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March 30, 2005

**Marlene H. Dortch**  
**Secretary**  
**Federal Communications Commission**  
**445 12th Street, SW**  
**Washington, D.C. 20554**

*Re: CC Docket Nos. 96-45, 98-171, and 97-21, 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; Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*

Dear Ms. Dortch:

Attached are Comments of Verizon In Support of Applications for Review by Qwest, Business Discount Plan, and SBC, and Petition for Reconsideration by Sprint. Verizon had originally filed its Comments on January 21, 2005 prior to the Commission's March 16, 2005 Public Notice, DA 05-453, establishing a comment cycle. Accordingly, Verizon is refileing its Comments pursuant to that cycle.

Very truly yours,

A handwritten signature in cursive script that reads "Edward Shakin/ESH".

**Edward Shakin**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
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	)	CC Docket No. 98-171
	)	
Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.	)	CC Docket No. 97-21
	)	

**COMMENTS OF VERIZON<sup>1</sup> IN SUPPORT OF  
APPLICATIONS FOR REVIEW BY QWEST, BUSINESS DISCOUNT PLAN,  
AND SBC, AND PETITION FOR RECONSIDERATION BY SPRINT<sup>2</sup>**

As explained by the applications for review and petition for reconsideration, the Bureau exceeded its authority, and violated the Administrative Procedures Act (“APA”), by setting a new rule that “reject[s] as untimely any Form 499-A revised filing not submitted within twelve months of the due date of the original filing” if the revision

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<sup>1</sup> The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

<sup>2</sup> See SBC Application for Review of Action Taken Pursuant to Delegate Authority, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005) (“SBC Application”); Qwest Application for Review, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005) (“Qwest Application”); Business Discount Plan, Inc. Application for Review, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005) (“BDP Application”); Sprint Petition for Reconsideration, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005) (“Sprint Petition”).

would result in a decreased contribution to regulatory fees, universal support, or other relevant programs.<sup>3</sup>

The Commission should reverse the twelve-month time limit, because it is both procedurally and substantively defective. Procedurally, the order should be reversed, because the Bureau exceeded its authority in setting the new rule, and did not provide parties notice of the proposed rule change, or an opportunity comment before it was adopted. If the Commission wishes to change the rules for filing corrections to the Form 499-A, any proposed rule change first should be put out for public notice and comment. As a substantive matter, it was arbitrary and capricious for the Bureau to adopt a rule that creates a firm deadline for changes that would decrease a carrier's contribution, but not for changes that would increase it. In addition, the Bureau should not have eliminated the option for USAC to accept forms filed outside the relevant time frame when the carrier can show cause for the delay in filing. Until the outstanding petitions and applications are addressed, the Commission should stay the twelve-month limit, as Qwest requested in its petition for stay.<sup>4</sup>

### ARGUMENT

The *Form 499 Order* was issued in response to several petitions filing requests for review of decisions by the Universal Service Administrative Company ("USAC").

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<sup>3</sup> See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 04-3669, ¶ 1 (rel. Dec. 9, 2004) ("*Form 499 Order*"). The Form 499 Telecommunications Reporting Worksheet is used by contributors to report revenues and information necessary for assessment by the universal service fund, interstate Telecommunications Relay Service, administration of the North American Numbering Plan, and shared costs of local number portability. *Id.*, ¶ 3. The Form 499-A is the annual form; the Form 499-Q is the quarterly version of the form. *Id.*, ¶ 5.

<sup>4</sup> Petition of Qwest Communications International Inc. for Stay Pending Action on Application for Review, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005).

Although the Form 499-A instructions approved by the Commission had directed filers to correct Form 499-A revenue data within a year, the instructions also contemplated acceptance of late-filed revisions if “accompanied by an explanation of the cause for the change” along with documentation of how the figures were derived.<sup>5</sup> However, USAC had adopted a policy of rejecting revised Form 499-As filed more than one year after the filing deadline *if* the revised forms would *lessen* the carrier’s contribution. *Form 499 Order*, ¶¶ 1, 7. USAC has accepted late-filed forms if they would result in an *increase* in a carrier’s contribution. *See, e.g., Qwest Application*, at 9; *SBC Application*, at 3-4. Some had pointed out that USAC exceeded its authority in creating a policy of rejecting revised Form 499-As filed after one year when there was evidence of overpayment. *SBC Application*, at 4.

In the *Form 499 Order*, the Bureau adopted USAC’s practices, and set a “firm twelve-month deadline for revisions that would result in reduced contributions.” *Id.*, ¶ 10. Apparently, by adopting a “firm” deadline, the Bureau also has eliminated the exception in the prior Form 499-A instructions that would have allowed carriers to file revisions beyond the relevant window if the filer could provide an explanation justifying the change, and how the figures were derived. *Id.* The Commission should reverse the *Form 499 Order*, because it is both procedurally and substantively in error.

Procedurally, the *Form 499 Order* should be reversed on two grounds. First, the Bureau exceeded its authority in adopting a firm deadline for filing amended Form 499-As. The Commission has delegated authority to the Bureau only to make “changes to the

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<sup>5</sup> See Instructions to the Telecommunications Reporting Worksheet, Form 499-A, at 11, available at <http://www.universalservice.org/forms/default.asp#bcd>. See also *Form 499 Order*, ¶ 6 & n.18.

*administrative* aspects of the reporting requirements, such as ‘when and where worksheets are filed,’ and not to the substance of the underlying programs.” *Form 499 Order*, ¶ 9 (emphasis added). Second, it did not give parties notice and opportunity to comment on the new rules.<sup>6</sup> The *Form 499 Order* attempts to address both of these problems by asserting that the new rules are “procedural, non-substantive changes to the administrative aspects of the reporting requirements.” *Form 499 Order*, at n.31.<sup>7</sup> However, this is not correct. Rather than merely setting a deadline for filing the forms, the Bureau made substantive policy decisions in setting the criteria for the deadline. Specifically, the Bureau set substantive policy by making the twelve-month deadline (1) only applicable to changes that would decrease a carrier’s contribution, but not those that would increase it; and (2) non-waivable by USAC. See *Form 499 Order*, ¶¶ 10-12. Here, by directing USAC to reject *any* late filing that would decrease a carrier’s contribution, regardless of the reason for the change; and by determining that some types of revisions will be allowed but others will not, the Bureau changed the underlying standards governing USAC’s acceptance to revisions to the forms. Because the rules establish “substantive” policy changes, there must be the opportunity for notice and comment, and full Commission review, before they can be adopted.<sup>8</sup> Also, because the

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<sup>6</sup> See 5 U.S.C. § 553 (requiring agencies generally to afford notice of a proposed rulemaking and opportunity for public comment before the rule is adopted).

<sup>7</sup> The APA does not require agencies to follow the general procedures for notice and comment for changes in “rules of agency organization, procedure or practice.” *Form 499 Order*, at n.31; see also 5 U.S.C. § 553(b)(3)(A).

<sup>8</sup> The procedural exception to the APA’s notice and comment requirements, upon which the Bureau attempts to rely, “does not apply where the agency ‘encodes a substantive value judgment,’” or sets “substantive standards.” *JEM Broadcasting Co. v. FCC*, 22 F.3d 320, 327, 328 (D.C. Cir. 1994).

Bureau does not have authority to make substantive changes to carriers' contribution obligations, it exceeded its delegated authority. *See Form 499 Order*, ¶ 9.

In addition to the procedural problems, the new rule is substantively flawed as well. As an initial matter, there often are good reasons why a carrier cannot meet the one-year deadline for amending the Form 499-A. For example, carriers may discover accounting error that affect data from more than one year, and thus need to correct past Form 499-As.<sup>9</sup> Moreover, the Bureau should not have adopted one deadline for filing changes that would *decrease* a carrier's contribution, but essentially no deadline for changes that would increase it. *See Form 499 Order*, ¶¶ 10-12. By choosing to accept changes that redound to its benefit, and reject those that do not, the Bureau has created a situation that will result in deliberately requiring over-contribution by some carriers.<sup>10</sup> This is patently unfair and unreasonable, and violates the statutory command that carriers be required to contribute to the universal service fund on an "equitable and non-discriminatory basis." 47 U.S.C. § 254(d).

In addition, the Bureau erred in creating a "firm" deadline that is not waivable by USAC, even if the carrier can demonstrate that the change is justified. *See Form 499 Order*, ¶¶ 10-12. Presumably, the Bureau does not purport to eliminate a carrier's rights to petition the Commission for a waiver of any refusal to accept a late-filed Form 499-A, under the Commission's general authority to waive any rule upon "good cause shown."

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<sup>9</sup> *See, e.g., Sprint Application*, at 2-3 (pointing that IRS allows three years to amend tax returns, and that in some cases, situations beyond a carrier's control – such as a change in Commission policy – may warrant an even longer period of time).

<sup>10</sup> *See, e.g., Qwest Application*, at 9 (when Qwest discovered that revenues had been reported to the wrong affiliate and tried to correct it, USAC accepted the revised Form 499 from the affiliate that had not previously contributed, but rejected the Form 499 filed by the entity that had erroneously reported the revenues, resulting in a situation where these revenues were "double taxed"); *SBC Application*, at 3-4 (similar).

*See* 47 C.F.R. § 1.3.<sup>11</sup> However, by denying USAC the authority to grant such waivers in the first instance, the Bureau has created a situation where USAC has no discretion, and carriers will be forced to petition the Commission for waivers of the filing deadline in all cases. The Bureau has already recognized that USAC is capable of considering the merits of the waiver requests,<sup>12</sup> and has articulated no reason for eliminating USAC's authority to grant such waivers.

**Conclusion**

The Commission should reverse the twelve-month limit on amending the Form 499-A. Pending consideration of the applications for review and petition for reconsideration, it should stay application of the rule.

Respectfully submitted,



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Of Counsel

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January 21, 2005

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<sup>11</sup> For example, just last year, the Commission granted several waiver petitions, allowing carriers to “true-up” revenues in a method that differed from USAC rules. *See Federal-State Joint Board on Universal Service*, Order, 19 FCC 13580 (2004).

<sup>12</sup> *See Form 499 Order*, ¶ 13 (remanding to USAC pending petitions for waiver before the new requirements go into effect, “to allow USAC to consider if there was good cause to allow revisions beyond the deadline contained in the Instructions”).

**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 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.**