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

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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 Numbering) CC Docket No. 92-237
Plan and North American Numbering Plan Cost) NSD File No. L-00-72
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

**CINGULAR WIRELESS LLC COMMENTS ON AT&T PETITION FOR
WAIVER**

Cingular Wireless LLC ("Cingular"), through undersigned counsel, offers the following comments on the petition for waiver ("*Waiver*") filed by AT&T Corp. ("AT&T") in the captioned proceedings in accordance with the Public Notice, DA 94-241 released January 30, 2004. Cingular supports AT&T's waiver request and asks that it be extended to all similarly situated carriers

Discussion.

On January 27, 2004, AT&T filed for a waiver of the 2003 universal service true-up process adopted in the Universal Service *Second Reconsideration Order*, 18 FCC Rcd 4818 (2003). That order states that “USAC will 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.”¹ AT&T requests that USAC subtract AT&T’s *actual* collected revenues for the first quarter 2003, rather than its projected revenues when performing the true-up.

AT&T claims that absent the *Waiver*, it will be required to pay “more than its fair share” based on its actual 2003 revenues due to a forecasting error for the first quarter

AT&T states:

A waiver is necessary to ameliorate the unanticipated impact of the rule which would unfairly penalize carriers such as AT&T that realized greater revenues in the first quarter 2003 than they had projected.²

AT&T notes that the Commission expressly held that the purpose of the annual true-up is to ensure that “interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms.”³ However, because AT&T under-projected its first quarter revenues, the formula applied by USAC will result in its over-paying approximately \$11 million when compared with its actual revenues. AT&T notes that it never collected this \$11 million from its customers, since the contribution factor for the first quarter 2003 was not based on projected revenues.⁴ AT&T asks the Commission to grant the *Waiver* so that USAC can net out AT&T’s *actual* first quarter

¹ *Second Reconsideration Order* at ¶ 17 (emphasis added)

² *Waiver* at 2

³ *Waiver* at 4, citing *Second Reconsideration Order* at ¶ 15

⁴ *Waiver* at 5

revenues from its calendar year revenues to determine its actual revenues for the second through fourth quarters 2003.⁵

Cingular supports the grant of AT&T's *Waiver*. The purpose of a true-up is to base a contributor's universal service payment on its actual revenues. Because of the way the formula works, a carrier such as AT&T that has under-forecast its first quarter revenues will not true-up to its actual revenues, thereby defeating the purpose of the true-up.

Cingular has reexamined its own 2003 universal service contribution based on AT&T's *Waiver*. Like AT&T, Cingular under-projected its first quarter 2003 revenues. As a result, Cingular will contribute approximately \$1.2 million more than it owes based on its actual revenues for 2003. Cingular therefore requests that the Commission grant AT&T's *Waiver* and extend the waiver to all similarly situated carriers.

Respectfully submitted,

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⁵ *Waiver* at 6

CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 27th day of February, 2004, the foregoing Comments were sent via first class mail, postage prepaid to the following:

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s/ Lydia Byrd
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