

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
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
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

OPPOSITION OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. (“AWS”) hereby submits its opposition to AT&T Corp.’s (“AT&T’s”) Petition for Reconsideration^{1/} of the Commission’s *Wireless Clarification Order* issued in the above-captioned proceeding.^{2/} AT&T’s Petition should

^{1/} AT&T Petition for Reconsideration, CC Docket Nos. 96-45 *et al.* (filed March 13, 2003) (“AT&T Petition”)

^{2/} *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with*

be dismissed as an untimely request for reconsideration of the *USF Assessments Order*^{3/} because it challenges the decision the Commission made in that Order regarding which portion of a wireless bill is considered interstate for purposes of recovering USF contributions from customers.

Even if the Commission considers AT&T's Petition on the merits, however, it should be denied because the Commission's decision to allow wireless carriers to use an allocator both to report interstate revenues and to recover contributions does not discriminate against interstate long distance carriers. Rather, the *Wireless Clarification Order* simply takes into account that wireless carriers do not have the ability to determine the proportion of interstate traffic carried on their networks on a customer-specific basis, either for reporting or recovery purposes.

Finally, in a companion notice of proposed rulemaking to the *USF Assessments Order*, the Commission has asked for comment on the appropriate methodology for wireless carrier traffic studies. Accordingly, there is no reason to consider the duplicative (and onerous) proposals set forth in AT&T's Petition.

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; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Order and Order on Reconsideration (rel. Jan. 30, 2003) ("*Wireless Clarification Order*").

^{3/} *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking 17 FCC Rcd 24592 (2003) ("*USF Assessments Order*" or "*Second Further Notice*").

I. AT&T’S PETITION IS AN UNTIMELY REQUEST FOR RECONSIDERATION OF THE *USF ASSESSMENTS ORDER*

Although AT&T argues that the *Wireless Clarification Order* represents a departure from statements the Commission made in the *USF Assessments Order*, the policy about which AT&T’s Petition complains was established in the prior decision. Specifically, in the *USF Assessments Order*, the Commission held that “[f]or wireless telecommunications providers 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.”^{4/} The *Wireless Clarification Order* merely clarifies that it is appropriate to use this same approach when a wireless carrier develops its own allocator for interstate traffic through a company-specific traffic study.^{5/}

AT&T’s Petition does not differentiate between whether wireless carriers use the Commission’s safe harbor proxy or their own company-derived proxies for calculating interstate recovery revenues – rather, it generically contends that wireless carriers should be required to determine interstate recovery revenues on a customer-by-customer basis.^{6/} Given that AT&T declined to ask for reconsideration of the *USF Assessments Order*, its attempt to reach the same result through the instant Petition should be rejected as untimely.

^{4/} *USF Assessments Order* at n.131.

^{5/} *Wireless Clarification Order* ¶ 8.

^{6/} To be sure, AT&T’s Petition periodically mentions the traffic studies aspect of the *Wireless Clarification Order*. It does not, however, limit its request for relief to such situations. Rather, AT&T asks the Commission to “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 . . .” AT&T Petition at 9.

II. THE WIRELESS CLARIFICATION ORDER DOES NOT DISCRIMINATE IN FAVOR OF WIRELESS CARRIERS

Contrary to AT&T's arguments, the Commission's decision to allow CMRS carriers – and not wireline carriers – to use an allocator to determine what percentage of the traffic carried on their networks is interstate for purposes of calculating universal service recovery charges is entirely reasonable. The *Wireless Clarification Order* represents neither a “tangled web” of special relief for wireless carriers nor “artful legal sophistry” on the part of the Commission.^{7/} Rather, based on the regulatory regimes applicable to their operations and the manner in which they conduct their businesses, it is clear that wireless and wireline carriers are not similarly situated.

Although some wireless providers have developed a method for determining a reasonable *proxy* of their interstate revenues through aggregated traffic studies, AT&T's contention that wireless providers have the “capability of making the same identification on a customer-by-customer basis” is simply wrong.^{8/} Indeed, in the *Wireless Clarification Order*, the Commission explicitly recognized that CMRS providers generally cannot separate the calls of individual customers by jurisdiction, and it therefore rejected AT&T's arguments to the contrary.^{9/} Long distance wireline carriers such as AT&T, by contrast, can establish precisely how much interstate revenue they derive from each customer because they track the jurisdiction of each call carried on their networks for a variety of regulatory and billing purposes, including the payment of access charges and regulatory fees.

^{7/} See AT&T Petition at 2, 5.

^{8/} Cf. Letter from Robert W. Quinn, AT&T, and Richard S. Whitt, WorldCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed Jan. 24, 2003).

^{9/} *Wireless Clarification Order* ¶ 8.

The Commission should not entertain AT&T's proposal to require wireless carriers to bill individual subscribers based on their particular percentage of interstate revenues each month. As AT&T knows, CMRS carriers offer buckets of minutes to consumers and they do not measure each subscriber's actual minutes of use on a jurisdictional basis. Developing a mechanism to perform such measurements for no reason other than USF compliance would be neither economically feasible or equitable. To the contrary, the amount of resources that would have to be devoted to transforming wireless business and billing models for such purposes would put the wireless industry at a significant competitive disadvantage in the telecommunications marketplace.

Even putting aside the technical and economic reasons for permitting wireless carriers to use allocators for cost recovery purposes, AT&T's claims of discrimination fail because they are based on a fundamental misunderstanding about the services provided by CMRS carriers. In particular, all of AT&T's "examples" of discrimination are grounded on its mistaken belief that there is a category of carrier called "CMRS interstate long distance providers" that offers exactly the same services as AT&T.^{10/} As the Commission has long recognized, however, CMRS is a unified service that lacks separate interstate and intrastate components.^{11/}

Wireless carriers sell, and wireless customers purchase, an integrated end-to-end service that does not differentiate between intrastate, interstate, local, or long distance

^{10/} AT&T Petition at 2.

^{11/} See, e.g., *Implementation of §§ 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1416-17 (1994) (detariffing CMRS even though wireline interstate services were still subject to tariffing); *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 13 FCC Rcd 8061 (1998) (establishing three categories of telecommunications services for application of the CPNI rules – local, interexchange, and CMRS).

calls. Thus, a wireless subscriber will pay the same flat fee whether she uses 0 percent of her minutes for interstate calling one month and 100 percent the next month. In essence, through her nationwide calling plan, a wireless customer purchases the convenience of paying no attention either to the origination or destination point of the calls she makes. Yet, AT&T would have wireless carriers – solely to comply with universal service contribution regulations – parse through each customer’s bill to assess which portion of the service is “interstate.”

Moreover, in light of the unified service provided to CMRS customers, AT&T’s purported concern about certain wireless subscribers potentially paying more than their fair share in USF recovery charges is misplaced.^{12/} Indeed, AT&T’s position is somewhat ironic given that the connections-based universal service assessment regime it has proposed would not take into account either the volume of calls made by any subscriber or the percentage of those calls that are interstate. As consumer advocates have pointed out, adoption of the interexchange carriers’ connection-based proposals “would in effect require low-income and elderly persons – those customers that contribute the smallest amount of telecommunications activity or revenue and are least able to afford long-distance service – to subsidize price reductions for those customers best able to afford long-distance service.”^{13/}

In contrast to the regressive nature of AT&T’s universal service contribution proposal, the *Wireless Clarification Order* and the *USF Assessments Order* preclude CMRS carriers from charging the same flat line-item fee to all customers without regard to how much they spend on telecommunications services. Indeed, the Commission

^{12/} See AT&T Petition at 6.

explicitly prohibits carriers – both wireline and wireless – from “averag[ing] contribution costs across all end-user customers when establishing federal universal service line-item amounts.”^{14/} Permitting CMRS carriers to use an allocator to determine the interstate portion of their integrated services, while requiring them to take into account each customer’s total telecommunications bill in calculating recovery charges is both reasonable and non-discriminatory. AT&T’s Petition should be denied.

III. THIS PROCEEDING IS NOT THE APPROPRIATE FORUM TO ADDRESS METHODOLOGIES BY WHICH WIRELESS CARRIERS CONDUCT TRAFFIC STUDIES

The Commission has issued a *Second Further Notice* in this docket asking for comment on standards for wireless carrier interstate traffic studies, and numerous parties, including AT&T, have submitted their proposals on whether and what kind of guidance the Commission should provide.^{15/} Thus, there is no reason for the Commission to address the repetitive proposals for wireless traffic studies set forth in AT&T’s Petition. If, however, the Commission decides that this proceeding is an appropriate forum for such matters, AWS incorporates by reference its comments and reply comments filed in response to the *Second Further Notice*.^{16/}

^{13/} Comments of Consumers Union *et al.* on *Second Further Notice* at 8.

^{14/} *USF Assessments Order* ¶ 51. AT&T cites to this prohibition on averaging as evidence that the Commission intended to preclude the use of an interstate revenues allocator for recovery charge calculations. AT&T Petition at 4-5. AT&T’s interpretation cannot be correct, however, because the Commission expressly ruled in a footnote to the same paragraph that, when determining customer line-items, “the interstate portion of the bill would equal the relevant safe harbor percentage times the total amount of the telecommunications charges on the bill.” *Id.* at n.131. In other words, the Commission approved a wireless interstate revenues allocator (the safe harbor percentage) at the same time it prohibited averaging of recovery charges across all customers.

^{15/} *Second Further Notice* ¶ 68.

^{16/} AWS Comments (filed Feb. 28, 2003) and AWS Reply Comments (filed April 18, 2003) on *Second Further Notice*.

CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny AT&T's
Petition for Reconsideration of the *Wireless Clarification Order*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bryan Bookhard, hereby certify that on the 24th day of April, I caused copies of the foregoing "Opposition of AT&T Wireless Services, Inc." to be sent either by first class mail or electronically to the following:

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