

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 Regulatory 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 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

DOBSON PETITION FOR WAIVER

Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively referred to as “Dobson”) hereby request, pursuant to Section 1.3 of the Commission’s Rules, waiver of the deadline for filing adjustments to its first quarter 2003 revenue projections for the Universal Service Fund (“USF”) contributions. Such a waiver will permit Dobson to utilize more accurate revenue data for that quarter and would eliminate the effect of the errors caused by projected data being utilized in the annual true-up process.¹ This waiver request is

¹ *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, ¶¶ 20, 36 (2002).

similar to those granted previously to Verizon, AT&T Corp. and SBC Communications.² Like these companies, Dobson under-estimated its revenue for the first quarter of 2003 and, without a waiver, would pay a higher amount than is warranted into the USF. Therefore, a waiver of the deadline is necessary to allow Dobson to file the 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."³ Generally, a waiver is appropriate if "special circumstances warrant deviation from the general rule and such deviation will serve the public interest."⁴ In this case, a waiver of the deadline to file corrections of the first quarter 2003 revenue projections is necessary to ensure that the true-up mechanism operates as intended, particularly based on the unique circumstances surrounding the rule change.

In December 2002, the Commission adopted a new method of calculating service providers' contributions to USF based on projected end-user interstate revenue, rather than using the former basis of historical revenues. In order to adjust for errors in revenue projections, the Commission adopted a true-up process "to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service

² See *Federal-State Joint Board on Universal Service*, Order, FCC 04-170 (rel. July 20, 2004) (the "Waiver Order"). See also SBC Petition for Waiver, CC Docket 96-45 et al. (filed Feb. 27, 2003); AT&T Petition for Waiver, CC Docket 96-45 et al. (filed Jan. 27, 2004); Verizon Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2003).

³ 47 C.F.R. § 1.3.

⁴ *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).

mechanisms based on quarterly revenue data.”⁵ The new projected revenue-based USF mechanism became effective after the first quarter of 2003 (on April 1, 2003). To implement this mechanism, the Commission required contributors to report projected collected revenues for the first quarter of 2003 on the February 1, 2003 FCC Form 499-Q even though contributions during the first quarter were based on historical revenues. The Commission directed the Universal Service Administrative Company (“USAC”) to use the annual revenue data provided in the FCC Form 499-A to perform an end-of-year true-up to quarterly revenue data from the Form 499-Q submissions. As necessary, USAC was to refund or collect from contributors any over- or under-payments.

In its *Reconsideration Order*, the Commission recognized that the true-up of projections for calendar year 2003 was inappropriate since the first quarter projections were not used in setting the contribution factor for that quarter.⁶ In order to avoid “trueing up” projected revenues to prior periods where carriers were not assessed on that basis, the Commission stated that the “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.”⁷

The Commission, however, then instructed USAC 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

⁵ See *Federal-State Joint Board on Universal Service*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, ¶ 15 (2003)(“*Reconsideration Order*”).

⁶ *Id.* at ¶ 13.

⁷ *Id.* at ¶ 17.

2003.”⁸ Thus, the stated procedure does not true-up actuals but instead nets out the first quarter projections against the actuals for calendar year 2003 to arrive at an estimate of the carrier’s revenues for the second through fourth quarters. This subtraction of projected first quarter revenue from the year’s actual revenue penalizes companies that under-projected their revenue during the first quarter because, by understating first quarter 2003 revenue in the true-up process, it artificially inflates the total revenues, and hence total contribution liability, for the remaining three quarters. A carrier’s under projection during the first quarter does not impact actual USF payments for the first quarter 2003 since that payment was based on a carrier’s historical revenues with a 6-month lag.

Acknowledging this problem, the Commission adopted a *Waiver Order* for AT&T, SBC Communications and Verizon, finding that this situation represents “special circumstances that warrant deviation from the Commission’s universal service true-up procedures for 2003.”⁹ The Commission also noted that granting a waiver was consistent with Section 254 of the Act¹⁰ and in the public interest because “first quarter 2003 revenues were not utilized to calculate universal service contributions.”¹¹

In the *Waiver Order*, the Commission “decline[d] to extend this waiver to all similarly situated parties,” but noted that “[i]n individual carriers may seek similar waiver relief, and such petitions would be evaluated consistent with the precedent established in [the *Waiver Order*].”¹² Like the carriers in the *Waiver Order*, Dobson under-projected its revenues in first

⁸ *Id.*

⁹ See *Waiver Order* at ¶ 7.

¹⁰ Section 254 of the Act requires that “interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.” 47 U.S.C. § 254(d).

¹¹ *Id.*

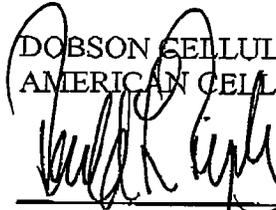
¹² *Waiver Order* at n.15.

quarter 2003 and, like those carriers, also will pay more than the "appropriate amounts" unless the Commission grants it a waiver to the true-up process. By allowing Dobson similar relief as granted to similarly situated carriers, the Commission will allow USAC to true up Dobson's second through fourth quarter projections free of any first quarter errors. The alternative methodology explained in the *Waiver Order* would result in a far more accurate true-up than that specified in the rules.¹³

Accordingly, Dobson requests grant of the limited waiver requested above that would allow USAC to true up Dobson's actual first quarter 2003 according to the methodology adopted in the *Waiver Order*.

Respectfully submitted,

DOBSON CELLULAR SYSTEMS, INC. and
AMERICAN CELLULAR CORPORATION

By: 

Ronald L. Ripley
Senior Vice President & General Counsel

14201 Wireless Way
Oklahoma City, OK 73134-2512
(405) 529-8376

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¹³ In the *Waiver Order*, the FCC directed USAC to conduct true-ups for the petitioners by subtracting historical gross billed revenues from the first quarter 2003 reported on Forms 499Q, adjusted to reflect their annual uncollectible rates for 2003 reported on their Forms 499A.