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

PETITION FOR RECONSIDERATION OF
CTIA – THE WIRELESS ASSOCIATION™

CTIA – The Wireless Association™ ("CTIA")[1] submits this Petition for Reconsideration with respect to the Order issued by the Federal Communications Commission ("Commission" or "FCC") granting a waiver of portions of the FCC's true-up process for universal service contributions based on calendar year 2003 revenues to AT&T Corp. ("AT&T"), SBC Communications Inc. ("SBC"), and the Verizon telephone companies ("Verizon") (collectively "Waiver Recipients"), but declining to extend such relief to similarly-situated contributors.[2] CTIA supports the Commission's grant of relief to the Waiver Recipients, but respectfully requests that the Commission reconsider its decision not to extend the requested relief to all similarly-situated contributors that under-projected their revenues for the first calendar quarter of 2003. Fundamental fairness demands such a result.

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[1] CTIA – The Wireless Association™ (formerly known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

[2] *See Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 04-170 (rel. Jul. 20, 2004) (the "*Waiver Order*").

I. BACKGROUND

The Waiver Recipients sought relief from the FCC's true-up mechanism adopted in the context of the transition from contributions to the Universal Service Fund ("USF") based on historical gross-billed revenues to projected collected revenues, which became effective on April 1, 2003. Specifically, in connection with the transition to a projected collected revenues-based contribution system, the Commission adopted a true-up mechanism for calendar year 2003 revenues by which the Universal Service Administrative Company ("USAC") could ensure that contributors accurately project their revenues and remit appropriate USF contributions. When it adopted and later modified its true-up mechanism, the Commission indicated that USAC would subtract revenues projected on contributors' FCC Form 499-Q for the first quarter of 2003 from annual revenues reported on contributors' FCC Form 499-A in order to arrive at an estimate of a contributor's "actual" revenues for the second through fourth quarters of 2003. USAC would then compare those "actual" revenue estimates (for the second through fourth quarters of 2003) to the projected revenues for those periods reported on a quarterly basis on a contributor's FCC Forms 499-Q to determine whether the contributor had made appropriate payments into the USF.[3]

While the true-up mechanism is a necessary procedure, it severely disadvantages any contributor whose actual revenues for the first quarter of 2003 exceeded its projected

[3] *Id*., FCC 04-170, para. 3; *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, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd. 4,818 (2003).

revenues for that period, because that contributor would erroneously appear to have higher actual revenues for the second through fourth quarters of 2003. Thus, any similarly-situated contributors would be required to make excess contributions to the USF based upon revenues they had not actually collected.[4] The Commission concluded the Waiver Recipients had demonstrated good cause to justify a waiver, because application of the true-up mechanism would result in the Waiver Recipients contributing "more than an equitable share" into the USF because they had under-projected first quarter 2003 revenues.[5] The Commission declined, however, to extend the relief to other similarly-situated contributors that had under-projected their first quarter 2003 revenues, but which had not filed waiver requests. The Commission found arguments that other contributors experienced similar circumstances were "speculative, given the record before [it]."[6] CTIA respectfully requests that the Commission reconsider its decision, and extend relief to all similarly-situated contributors.

II. RELIEF SHOULD BE EXTENDED TO SIMILARLY-SITUATED CONTRIBUTORS

A. Special Circumstances Exist for Extending Relief to Similarly-Situated Contributors.

In the *Waiver Order*, the Commission concluded that the Waiver Recipients had demonstrated special circumstances warranting grant of a waiver, because application of the Commission's true-up procedures would result in the Waiver Recipients contributing "more than an equitable share" to the USF.[7] Similarly, all other contributors that under-projected their collected revenues for the first quarter of 2003 would, as a result of the

[4] Petition for Waiver filed by AT&T Corp. on January 27, 2004 in CC Docket No. 96-45, p. 5.
[5] *Waiver Order*, FCC 04-170, paras. 6, 7.
[6] *Id*., para. 7.
[7] *See Waiver Order*, FCC 04-170, para. 7.

Commission's revenue year 2003 true-up procedures, also contribute more than an equitable share to the USF. As the Commission noted in the *Waiver Order*,[8] such a result would be contrary to section 254(d) of the Communications Act of 1934, as amended.[9]

B. Grant of the Requested Relief is in the Public Interest.

In the Waiver Order, the Commission also determined that waiver of the revenue year 2003 true-up procedures would be in the public interest, because "first quarter 2003 revenues were not utilized to calculate universal service contributions."[10] In other words, as adopted, the true-up procedures would result in contributors that under-projected their first quarter 2003 revenues over contributed to the fund based on projected revenues for a period that should not have been used to calculate USF contributions as a result of the transition from historical to projected revenue-based contributions. Contrary to the public interest, other similarly-situated contributors that under-projected their first quarter 2003 revenues also were required to over contribute based upon projected revenues for a period that should not have been used.

The public interest also mandates that all similarly-situated contributors that under-projected their revenues for the first quarter of 2003 be provided relief from the Commission's true-up procedures without being required to expend additional human and financial resources to individually prepare and prosecute waiver requests that raise precisely the same facts and issues as those raised by the Waiver Recipients. Contributors to the USF should be entitled to expect that the fund will be administered, and their contributions calculated, by fair means. The Commission should not require contributors to submit individual pleadings to ensure this fundamental fairness.

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[8] *Id*.
[9] 47 U.S.C. § 254(d).
[10] *See Waiver Order*, FCC 04-170, para. 7.

Application of the relief to similarly-situated contributors also would serve the public interest by reducing the administrative burden on the Commission and on the public. Just as was the case with the Waiver Recipients' requests, the relief would extend solely to those contributors whose projected revenues for the first quarter of 2003 were *less* than their actual revenues for that period. So, the facts are identical. The legal analysis also is identical – the *Waiver Order* acknowledges as much.[11] The Commission has recognized that blanket waivers are appropriate based upon administrative convenience in circumstances where:

> weighing the merits of the waiver request for each …[requesting entity]… involves evaluating a common fact situation rather than a diverse set of facts for each …[requesting entity]. Because the request for waiver of all of the …[requesting entities]… is based on common facts, it would be a waste of time and resources to require each …[requesting entity]… to file individually.[12]

Finally, extension of the relief to similarly-situated contributors will not have adverse or unintended consequences. The waiver relates to a unique set of facts – an error relating to the transition to a contribution mechanism based on projected collected revenues – that will not recur. The universe of companies eligible for relief is already certain since the companies already have submitted projected and annual revenue information for the relevant time periods. Moreover, the time period for revising projected revenues for the first quarter of 2003 on the FCC Form 499-Q has long since passed. Thus, extension of the relief will be to a discrete set of companies for a single transitional circumstance. Further, the Commission has fashioned a solution to provide

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[11] "Individual carriers may seek similar waiver relief, and such petitions would be evaluated consistent with the precedent established in this Order." *Waiver Order*, FCC 04-170, n. 15. Indeed, the Commission is required to adhere to its prior rulings absent a reasoned explanation.

[12] *Daniel R. Goodman*, Memorandum Opinion and Order, 10 FCC Rcd. 8,537, para. 10 (1995).

the Waiver Recipients with relief in a way that will "lessen implementation burdens for the Administrator."[13] As the Commission noted, this alternate solution will preclude the need for contributors to submit new data to the administrator, and for the administrator to devise a mechanism to process such data. Instead, the administrator may use data that it already possesses in its database. In sum, extension of the relief granted to the Waiver Recipients is consistent with the public interest and does not impose unintended consequences or undue administrative burdens.

C. Extension of the Relief to Similarly-Situated Contributors is Consistent with Commission Precedent.

The Commission generally has preferred general or blanket waivers in other circumstances where relief was necessary to ensure the proper administration of Commission programs or initiatives, or where the relief granted was based upon a similar set of facts and circumstances and the processing of separate waiver requests would be unduly burdensome on Commission resources. Examples can be found in the context of the submission of cost data by cable operators,[14] implementation of the FCC's anti-trafficking rules applied to cable systems,[15] implementation of the payphone compensation rules,[16] and application of the notification requirements associated with subscriber requests for new product tiers by cable operators.[17] Similarly, in the Goodman-Chan case, the full Commission provided a blanket waiver of the construction

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[13] *Waiver Order*, FCC 04-170, para. 8.
[14] *Annual Rate Adjustment System*, 11 FCC Rcd. 13,997 (Cab. Serv. Bur. 1996).
[15] *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions*, Report and Order and Further Notice of Proposed Rule Making, 8 FCC Rcd. 6,828 (1993).
[16] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd. 10,893 (Com. Car. Bur. 1998).
[17] *Public Notice*, Cable Services Bureau Issues Letter Regarding 30 Day Advance Notification Requirements of Cable Television Rate and Service Charges, 1995 FCC LEXIS 5,447 (Cab. Serv. Bur. 1995).

deadline to approximately 4,000 licensees who used the services of companies being pursued by the Federal Trade Commission, based upon grounds of administrative ease in processing one request as opposed to thousands where the facts and circumstances underlying the relief were identical.[18]

The Commission more recently employed the blanket waiver approach in the context of local number portability, when it granted a six-month waiver of the wireline-to-wireless porting requirement to all local exchange carriers with fewer than two percent of the nation's subscriber lines that operate in the top 100 Metropolitan Statistical Areas (the "Two Percent Carriers") who met certain criteria.[19] In that case, several Two Percent Carriers had sought waivers from the Commission. In addition, three industry organizations jointly sought blanket relief from the Commission for Two Percent Carriers. The Commission granted blanket relief for all Two Percent Carriers who met the established criteria, finding that these carriers faced similar obstacles to complying with their portability requirements, and that the public interest would be served by a blanket waiver because compliance ultimately would be achieved and the underlying purposes of the portability rules would be served.[20]

In the instant case, contributors faced similar challenges in complying with the Commission's new projected collected revenue reporting requirement. Contributors needed to develop methodologies and procedures to accurately project collected revenues on a quarterly basis. Contributors were required to project revenues for the first time less than two months after the Commission's adoption of a new contribution methodology. Moreover, the underlying statutory mandate of the Commission's universal service

[18] *Daniel R. Goodman*, Memorandum Opinion and Order, 10 FCC Rcd. 8,537, para. 10 (1995).
[19] *Telephone Number Portability*, Order, 19 FCC Rcd. 875 (2004).
[20] *Id*.

contribution methodology – "equitable and nondiscriminatory" contributions to the universal service mechanisms – would be served by grant of the requested relief to similarly-situated contributors that under-projected their first quarter 2003 collected revenues.[21] In short, as described above, the Commission generally has favored blanket relief in cases such as this one, and should provide blanket relief in this case.

III. CONCLUSION

WHEREFORE, for good cause shown, CTIA respectfully requests that the Commission reconsider its decision not to waive the Commission's revenue year 2003 universal service contribution true-up procedures for all similarly-situated contributors that under-projected their revenues for the first calendar quarter of 2003.

Respectfully submitted,

CTIA – THE WIRELESS ASSOCIATION™

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[21] *See* 47 U.S.C. § 254(d).

CERTIFICATE OF SERVICE

I, Shontee Bryant, hereby certify that copies of the foregoing "Petition for Reconsideration" have been served this 18th day of August, 2004 by United States mail, first class postage prepaid, on the following:

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