Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of<br><br>Federal-State Joint Board on<br>Universal Service | CC Docket No. 96-45 |

**VERIZON PETITION FOR WAIVER**

The Verizon telephone companies ("Verizon")[1] respectfully request a waiver of the Commission's Universal Service Fund rules that require adjustments to its first quarter 2003 revenue projections to be submitted not later than March 20, 2004, so as to eliminate the effect of the first quarter projection errors in the true-up process. *See Federal-State Joint Board on Universal Service,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 36 (2002). This is the same as the waiver that AT&T Corp. submitted on January 27, 2004.[2] Like AT&T, Verizon under-estimated its revenue for the first quarter of 2003 and, without a waiver, would pay a higher amount than is warranted into the Universal Service Fund.

In December 2002, the Commission adopted a new method of calculating a service provider's contributions to the Universal Service Fund based on projected end-

[1] The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

[2] Verizon is today filing the attached comments on AT&T's petition, asking that a waiver be granted to all similarly situated service providers based on the special circumstances of the first quarter of 2003. If the Commission grants that request, the instant petition will be moot.

user interstate revenues, rather than using the previous basis of historical revenues. In order to adjust for errors in revenue projections, it adopted a true-up process "to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data." Order and Second Order on Reconsideration, 18 FCC Rcd 4818, ¶ 15 (2003).

Unfortunately, because the change became effective after the first quarter of 2003, carriers that under-projected first quarter revenues in first quarter 2003 will pay more than the "appropriate amounts" unless the Commission changes the true-up process for first quarter 2003. This is because the true-up process will not take into account actual revenues for that quarter but will use only forecasts.

WorldCom identified this problem in its petition for reconsideration of the Order, showing that "carriers never actually contribute to universal service on the basis of first quarter 2003 revenues and yet they could be penalized for mis-projecting these revenues." WorldCom Petition for Reconsideration, CC Docket No. 96-45, at 3 (filed Jan. 29, 2003).[3] In order to avoid "truing up" revenues to prior periods where carriers were not assessed, the Commission partially granted WorldCom's petition for reconsideration, holding that "[t]he true-up for calendar year 2003 revenues will apply to revenues projected for the second through fourth quarters of 2003. The true-up for

[3] On April 1, 2003, the Administrator converted from universal service assessments based on revenues from two quarters prior to projected revenues. *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service*, 17 FCC Rcd 24952, ¶¶ 29-39 (2002). As a result, revenues from the fourth quarter of 2002 and the first quarter of 2003 were not assessed. *See* Order and Second Order on Reconsideration, ¶ 13 & n.25.

calendar year 2003 revenues will not apply to revenues projected for the first quarter of 2003." Order and Second Order on Reconsideration, ¶ 17.

However, the Commission then instructed the Administrator to "subtract revenues *projected* for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003." *Id.* (emphasis added). Use of projected first quarter revenues in this manner creates the same problem by penalizing companies such as Verizon that under-projected those revenues. Verizon therefore seeks a limited waiver, only for the first quarter of 2003, to submit a revision to the February 1, 2003 Form 499 that substitutes its actual interstate and international end user revenues for the first quarter 2003 rather than projected revenues.

The under-projection of revenues had no impact on actual Fund payments at the time, because the first quarter 2003 payments were based on Verizon's historical revenues. However, the effect of netting out Verizon's understated first quarter 2003 projection in the true-up process is to artificially inflate Verizon's contribution for the entire year.

A waiver is appropriate here because of the unique circumstance of the change in the rules that affects only the first quarter of 2003 and only companies, such as Verizon, that under-projected their revenues for that quarter. As the courts have held, "a waiver is appropriate where "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also, WAIT Radio v. FCC*, 418 F.2d 1153

(D.C. Cir. 1969). Use of projected revenues for that quarter creates an unintended inequity that warrants special relief.

Accordingly, Verizon requests that the Commission grant it a waiver and allow the Administrator to net out Verizon's actual first quarter 2003 revenues from its calendar year 2003 revenues to determine its actual revenues for the remainder of 2003.

Respectfully submitted,

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February 27, 2004

Attachment A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

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| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
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| AT&T Corp. Request For Waiver of the Annual True-up Process for 2003 Universal Service Contributions | ) | DA 04-241 |
| | ) | |
| | ) | |

## COMMENTS OF VERIZON[1]

AT&T's petition has identified a significant flaw in the Commission's true-up process for 2003. "[T]he 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." Order and Second Order on Reconsideration, 18 FCC Rcd 4818, ¶ 15 (2003). Unfortunately, due to a mid-year change in the method of assessment, carriers that under-projected first quarter revenues in first quarter 2003 will pay more than the "appropriate amounts" unless the Commission changes the true-up process for first quarter 2003. However, the problem AT&T presents is certainly not unique to AT&T. Verizon also under-projected first quarter 2003 revenues, and undoubtedly many other companies did so as well. Therefore, the Commission should grant a waiver for *all* service providers that under-forecasted first

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1 The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

quarter 2003 revenues and allow them to use actual revenues from that quarter, not forecasted revenues, in the 2003 true-up process.[2]

Effective April 1, 2003, the Commission directed the Administrator to change the method of assessing carriers, by basing contributions on carriers' "projected" revenues, rather than "actual," historical data.[3] As WorldCom pointed out in a petition for reconsideration of the Order, "carriers never actually contribute to universal service on the basis of first quarter 2003 revenues and yet they could be penalized for mis-projecting these revenues." WorldCom Petition for Reconsideration, CC Docket No. 96-45, at 3 (filed Jan. 29, 2003).[4] In order to avoid "truing up" revenues to prior periods where carriers were not assessed, the Commission granted WorldCom's petition for reconsideration, holding that "[t]he true-up for calendar year 2003 revenues will apply to revenues projected for the second through fourth quarters of 2003. The true-up for calendar year 2003 revenues will not apply to revenues projected for the first quarter of 2003." Order and Second Order on Reconsideration, ¶ 17.

However, in granting WorldCom's Petition for Reconsideration, the Commission instructed the Administrator to "subtract revenues *projected* for the first quarter of 2003

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2 In the event the Commission chooses not to grant a general waiver to all similarly situated service providers, Verizon is today filing its own waiver to use actual revenues for the first quarter of 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*, 17 FCC Rcd 24952 (2002) ("*Interim Contribution Methodology Order*").

4 On April 1, 2003, the Administrator converted from universal service assessments based on revenues from two quarters prior to projected revenues. *See Interim Contribution Methodology Order,* ¶¶ 29-39. As a result, revenues from the fourth quarter of 2002 and the first quarter of 2003 were not assessed. *See* Order and Second Order on Reconsideration, ¶ 13 & n.25.

from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003." *Id.* (emphasis added). Use of projected first quarter revenues in this manner creates the same problem that WorldCom and AT&T raise in their petitions by penalizing companies that under-projected those revenues.[5] The Commission should direct the Administrator to allow service providers that under-forecasted first quarter 2003 revenues to use *actual*, rather than projected, first quarter 2003 revenues in the true-up process for the year, as AT&T requests. Doing so would reach the goal that the Commission intended with the true-up process – making sure that contributors pay the appropriate amount to the universal service fund.

To accomplish this, the Commission can either issue a further reconsideration order to grant the relief WorldCom asked for in the original petition for reconsideration, or grant a waiver to all companies that under-projected first quarter 2003 revenues. Because the problem occurs only for the first quarter of 2003, there is no need to change the contribution methodology for any other period, and a one-time waiver to all service providers for that quarter is warranted to avoid the inequitable result that prompted both WorldCom's and AT&T's filings.

A general waiver is appropriate here, because it would be based on the special circumstances that affect only the first quarter of 2003 and are not repeated in subsequent quarters or years. Moreover, it would only impact those carriers that under-projected first quarter 2003 revenues. As the courts have held, a waiver is appropriate "if special

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[5] Like AT&T, Verizon's actual first quarter 2003 revenues exceeded its forecast and it, too, would be penalized under the current contribution methodology.

circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also, WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). Here, both AT&T and WorldCom have shown that the public interest is not served by using projected revenue for the first quarter of 2003 in the true-up process, and the Commission appeared to agree in the reconsideration order. However, in its instructions to the Administrator, the Commission again based the true-up, in part, on forecasted minutes for that quarter. Therefore, a "deviation from the general rule" is warranted for the first quarter of 2003. In addition, the Commission has previously recognized the ability to grant a waiver to cover an entire class of parties that are similarly situated.[6]

The Commission should not, however, give special relief only to AT&T. AT&T argues that the changes made to the 2003 contribution process in December 2002 and March 2003 – changes which AT&T had supported – "penalize carriers such as AT&T that had underprojected first quarter 2003 revenues." AT&T Petition for Waiver, CC 96-45 at 5 (filed Jan. 27, 2004). AT&T has failed to make a claim that it alone should be entitled to this relief. Verizon and, undoubtedly, many other service providers are in the same position, and there is no reason to treat AT&T differently from all other similarly

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[6] *See, e.g., Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 7197 (1999) (granting a waiver of schools and libraries rules for all affected applicants that met certain criteria); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 17 FCC Rcd 7779 (2002) (granting waiver of TRS minimum standards to all IP Relay Providers); *Local Number Portability Phase I Implementation*, 13 FCC Rcd 2299 (1998) (granting industry-wide waiver of deadline to comply with local number portability requirements); *Implementation of the Pay Telephone Reclassifications and Compensation Provision of the Telecommunications Act of 1996*, 12 FCC Rcd 16387 (1997) (granting industry-wide waiver of deadline for provision of payphone-coding digits).

situated contributors. Indeed, an exclusive waiver would violate the Act's requirement that universal service contributions be made on an "equitable" and "non-discriminatory" basis. 47 U.S.C. § 254(b)(4). As a result, the Act requires that the waiver in this instance must extend to all similarly situated carriers, including Verizon.

Respectfully submitted,

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Attachment A

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Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.