

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

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Review – Streamlined)	CC Docket No. 98-171
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)	CC Docket No. 90-571
Individuals with Hearing and Speech)	
Disabilities, and the Americans with)	
Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost 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

NEXTEL COMMUNICATIONS, INC. PETITION FOR WAIVER

Pursuant to Section 1.3 of the Rules of the Federal Communications Commission (“Commission”),¹ Nextel Communications, Inc. (“Nextel”) respectfully requests that the Commission grant a waiver of its Universal Service Fund (“USF”) rules that direct the Universal Service Administrative Company (“USAC”) to use projected first quarter 2003 revenues for the 2003 annual “true up” process. Recently, the Commission granted

¹ 47 C.F.R. § 1.3.

AT&T Corp. (“AT&T”), SBC Communications, Inc. (“SBC”) and the Verizon telephone companies (“Verizon”) (collectively “Petitioners”) relief that eliminated the effect errors in projected first quarter 2003 revenues numbers would have on the 2003 annual “true up” process.² Nextel requests the same relief so that Nextel does not pay in excess of its appropriate contribution based on actual revenues, and to ensure that Nextel is treated in a equitable and non-discriminatory manner in relation to similarly situated carriers.

BACKGROUND

In 2002, in its *Interim Contribution Methodology Order*, the Commission made a number of changes to the methodology for assessing Universal Service contributions.³ Among these changes was a determination that contributions would be based on forward-looking revenue *projections*, rather than *historical* gross-billed revenues. This new methodology was effective beginning the second quarter 2003.⁴ Because USF contributions would now be based on projections rather than actuals, the *Interim Contribution Methodology Order* also established a revised process to “true up” actual

² See *Federal-State Joint Board on Universal Service, Order*, CC Docket No. 96-45, FCC 04-170 (rel. July 20, 2004) (hereinafter “Waiver Order”).

³ See *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, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002) (hereinafter “Interim Contribution Methodology Order”).

⁴ See *id.* at 24969.

revenues to projected revenues at the end of each year.⁵ This framework for the “true up” process, which is intended to ensure that carriers neither under nor over-pay into the USF, was further refined on *Reconsideration*, when the Commission adopted a transitional true up process for 2003 USF contributions – the year the contribution methodology changed from historical revenues to projected revenues.⁶

Because carriers’ contributions were based on projected revenues for only part of the year, the Commission had to establish a unique true-up mechanism for 2003 to account for the fact that carriers were relying on historical revenues in the first quarter. Thus, in the *Reconsideration Order*, the Commission attempted to isolate the second, third and fourth quarters of 2003 to determine whether carriers had over or under-paid. To isolate the revenues of just those quarters, the Commission directed USAC to subtract carriers’ projected first quarter 2003 revenues from their total 2003 actual revenues to arrive at the estimated actual revenues for the second, third and fourth quarters of 2003. USAC would then compare that “actual” revenue number for the last three quarters to the

⁵ See *id.* at 24972.

⁶ See *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, Order and Second Order on Reconsideration*, 18 FCC Rcd 4818, 4824-25 (2003) (hereinafter “*Reconsideration Order*”).

carriers' projected revenues for that same period "to determine whether a refund or collection is appropriate" under the true up process.⁷

On January 27, 2004, AT&T requested a waiver of the 2003 universal service true up process delineated in the *Reconsideration Order*. In the Petition, AT&T noted that the Commission erred when it decided to subtract first quarter *projections* from the second, third and fourth quarter *actuals* to arrive at an estimate of actual revenues for those three quarters. As a result, if a carrier under-projected its first quarter revenues, the revenues for the remainder of the year would be overstated. As AT&T stated it, the "true up" process delineated in the *Reconsideration Order* "does not true up to actuals (which is the purpose of a true up) but it simply nets out the first quarter projections against the actuals for calendar year 2003..."⁸ Therefore, the net effect of the *Reconsideration Order's* interim "true up" process is to "artificially and erroneously" inflate the second through fourth quarter 2003 USF contributions of those carriers that under projected first quarter 2003 revenues.⁹ Accordingly, AT&T requested a waiver directing USAC to subtract AT&T's actual collected revenues for first quarter 2003, rather than its projected revenues, when USAC performed the true up. SBC and Verizon also submitted waiver petitions requesting similar relief.¹⁰

⁷ *Id.* at 4825.

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* Verizon Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2004); SBC Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2004).

On July 20, 2004, the Commission released an Order (the “*Waiver Order*”) granting, in part, the Petitioners’ waiver requests.¹¹ In the *Waiver Order*, the Commission adopted an alternate 2003 true up methodology to respond to the Petitioners’ concerns.¹² Rather than utilize a carrier’s actual collected revenues, as the Petitioners had proposed, the Commission directed USAC to subtract from total 2003 actuals the Petitioners’ historical gross billed revenues from the first quarter of 2003, adjusted to reflect a carrier’s uncollectible rate for 2003 as reported on Form 499-A.¹³ This, the Commission stated, would more fairly depict the second, third and fourth quarter 2003 actuals to be compared to the same periods’ projections for purposes of USF true up. Critically, however, the Commission declined to extend this relief to all similarly situated carriers. Instead, the Commission invited carriers to individually file for similar relief, and stated that such petitions “would be evaluated consistent with the precedent established in this Order.”¹⁴ Accordingly, Nextel hereby petitions the Commission for a waiver directing the USAC Administrator to true up Nextel’s 2003 revenues using the same procedure adopted for the Petitioners.

¹¹ See *Waiver Order* at ¶ 8.

¹² See *id.*

¹³ Because these two figures – historical gross billed revenues and the uncollectible rate – were already in USAC’s possession, the Commission concluded that using these figures would allow USAC to accomplish Petitioners’ objectives more efficiently and without having to collect additional data.

¹⁴ See *Waiver Order* at ¶ 7, n. 15.

DISCUSSION

As the Commission noted in the *Waiver Order*, Section 254 of the Act requires that “interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.”¹⁵ Under this framework, the purpose of the annual true up should be to “ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly review data.”¹⁶ As the Petitioners demonstrated, the interim “true up” methodology used in 2003 during the transition to a projected revenue system would result in affected carriers contributing more than their equitable share if they underestimated their first quarter 2003 revenues. In the *Waiver Order*, the Commission stated that this problem with the interim “true up” methodology represented “special circumstances that warrant deviation from the Commission’s universal service true-up procedures for 2003.”¹⁷ In addition, the Commission also specifically noted that this was consistent with Section 254 and in the public interest because “first quarter 2003 revenues were not utilized to calculate universal service contributions.”¹⁸

Nextel is in the same position as the Petitioners. Nextel also underestimated its first quarter 2003 revenue projection. Therefore, Nextel will pay approximately \$1.5 million more than its “equitable” share to the USF if a waiver is not granted. Thus, Nextel is entitled to the same “true-up” relief as that afforded the Petitioners. Failure to

¹⁵ *Id.* at ¶ 7.

¹⁶ Reconsideration Order, 18 FCC Rcd at 4824.

¹⁷ Waiver Order at ¶ 7.

¹⁸ *Id.*

do so would treat Nextel in a non-equitable and discriminatory manner in comparison to other carriers that have been granted relief under the exact same circumstances, in contravention of Section 254 of the Act. Accordingly, Nextel requests that the Commission extend the relief granted in the *Waiver Order* to Nextel, and direct the USAC Administrator to true up Nextel's 2003 revenues according to the true up methodology adopted in the *Waiver Order*.¹⁹

¹⁹ Nextel notes that CTIA – The Wireless Association recently filed a Petition for Reconsideration of the Waiver Order requesting that the relief in that Order be extended to all similarly-situated carriers. *See* Petition for Reconsideration of CTIA – The Wireless Association, CC Docket No. 96-45 (filed Aug. 18, 2004).

CONCLUSION

For the aforementioned reasons, Nextel respectfully requests that the Commission grant the waiver requested herein.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By: /s/ Laura L. Holloway

Lawrence R. Krevor
Vice President – Government Affairs

Laura L. Holloway
Vice President – Government Affairs

Christopher R. Day
Counsel – Government Affairs

NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4141

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