

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** )

**SOUTHERNLINC WIRELESS PETITION FOR WAIVER**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless"),<sup>1</sup> through its undersigned counsel and pursuant to section 1.3 of the Federal Communications Commission's ("FCC") rules,<sup>2</sup> respectfully requests a waiver of the universal service rules that direct the Universal Service Administrative Company ("USAC") to use projected revenues for the first quarter of 2003 for the annual "true up" process. In particular, SouthernLINC Wireless requests a waiver of the deadline for filing adjustments to its first quarter 2003 revenue projections to permit it to file actual collected revenues for that quarter. The FCC recently granted AT&T Corp. ("AT&T"), SBC Communications ("SBC"), the Verizon Telephone companies ("Verizon") (collectively "Petitioners"), and nine other carriers similar relief to mitigate the effect that under-projected first quarter 2003 revenues numbers would have on the annual "true up" process.<sup>3</sup> SouthernLINC Wireless requires a waiver to avoid paying more than its

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<sup>1</sup> On February 3, 2005, Southern LINC modified its name to SouthernLINC Wireless.

<sup>2</sup> 47 C.F.R. § 1.3 (2004).

<sup>3</sup> In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, 19 FCC Rcd 13580 (2004) [hereinafter *Waiver Order*]; In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, 19 FCC Rcd 24049 (2004) [hereinafter *Second Waiver Order*]; In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, DA 05-306 (2005) [hereinafter *Third Waiver Order*].

equitable share of universal service and to ensure that it receives nondiscriminatory treatment with respect to similarly situated contributors.

## **I. BACKGROUND**

SouthernLINC Wireless is a wholly owned subsidiary of Southern Company, which is a registered holding company under the Public Utility Holding Company Act of 1935. As a Commercial Mobile Radio Service ("CMRS") provider, SouthernLINC Wireless operates a digital 800 MHz SMR system using Motorola's proprietary Integrated Digital Enhanced Network technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

## **II. UNIVERSAL SERVICE TRUE-UP PROCEDURE**

In December 2002, the FCC adopted several modifications to the revenue-based mechanism for assessing universal service contributions.<sup>4</sup> Among other modifications, the FCC decided to base contributions on a percentage of *projected*, collected interstate end-user telecommunications revenues, rather than *historical* gross-billed revenues.<sup>5</sup> While this new contribution mechanism took effect with the universal service payments for the second quarter of 2003, the FCC required contributors to begin reporting projected revenues on the Form 499-Q for February 1, 2003.<sup>6</sup>

The FCC anticipated that contributors could make errors when projecting their revenues. To "minimize the potential for inaccurate estimates," the FCC established a

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<sup>4</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002) [hereinafter *Interim Contribution Methodology Order*].

<sup>5</sup> *Id.* at 24969-74 ¶ 29-39.

<sup>6</sup> *Id.* at 24972-73 ¶ 37; 47 C.F.R. §§ 54.706, 54.709.

process to "true up" actual revenues to projected revenues at the end of each year.<sup>7</sup> "[T]he purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data."<sup>8</sup> The FCC required contributors to project their collected revenues for the first quarter of 2003 in order to provide the USAC with a full year of projected revenues with which to conduct the annual true up for 2003.<sup>9</sup>

In an *Order on Reconsideration*, the FCC revised this process after realizing that a true up of projections for 2003 was inappropriate.<sup>10</sup> The FCC noted that the "USAC should only apply the true-up to revenues for which universal service contributions actually were assessed."<sup>11</sup> Because contributors paid universal service based on projected revenues only for the last three quarters of 2003, the FCC held that "[t]he 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 will not apply to revenues projected for the first quarter of 2003."<sup>12</sup>

The FCC directed the USAC to achieve this result by isolating the revenues from the second, third, and fourth quarters of 2003 when performing the true up. Under the new true-up methodology, the USAC would subtract a contributor's projected first quarter 2003

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<sup>7</sup> The FCC also attempted to limit erroneous estimates by requiring contributors to report projected revenues on their Forms 499-Q only for the immediately succeeding quarter. *Interim Contribution Methodology Order*, 17 FCC Rcd at 24972 ¶ 36.

<sup>8</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4824 ¶ 15 (2003) [hereinafter *Reconsideration Order*].

<sup>9</sup> *Interim Contribution Methodology Order*, 17 FCC Rcd at 24973 ¶ 37.

<sup>10</sup> *Reconsideration Order*, 18 FCC Rcd at 4823-25 ¶ 13-18.

<sup>11</sup> *Id.* at 4824 ¶ 15.

<sup>12</sup> *Id.* at 4824-25 ¶ 17.

revenues from its actual 2003 revenues reported on Form 499-A to arrive at an estimate of the actual revenues for the last three quarters of 2003.<sup>13</sup> The USAC would then "compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate."<sup>14</sup>

Despite the FCC's efforts to correct this problem, AT&T noted that the revised true-up methodology would still penalize carriers that had under-projected revenues for the first quarter of 2003. In a Petition for Waiver, AT&T explained that the revised methodology would not true up projected revenues for the second, third, and fourth quarters with actual collected amounts but would instead net out the first quarter projections against the total actual revenues from 2003.<sup>15</sup> "[B]y netting out the projected amount for the first quarter, the true up payments for the second through fourth quarters are increased by the amount of the underforecasting in the first quarter."<sup>16</sup> This "true up" process "artificially and erroneously inflates USF contributions for the second through fourth quarters" for carriers that under-projected their first quarter revenues. Thus, AT&T requested a waiver allowing it to revised the Form 499-Q for February 1, 2003 to replace the projected collected revenues with actual revenues. SBC and Verizon subsequently submitted petitions requesting the same relief.<sup>17</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 4825 ¶ 17.

<sup>15</sup> AT&T Petition for Waiver, CC Docket No. 96-45 at 5 (Jan. 27, 2004).

<sup>16</sup> *Id.*

<sup>17</sup> Verizon Petition for Waiver, CC Docket No. 96-45 (Feb. 27, 2004); SBC Petition for Waiver, CC Docket No. 96-45 (Feb. 27, 2004).

On July 20, 2004, the FCC released an *Order* (the "*Waiver Order*") granting, in part, the Petitioners' waiver requests.<sup>18</sup> Specifically, the FCC held that the Petitioners had "demonstrated special circumstances that warrant deviation from the . . . universal service true-up procedures for 2003."<sup>19</sup> While the Petitioners had proposed to submit their actual collected revenues for the first quarter, the FCC instead adopted an alternative true-up methodology.<sup>20</sup> Under this alternative methodology, the USAC would "subtract Petitioners' historical gross billed revenues for first quarter 2003 reported on their Form 499-Qs, adjusted to reflect their annual uncollectible rates for 2003 reported on their Form 499-As . . . ."<sup>21</sup> Although the FCC acknowledged that the alternative methodology would not produce an amount equal to the collected revenues for the first quarter, it found that this methodology would avoid creating administrative difficulties and would expedite the true-up process.<sup>22</sup> Thus, the FCC granted a waiver enabling the Petitioners to avoid contributing more than an equitable share to the universal service fund.

Although the FCC declined to extend this relief to all similarly situated carriers, it invited carriers to request relief individually and stated that such petitions "would be evaluated consistent with the precedent established in this Order."<sup>23</sup> The FCC has

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<sup>18</sup> *Waiver Order*, 19 FCC Rcd at 13583 ¶ 8.

<sup>19</sup> *Id.* at 13582 ¶ 7.

<sup>20</sup> *Id.* at 13583 ¶ 8.

<sup>21</sup> *Id.*

<sup>22</sup> Because the USAC already had the Petitioners' historical gross-billed revenues and the uncollectible rate, the FCC concluded that using these figures would accomplish Petitioners' objectives more efficiently and without having to collect additional data or develop new systems to accept or process the data. *Id.*

<sup>23</sup> *Id.* at 13582 ¶ 7 n.15.

subsequently granted the same relief to an additional nine petitioners.<sup>24</sup> SouthernLINC Wireless is similarly situated to the Petitioners. Accordingly, SouthernLINC Wireless respectfully requests a waiver directing the USAC to true up its 2003 revenues using a similar, but not identical, procedure.

### **III. SOUTHERNLINC WIRELESS REQUIRES A WAIVER TO AVOID OVER-CONTRIBUTING TO THE UNIVERSAL SERVICE FUND**

Section 1.3 of the FCC's rules provides that a waiver may be granted "if good cause therefor[e] is shown."<sup>25</sup> Under this rule, the FCC may grant a waiver if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>26</sup> The FCC has concluded that universal service contributors demonstrate special circumstances warranting a waiver of the annual true-up procedure if they under-projected their interstate revenues for the first quarter of 2003.<sup>27</sup> While SouthernLINC Wireless also under-projected its interstate revenues for the first quarter of 2003 and is entitled to a waiver of the true-up procedure, it will need to submit its revised revenue data.

#### **A. SouthernLINC Wireless Has Experienced Special Circumstances**

SouthernLINC Wireless warrants a waiver of the annual true-up process for 2003. In particular, similar to the Petitioners, SouthernLINC Wireless has experienced special circumstances resulting from the under-projection of its interstate revenues for the first quarter of 2003. A waiver of the annual true-up process for SouthernLINC Wireless would

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<sup>24</sup> *Third Waiver Order*, DA 05-306; *Second Waiver Order*, 19 FCC Rcd 24049.

<sup>25</sup> 47 C.F.R. § 1.3.

<sup>26</sup> *Northeast Cellular Tel. 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). The FCC may also consider "hardship, equity, or more effective implementation of policy." *Waiver Order*, 19 FCC Rcd at 13582 ¶ 6.

<sup>27</sup> *Third Waiver Order*, DA 05-306 ¶ 3-4; *Second Waiver Order*, 19 FCC Rcd 24049 ¶ 3-4; *Waiver Order*, 19 FCC Rcd at 13583 ¶ 8.

ensure that the FCC complies with the applicable statutory requirements, serves the public interest, and provides similar relief to similarly situated contributors.

The FCC must assess universal service fees in accordance with its statutory mandate. Section 254(d) of the Communications Act states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, *on an equitable and nondiscriminatory basis*," to the universal service fund.<sup>28</sup> To comply with this mandate, the FCC has implemented an annual true-up procedure to prevent carriers from over- or under-contributing. As the FCC has repeatedly affirmed, "the purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms."<sup>29</sup>

The true-up procedure for 2003 would violate this statutory mandate by requiring certain carriers to contribute more than their equitable share to the universal service fund. In response to multiple petitions, the FCC held that contributors that had under-projected their interstate revenues for the first quarter of 2003 had experienced "special circumstances that warrant deviation from the Commission's universal service true-up procedures for 2003."<sup>30</sup> The FCC also noted that a waiver would be consistent with the public interest because "first quarter 2003 revenues were not utilized to calculate universal service contributions."<sup>31</sup> Thus, the FCC waived the 2003 true-up procedure for the Petitioners.

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<sup>28</sup> 47 U.S.C. § 254(d) (emphasis added).

<sup>29</sup> *Waiver Order*, 19 FCC Rcd at 13582 ¶ 7; *Reconsideration Order*, 18 FCC Rcd at 4824 ¶ 15.

<sup>30</sup> *Waiver Order*, 19 FCC Rcd at 13582 ¶ 7.

<sup>31</sup> *Id.*

SouthernLINC Wireless has experienced similar special circumstances that warrant a waiver of the 2003 true-up procedure. On the Form 499-Q for February 1, 2003, SouthernLINC Wireless under-projected its interstate revenues for the first quarter of 2003. As with the Petitioners, this under-projection skewed the true up for 2003 because the USAC incorrectly attributed the difference between SouthernLINC Wireless's projected and actual revenues for the first quarter to the second, third, and fourth quarters. This, in effect, artificially inflated SouthernLINC Wireless's revenues in the second, third, and fourth quarters, while artificially deflating its actual revenues in the first quarter.

Thus, the USAC reached an inaccurate result for the true up because it only deducted SouthernLINC Wireless's under-projected first quarter revenues, rather than its actual first quarter revenues, from its overall revenues on Form 499-A. Absent a waiver, SouthernLINC Wireless will have to pay more than its "equitable" share to the universal service fund in violation of the statutory requirement and contrary to the treatment of similarly situated contributors.

**B. The FCC Should Permit SouthernLINC Wireless to Submit Its Actual Collected Revenues**

The FCC should waive the deadline for the filing of revisions to the Form 499-Q for February 1, 2003, to enable SouthernLINC Wireless to substitute actual collected revenues for the projected revenues in the first quarter of 2003.<sup>32</sup> Although the FCC declined to grant this relief to the Petitioners, the FCC's alternative true-up methodology would not improve the accuracy of the 2003 true-up process for SouthernLINC Wireless

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<sup>32</sup> Alternatively, the FCC could allow SouthernLINC Wireless to file a revised Form 499-Q for May 1, 2003, reflecting its actual collected revenues for the first quarter instead of its erroneous historical gross-billed revenues.

and would instead result in inequity, hardship, and an unfair application of the revised true-up policy.

The FCC should allow SouthernLINC Wireless to revise its Form 499-Q for February 1, 2003, to replace the projected collected revenues on Line 120 of its Form 499-Q with actual collected revenues. This revised figure would ensure that the USAC performs the true-up for the second through fourth quarters without incorporating any revenues from the first quarter.

The relief granted to the Petitioners would not resolve the problem because SouthernLINC Wireless mistakenly under-reported its historical gross-billed revenues for the first quarter of 2003 on the Form 499-Q for May 1, 2003. Because of this error on SouthernLINC Wireless's May 2003 Form 499-Q, if the USAC were to simply subtract SouthernLINC Wireless's incorrect May 2003 historical gross-billed revenue figure from the actual revenues on its Form 499-A, SouthernLINC Wireless would not receive the full relief to which it is entitled. Without using a different method for correcting the under-reporting in the first quarter of 2003, SouthernLINC Wireless would still contribute more than its equitable share to the Universal Service Fund for 2003 and would not receive the relief the FCC has already granted to similarly situated contributors. Likewise, using the alternative methodology adopted in the *Waiver Order* would in effect still artificially shift a significant portion of SouthernLINC Wireless's first quarter revenues into the second, third, and fourth quarters. This revenue shift would not satisfy the objective of the FCC's revised true-up policy, which is intended to eliminate the first quarter from the true-up calculation.

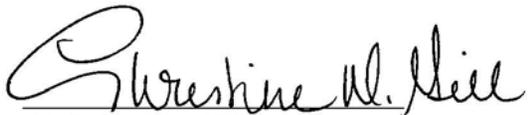
This approach would be consistent with the statutory mandate of assessing contributions on an "equitable and nondiscriminatory" basis. Since simply applying the

corrective approach adopted in the AT&T *Waiver Order* will not result in SouthernLINC Wireless receiving an appropriate refund, the Commission should permit SouthernLINC Wireless either to correct its Form 499-Q for February 1, 2003 or for May 1, 2003. These considerations outweigh any administrative inconvenience that might result from the requested relief.

**WHEREFORE, THE PREMISES CONSIDERED,** SouthernLINC Wireless respectfully requests a waiver to revise either its Form 499-Q for February 1, 2003, or its Form 499-Q for May 1, 2003, to reflect actual collected revenues for the first quarter of 2003 in a manner consistent with its Form 499-A filed on April 4, 2004.

Respectfully submitted,

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