

**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

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

Verizon Wireless submits the following opposition to the Petition for Reconsideration (“Petition”) of the universal service *Wireless Clarification Order*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 Telecommunications Relay Service, North American Numbering Plan, Local Number

(“AT&T”) on March 13, 2003.² For the reasons set forth below, Verizon Wireless urges the Commission to deny AT&T’s Petition and affirm its decision to permit wireless carriers to compute their maximum permissible USF recovery line items using the same interstate revenue percentages that they use for USF reporting.

I. AT&T’S PETITION IS A BASELESS ATTEMPT TO REDUCE ITS OWN UNIVERSAL SERVICE CONTRIBUTION BURDEN AT THE EXPENSE OF WIRELESS CARRIERS

AT&T's petition is based on the premise that the Commission intended to ban all types of carrier "averaging" in universal service surcharges, including the use of an average company-specific factor to determine the percentage of interstate revenue on a bill. In the same paragraph that AT&T cites for this proposition, however, the Commission specifically permitted wireless carriers contributing based on the safe harbor to use the safe harbor to compute their maximum permissible line items.³ Thus, the Commission clearly had no intention of banning this type of averaging. The *Wireless Clarification Order* clarified that carriers using a company-specific percentage may compute their line items in the same way as companies using a safe harbor, with no greater degree of averaging.

Portability, and Universal Service Support Mechanisms, Order and Order on Reconsideration, CC Docket 96-45, FCC 03-20 (rel. January 30, 2003) (“*Wireless Clarification Order*”).

² See *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 See *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*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 51 & n.131 (2002) (“*December 2002 Order*” and “*December 2002 FNPRM*”)); Petition at 3.

AT&T takes the Commission's language out of context because, at its core, AT&T's Petition is simply another attempt to shift the burden of contributing to universal service onto wireless carriers. AT&T itself recognized that the new safe harbor percentage is at the "high end" of the results of actual wireless interstate traffic studies reported to the Commission. Yet, AT&T would require wireless carriers to contribute based on this higher *averaged* percentage, even when they can demonstrate a lower, and more accurate, company-specific percentage.⁴ AT&T's attack against company-specific "averaging" is designed to increase the contribution of wireless carriers up to the safe harbor, thereby reducing the contributions required from interexchange carriers such as itself. Its attack is unsurprising given that AT&T was a primary proponent of the connection-based Coalition for Sustainable Universal Service ("CoSUS") proposal that would have largely exempted interexchange carriers from contributing to universal service, in violation of Section 254 of the Telecom Act.⁵ The Commission should reject AT&T's incorrect claims.

II. REQUIRING WIRELESS CARRIERS TO DETERMINE THEIR INTERSTATE TELECOMMUNICATIONS REVENUES ON A CUSTOMER-BY-CUSTOMER BASIS WOULD UNLAWFULLY FORCE WIRELESS CARRIERS TO USE THE SAFE HARBOR PERCENTAGE

If AT&T's Petition were granted, it would effectively force all wireless carriers to use the 28.5 percent safe harbor adopted in the *December 2002 Order*.⁶ AT&T's argument is largely

⁴ See Petition at 4. The figures provided by six wireless service providers ranged from 10 percent to 28.5 percent. See Letter from Diane J. Cornell, Cellular Telecommunications & Internet Association, to Marlene H. Dortch, Federal Communications Commission (Oct. 31, 2002).

⁵ The other members of CoSUS were the Ad Hoc Telecommunications Users Committee, e-commerce & Telecommunications Users Group, Level 3 Communications, and WorldCom.

⁶ *December 2002 Order* ¶¶ 21-22.

premised on the fundamental misconception that a wireless carrier that can determine a company-specific interstate revenue percentage also “has the information necessary to bill individual customers on that particular customer’s percentage of interstate usage.”⁷ The *Wireless Clarification Order* recognized that wireless carriers are currently unable to determine the interstate usage of individual customers.⁸ Under the AT&T argument, if wireless carriers are unable to derive customer-specific interstate revenue calculations, and there is no evidence in the record that any wireless carrier could do so, they would be forced by default to use the safe harbor for both reporting and collection, resulting in overpayment to the FCC and over-assessment of wireless customers. AT&T and WorldCom acknowledged as much in an *ex parte* letter to the Commission, stating that wireless carriers that do not have actual usage data for every customer “must apply the Commission-authorized safe harbor of 28.5% for *all* of their customers.”⁹

Requiring a wireless carrier to contribute based on the 28.5 percent safe harbor is inequitable and discriminatory when the carrier is otherwise capable of determining a lower company-specific percentage, based upon interstate traffic studies. AT&T apparently has forgotten that the central tenet of Section 254(d): in order to be equitable and non-discriminatory, a carrier’s universal service contribution must reflect its interstate activity. This principal is the foundation of the safe harbor methodology. The Commission first adopted the safe harbor in

⁷ Letter from Robert W. Quinn, AT&T Corp., and Richard S. Witt, WorldCom, Inc. to Marlene Dortch, Federal Communications Commission, at 2 (Jan. 24, 2003)(“*AT&T/WorldCom Ex Parte*”).

⁸ *Wireless Clarification Order* ¶ 8; Letter from Michael Altschul, Cellular Telecommunications & Internet Association, to Marlene H. Dortch, Federal Communications Commission, at 4-5 (Jan. 16, 2003).

order to “reasonably approximate the percentage of interstate wireless telecommunications revenues” for carriers unable to distinguish between interstate and intrastate revenues, while leaving wireless carriers that could make this distinction free to report a lower percentage.¹⁰ In the *December 2002 Order*, the Commission purposely raised the safe harbor to 28.5 percent, at the highest end of the wireless interstate revenue percentages submitted to the Commission, in order to give wireless carriers the “incentive to report their actual interstate telecommunications revenues if they are able to do so.”¹¹ The goal of the safe harbor is to ensure that wireless carriers contribute to universal service based, as closely as possible, on their actual interstate activity. The *December 2002 Order* only raised the level of the safe harbor – it did not abolish this principle, and AT&T offers no basis for doing so. For these reasons, reconsideration should be denied.

AT&T’s Petition rests its argument largely on the conclusion that the *Wireless Clarification Order* “treat[s] similar situations in dissimilar ways,”¹² stating that “[e]ven if the wireless carrier’s average customer usage is 20 percent interstate, the ‘interstate telecommunications revenue derived from [the] individual customer’ is not [necessarily] 20 percent of the individual customer’s monthly plan charge.”¹³ AT&T is not telling the Commission anything it did not know when it adopted the *Wireless Clarification Order*. In that

⁹ *AT&T/WorldCom Ex Parte* at 3.

¹⁰ *Federal State Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, ¶¶ 11, 13 (1998) (“*Interim CMRS Safe Harbor Order*”).

¹¹ *December 2002 Order* ¶ 22.

¹² Petition at 5, citing *Garrett v. FCC*, 513 F. 2d 1056, 160 (D.C. Cir. 1975).

¹³ *Id.* at 8, citing *December 2002 Order* ¶ 51 n. 132.

Order, the Commission expressly rejected AT&T and WorldCom's argument that the *December 2002 Order* requires wireless carriers to conduct traffic studies on a customer-by-customer basis when recovering contribution costs through a line item.¹⁴ The Commission recognized that wireless carriers may not have the capability to determine interstate telecommunications revenues on a customer-by-customer basis and therefore, allowed wireless providers to report their interstate telecommunications revenues based on a company-specific traffic study.¹⁵ There was absolutely nothing in the record of the contribution proceeding that could have justified the Commission concluding that wireless carriers had the ability to track customer specific interstate and intrastate usage. The Commission plainly stated that the "interstate telecommunications portion of each customer's bill would equal the company-specific percentage based on its traffic study times the total telecommunications charges on the bill."¹⁶ In rendering its decision, the Commission recognized that wireline and wireless carriers are *not* similarly able to allocate interstate revenues on a customer-by-customer basis and that forcing wireless carriers to contribute based on the safe harbor percentage would be inequitable and not supported by record evidence from the noticed proceeding.

Moreover, requiring wireless carriers with demonstrably lower percentages of interstate revenues to contribute to universal service based on the safe harbor would be not only "blatantly discriminatory," but such over-recovery also would constitute an impermissible assessment of their intrastate revenues. Where a carrier can demonstrate interstate revenues below the safe harbor, requiring it to contribute based on a higher percentage necessarily and impermissibly

¹⁴ *Wireless Clarification Order* ¶ 8.

¹⁵ *See Wireless Clarification Order* ¶ 8.

subjects its intrastate revenues to assessment. As the Fifth Circuit held in *Texas Office of Public Utility Counsel*, the FCC does not have authority under Section 254 to include intrastate revenues in the calculation of universal service contributions.¹⁷ Contrary to AT&T's argument, the safe harbor must be coupled with the ability to complete company-specific traffic studies in order to operate lawfully.

While Verizon Wireless vigorously opposes requiring wireless carriers to conduct traffic studies on a customer-by-customer basis, it does not oppose AT&T's alternative request to permit all carriers, including wireline carriers, to average their universal service recovery costs.¹⁸ As Verizon Wireless argued in its own petition for reconsideration of the *December 2002 Order*, the Commission can achieve its goals of fairness, accuracy, and transparency in universal service recovery practices simply by prohibiting carriers from over-recovering from their customers in the aggregate and from overburdening any class of subscribers.¹⁹

III. THE FCC SHOULD ADOPT A TRAFFIC STUDY METHODOLOGY FOR WIRELESS CARRIERS IN THE CONTEXT OF THE RULEMAKING PROCEEDING

Verizon Wireless agrees with AT&T that wireless carrier traffic studies conducted for purposes of averaging interstate telecommunications revenues should be subject to certain

¹⁶ *Id.*

¹⁷ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

¹⁸ *See* Petition at 10.

¹⁹ *See* Verizon Wireless Petition for Reconsideration in CC Docket 96-45 (filed Jan. 29, 2003) at 9, *Petitions for Reconsideration of Action in Rulemaking Proceedings*, Public Notice, Report No. 2593 (rel. Feb. 5, 2003), 68 Fed. Reg. 6918 (Feb. 11, 2003); *December 2002 Order* ¶¶ 40-45.

safeguards.²⁰ For this reason, Verizon Wireless already has proposed a traffic study methodology.²¹ Verizon Wireless discussed its proposal in detail in its comments filed in response to the *December 2002 FNPRM* and incorporates this discussion by reference herein.²²

While Verizon Wireless urges the Commission to adopt its proposal, AT&T's Petition is not the appropriate vehicle for consideration of this issue. The *December 2002 FNPRM* specifically requested and received comment on wireless traffic studies.²³ Given this issue's complexity, it is more appropriately handled in the context of the open rulemaking proceeding than in the context of a petition for reconsideration. Indeed, the Commission has never decided that such safeguards should not be adopted; thus, there is nothing to reconsider.

CONCLUSION

The Commission should deny AT&T's Petition to require wireless carriers to determine their maximum permissible line item charges on a customer-by-customer basis. As the Commission has already recognized, wireless carriers are unable to distinguish interstate revenues from intrastate revenues in this manner. The only equitable and lawful way for wireless carriers to recover their universal service costs is through the safe harbor, or alternatively, company-specific traffic studies. Therefore, the Commission should affirm its decision in the *Wireless Clarification Order* and reject AT&T's blatant attempt to avoid its

²⁰ See Petition at 10.

²¹ See Letter from L. Charles Keller, Wilkinson Barker Knauer, LLP, Attorney for Verizon Wireless, to Marlene H. Dortch, Federal Communications Commission (Oct. 28, 2002).

²² See Comments of Verizon Wireless on Second Further Notice of Proposed Rulemaking, at 5-7 (Feb. 28, 2003).

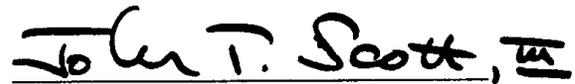
²³ *December 2002 FNPRM ¶ 68.*

contribution obligations. While Verizon Wireless supports the adoption of a wireless traffic study methodology, it asks the Commission to decide this matter in its open universal service proceeding.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style and is underlined with a horizontal line.

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April 24, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April a copy of the foregoing “Opposition of Verizon Wireless to Petition for Reconsideration of AT&T Corp.” in CC Docket 96-45 was sent US mail to the following party:

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A handwritten signature in black ink, reading "Sarah E. Weisman". The signature is written in a cursive style and is positioned above a horizontal line.

Sarah E. Weisman