, the Commission confirmed its intent, holding that it “did not intend to preclude wireless telecommunications providers from continuing to recover contribution costs in a manner that is consistent with the way in which companies report revenues to USAC” and, thus, CMRS providers may report revenues based on a company-specific study.”⁹ The Commission also expressly reiterated that “line items must not exceed the interstate telecommunications portion of each customer’s bill . . . times the contribution factor” and that wireless carriers using either the safe harbor or a percentage based on a traffic study may recover amounts from all customers based on that percentage.¹⁰

⁷ *Id.* at ¶ 51, n.132 (emphasis added).

⁸ See CTIA *Ex Parte* Presentation in CC Docket Nos. 96-45 et al., filed Jan. 16, 2003.

⁹ *Clarification Order* ¶ 8.

¹⁰ *Id.* ¶ 8, n.26.

II. DISCUSSION

AT&T claims that the *Clarification Order* backtracked from the *Contribution Methodology Order*. AT&T is, however, incorrect. The conclusions that AT&T challenges were reached in the *Contribution Methodology Order*. Thus, AT&T's petition is, in fact, an untimely challenge to the *Contribution Methodology Order*.¹¹

As demonstrated above, the *Contribution Methodology Order* clearly recognized that wireless carriers lack the ability to do what AT&T seeks to have them do – determine specifically the amount of interstate revenue on an *individual customer bill*. As the Commission has acknowledged, however, traffic studies can allow wireless carriers to show the *aggregate* amount of their revenue that is interstate, allowing them to *contribute* accurately. The Commission also has permitted the use of a safe harbor percentage based on the highest of a range of studies submitted by CTIA.

The *Contribution Methodology Order* unequivocally stated that wireless carriers using the safe harbor could use that same percentage to determine the amount of interstate revenue on individual customer bills for recovery purposes.¹² This established the principle that wireless carriers could use the same methodology to determine interstate revenues for both contribution and recovery purposes. Because the *Contribution Methodology Order* used the example of a carrier using the safe harbor, the *Clarification Order* merely spelled out that CMRS carriers that use a company-specific traffic study for reporting also may employ the same methodology for recovery.

¹¹ See 47 C.F.R. § 1.429(b), (d).

¹² *Contribution Methodology Order* ¶ 51 & n. ___.

AT&T contends that either the *Contribution Methodology Order* or the *Clarification Order* is discriminatory. To the contrary, the Commission's Orders are merely a pragmatic solution to the realities of the competitive wireless marketplace. Nevertheless, the fundamental principle with which AT&T takes issue – that wireless carriers may use the same methodology to determine interstate revenue for recovery that they use for reporting – was decided in the *Contribution Methodology Order*. AT&T's petition is therefore untimely.

AT&T addressed all of these issues in its comments leading up to the *Contribution Methodology Order*.¹³ Moreover, AT&T's argument regarding competitive neutrality is the argument and hypothetical scenario it raised (via COSUS) in earlier comments.¹⁴ The Commission took all of these issues into account in reaching its conclusions in the *Contribution Methodology Order*. AT&T, however, failed to timely seek reconsideration of these issues in the *Contribution Methodology Order*, even though the Commission clearly rejected AT&T's/COSUS' arguments.

To the extent that the Commission's decision raised new issues of fact (which it did not) or AT&T did not feel its comments were appropriately addressed, then AT&T should have raised these points in its January 29, 2003 Petition for Expedited Reconsideration and Clarification.¹⁵ Moreover, AT&T has separately raised these issues in a more appropriate forum

¹³ See AT&T Comments in CC Docket Nos. 96-45 et al., filed April 22, 2002; Comments of the Coalition for Sustainable Universal Services (COSUS) in CC Docket Nos. 96-45 et al., filed April 22, 2002; Reply Comments of the Coalition for Sustainable Universal Services (COSUS) in CC Docket Nos. 96-45 et al., filed May 13, 2002.

¹⁴ See Reply Comments of the Coalition for Sustainable Universal Services (COSUS) in CC Docket Nos. 96-45 et al., filed May 13, 2002, at 16, Att. 4 ¶ 18.

¹⁵ See AT&T Petition for Expedited Reconsideration and Clarification in CC Docket Nos. 96-45 et al., filed Jan. 29, 2003.

– the pending *Second Further Notice*.¹⁶ There is no compelling public interest reason to consider AT&T’s arguments here.¹⁷ The *Clarification Order* does not afford AT&T another “bite at the apple” to address the more fundamental issues it has already addressed elsewhere.

CONCLUSION

For the foregoing reasons, AT&T’s Petition is untimely and without merit and should be summarily denied.

Respectfully submitted,

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¹⁶ AT&T Reply Comments in CC Docket Nos. 96-45 et al., filed April 18, 2003, at 12-15.

¹⁷ See 47 C.F.R. § 1.429(b)(3).

