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 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

SBC PETITION FOR WAIVER

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively "SBC"),[1] respectfully requests that the Commission grant SBC a waiver of the deadline for filing adjustments to its first quarter 2003 revenue projections to permit SBC to file corrected revenue

[1] These subsidiaries include: Ameritech Advanced Data Services - Illinois, Inc., Ameritech Advanced Data Services - Indiana, Inc., Ameritech Advanced Data Services - Michigan, Inc., Ameritech Advanced Data Services - Ohio, Inc., Ameritech Advanced Data Services - Wisconsin, Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, Nevada Bell, Ohio Bell Telephone Company, Pacific Bell, SBC Advanced Solutions Inc., SBC Telecom, Inc., SNET America, Inc., Southern New England, Telephone Company, Southwestern Bell Communications Services, Inc., Southwestern Bell Telephone Company, Wisconsin Bell Telephone Company, and Woodbury Telephone Company.

data for that quarter.[2] That rule, in conjunction with the true-up mechanism, is intended to ensure that contributors contribute an "appropriate amount to the universal service mechanisms."[3] Strict application of the deadline, however, would force SBC to contribute more than an appropriate amount to those mechanisms because of forecasting errors made by SBC in projecting revenues on its first quarter Form 499-Q reports. Consequently, a waiver of that deadline is necessary to permit SBC to file corrected data, and thus contribute no more than an appropriate amount to universal service, consistent with the purpose of the deadline and the true-up rules.

DISCUSSION

Section 1.3 of the Commission's rules provides that the Commission may waive its rules "if good cause therefore is shown."[4] Generally, a waiver is appropriate if "special circumstances warrant deviation from the general rule and such deviation will serve the public interest."[5] In this case, a waiver of the deadline for filing corrections to first quarter 2003 revenue projections is necessary to ensure that the true-up mechanism operates as intended.

In 2003, the Commission adopted several modifications to its revenue-based contribution mechanism intended to ensure the sufficiency and predictability of universal service while it considered further reforms to sustain the fund over the long term.[6] Of relevance here, the Commission modified its contribution methodology by basing contributions on a percentage of projected collected interstate end-user revenues, rather than historical gross-billed revenues.[7]

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[2] *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *et al.*, Order and Second Order on Reconsideration, 18 FCC Rcd 4819, 4824 (2003) (*Reconsideration Order*).

[3] *Id.* at para. 15.

[4] 47 C.F.R. § 1.3.

[5] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153,1159 (D.C. Cir. 1969).

[6] *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Projected Revenue Order*).

[7] *Id.* at 24969-74.

Recognizing that contributors might make forecasting errors in calculating projected revenues, and thus over- or under-pay their contributions, the Commission required contributors to report projected revenues on their 499-Q forms only for the immediately succeeding quarter in order to "minimize the potential for inaccurate estimates."[8] The Commission further observed that contributors would have an opportunity to "correct their projections" by filing revised Form 499-Q forms and "through the annual true-up process."[9]

In addition to modifying the contribution methodology from one based on historical to one based on projected revenues, the Commission modified the deadline for filing revised 499-Q forms to provide contributors 45 days (rather than 90 days under the prior rule) to file corrected revenue projection data. The Commission explained that this modification was appropriate to "eliminate incentives for contributors to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter."[10] Again, however, the Commission noted that USAC would use actual revenue data provided by contributors on FCC Form 499-A to perform annual true-ups to quarterly projected revenue data, and thus ensure that contributors contribute no more than an appropriate amount to universal service by refunding or collecting any over-payments or under-payments. *Id.*; s*ee also*, *Reconsideration Order* at para. 15 ("the purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data").

To implement the revised, projected revenue-based contribution methodology, the Commission required contributors to begin reporting projected collected end-user interstate telecommunications revenues for the upcoming quarter in the modified 499-Q on February 1,

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[8] *Id.* at 24972.

[9] *Id.* at 24972.

[10] *Id.*

2003 (in that 499-Q, contributors thus were required to report projected revenues for the upcoming second quarter of 2003).[11] The Commission further required contributors to include in the February 1, 2003, Form 499-Q projected collected revenues for the first quarter of 2003 to provide USAC with a full year of projected revenues with which to conduct the annual true-up for 2003 revenues.[12]

Strict application of the deadline for filing revised 499-Q revenue projection data and the true-up procedures for 2003 would be inconsistent with the stated purpose of those requirements. In its first quarter 2003 Form 499-Q reports, SBC made forecasting errors regarding its projected revenues for that quarter. While some of these reports projected greater than actual revenues for the quarter, the reports for SBC as a whole projected revenues significantly lower than SBC's actual revenues for the quarter. Under the true-up procedures for 2003, the Universal Service Administrative Company (USAC) is required to subtract SBC's projected first quarter 2003 revenues from its calendar year 2003 actual revenues to determine SBC's purported "actual" revenues for the second through fourth quarters of the year.[13] The rules further require USAC to compare those "actual" revenues (as determined under the foregoing procedures) with the sum of SBC's projected revenues for the second through fourth quarter to determine whether a refund or an additional assessment is appropriate.[14] Because SBC projected lower revenues than it actually earned for first quarter 2003, its "actual" revenues (as determined under the true-up mechanism) for the last three quarters appear larger than they actually were. In particular, SBC's under-projection of first quarter revenue has the effect of inflating its actual revenues for the second through the fourth quarters of 2003 by approximately $43 million, which, in turn, artificially increased its USF contributions for those quarters by approximately $4.2 million. As a

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[11] *Projected Revenue Order* 17 FCC Rcd at 24973.

[12] *Id.*

[13] *Reconsideration Order* at para. 17.

[14] *Id.*

consequence, absent a waiver of the deadline for filing revised 499-Q Forms for the first quarter of 2003, SBC will be unable to correct its revenue projections for that quarter and thus forced to contribute more than an "appropriate[] amount to the universal service mechanisms" for 2003, contrary to the express purpose of the true-up mechanism.[15]

SBC's error did not affect the first quarter 2003 contribution factor, nor did it have any impact on SBC's contributions for that quarter, which were based on historical revenues. Moreover, because SBC's contributions were based on historical revenues during the first quarter of 2003, it could not (and did not) reduce its contribution obligations by under-projecting revenues, nor could its forecasting error affect universal service funding during that quarter. A waiver of the deadline for filing corrected first quarter 2003 499-Q forms to reflect actual revenues for that quarter thus would in no way implicates the Commission's rationale for allowing contributors only 45 days to file revised 499-Q revenue projections. And, because such a waiver would relate only to the transitional true-up mechanism for 2003 during which the Commission shifted from a historical to a projected revenue contribution methodology, it would not implicate the operation of the true-up mechanism going forward.

In these circumstances, a waiver of the deadline not only would not undermine the purposes of the Commission's rules, it is necessary to achieve the objectives of the true-up process and mitigate the unforeseen and unintended consequences of the 45 day limit on filing corrected revenue projection data. By permitting SBC's subsidiaries to correct their first quarter 2003 projections to reflect actual revenues, USAC would be able to perform an accurate true-up of those subsidiaries contributions for the second through the fourth quarters of 2003, and thus ensure that each subsidiary contributes an appropriate amount to universal service by refunding or collecting any over-payments or under-payments as intended.

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[15] *Id.* at para. 15. *See also Projected Revenue Order* at 24972 (noting that contributors would "have an opportunity to *correct* their projections . . . through the annual true-up process," and thus obtain a refund of any over-payments) (emphasis added).

The Commission therefore should grant SBC a limited waiver of the deadline for filing revisions to its first quarter 2003 499-Q forms, and permit USAC to subtract SBC's actual first quarter 2003 revenues from its calendar year 2003 revenues to determine SBC's "actual" revenues for the second through fourth quarters of 2003.

Respectfully submitted,

SBC COMMUNICATIONS INC.

By /s/ Christopher M. Heimann
Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini

1401 I Street, N.W.
Washington, D.C. 20005
(202) 326-8909

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