Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Waiver of Section 54.802(a)	)	CC Docket No. 96-45
of the Commission's Rules	)	

AT&T PETITION FOR WAIVER OF SECTION 54.802(A) OF THE COMMISSION'S RULES

Pursuant to section 1.3 of the Commission's rules, AT&T Communications of NY and AT&T Communications of California (hereinafter, collectively, "AT&T") request a waiver of the September 29, 2006 deadline for filing line count data for Interstate Access Support (IAS) set forth in section 54.802(a) of the Commission's rules.[1] On Monday, October 2, the first business day following the deadline, AT&T discovered that, due to an oversight by the personnel responsible for compiling and filing the line count data, it inadvertently had not submitted the data for the 2nd quarter by the deadline on Friday, September 29. AT&T took immediate action to prepare and submit the data, which were delivered to Universal Service Administrative Company ("USAC") the next day, October 3, which was just two business days late, but was informed by USAC that it would not accept the data absent a waiver of the deadline. AT&T has consistently met the IAS filing deadlines in prior quarters, and is filing this petition to ask that the Bureau waive the September 29, 2006 date and direct USAC to accept the line count data. Grant of this petition will promote the public interest because, as the Commission previously has acknowledged, Interstate Access Support funding based on the line count data serves a

[1] 47 C.F.R. § 54.802(a).

vitally important role in assuring affordable telephone service. Grant also is consistent with Commission precedent – in comparable circumstances, the Commission has granted waivers of deadline for filing line count data for IAS support. Finally, timely granting of the petition will serve the public interest by minimizing the impact of the late-filed data and helping to assure that USAC is not inconvenienced by the delay from the original filing date.

1. BACKGROUND.

Section 54.802(a) of the Commission's rules requires that line count data be filed on a quarterly basis with USAC. AT&T recognizes that USAC and the Commission place a high priority on compliance with this filing date and, consequently has sought diligently to submit line count data on time. Indeed, prior to September 29, 2006, AT&T has never failed to meet the relevant filing date. Nevertheless, due to an oversight by the AT&T personnel responsible for preparing and submitting the line count data, AT&T inadvertently missed the Friday, September 29 filing deadline. On the next business day, Monday, October 2, AT&T management personnel realized that those responsible for submitting the line count data for New York and California inexplicably had failed to make the requisite filing. AT&T took immediate action to gather the requisite line count data, prepare the appropriate forms, and to file those forms with USAC on the following day. Those forms were delivered to USAC on Tuesday, October 3, just two business days passed the deadline. On the same day (Tuesday, October 3), USAC acknowledged receipt of the forms, but informed AT&T that, because they were received passed the September 29 deadline, USAC would not accept the line count data and that AT&T would have to obtain a waiver.

AT&T regrets the oversight that caused the late filing in this instance, and has initiated additional procedures to ensure that it does not miss the line count filing deadline in future. Specifically, AT&T has instituted a process to electronically notify the personnel responsible for filing the line count data of the deadlines for filing those data one month, two weeks and again one week prior to the actual filing due date. AT&T also has established quarterly Management Reviews, which will occur two weeks prior to each filing deadline, to ensure that the personnel responsible for collecting and filing the requisite data have taken all steps necessary to file the data by the deadline.

2. DISCUSSION.

Section 1.3 of the Commission's rules provides that the Commission may waive its rules "if good cause therefore is shown."[2] Generally, such a waiver is appropriate if "special circumstances warrant deviation from the general rule and such deviation will serve the public interest," and where strict application of the rules is inconsistent with the public interest.[3] In applying this standard, the Commission typically considers, *inter alia*, whether grant of a waiver will avoid hardship or inequity or result in more effective implementation of overall Commission policy.[4] Plainly, AT&T's requested waiver meets these criteria.

In 1999, the Commission adopted an integrated interstate access reform and universal service proposal submitted by members of the Coalition for Affordable Local

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[2] 47 C.F.R. § 1.3.

[3] *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).

[4] *WAIT Radio*, 418 F.2d at 1159.

and Long Distance Service (CALLS).[5] The CALLS plan simultaneously removed implicit subsidies from interstate access charges and replaced them with a new interstate access universal service support mechanism (that is, Interstate Access Support mechanism) that was portable to competitors.[6] The Commission concluded that this proposal would achieve very important public interest benefits. In particular, it found that the CALLS plan would "reduce[], and in most instances eliminate[], implicit subsidies among end-user classes; make[] implicit universal service funding in access charges explicit and portable; provide[] significant benefits to consumers who make few or no long distance calls; and set[] carrier charges at reasonable levels."[7] The CALLS plan thus was part and parcel of the Commission's overall strategy to promote competition in all telecommunications markets, and to transition away from the existing system of implicit subsidies on which federal and state regulators previously had relied to achieve universal service objectives to support mechanisms that will be sustainable in a competitive marketplace as Congress directed.[8] And the IAS mechanism was the centerpiece of that plan by replacing implicit support in interstate access charges with explicit support.[9] In the Commission's words, the IAS mechanism was a "necessary first

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[5] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001) (*CALLS Order*).

[6] *Id.* at para. 1-4.

[7] *Id.* at para. 29.

[8] *Id.* at para. 4.

[9] *Id.* at para. 185.

step on the path to a more competitive marketplace" and critical to achieving universal service objectives.[10]

Absent a waiver of the September 29 deadline for submitting line count data, AT&T will be ineligible to obtain the IAS support that the Commission has acknowledged is a critical component of its access charge and universal service reform efforts. Moreover, in light of AT&T's history of compliance with the deadline and section 54.802(a), as well as its prompt efforts to remedy its error, strict enforcement of the filing deadline would disproportionately penalize AT&T for its oversight. Granting a waiver of the deadline, and, in effect, giving AT&T a brief extension of the period in which to file these data should not impose significant hardship on USAC. In these circumstances, the public interest weighs strongly in favor of granting AT&T the waiver and brief extension it seeks.

Commission precedent also supports granting AT&T the waiver it seeks. Just last July, the Bureau granted Verizon a waiver of the deadline for submitting line count data to obtain IAS support, and, last October, it granted Citizens Communications and Frontier Communications a waiver in comparable circumstances.[11] In both those cases, the petitioners had inadvertently failed to file line count data by the deadline, promptly sought to remedy their errors by filing the data only two business days passed the deadline, and implemented additional procedures to ensure that they would not miss the

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[10] *Id.* at para. 203.

[11] *Federal-State Joint Board on Universal Service, Verizon Communications Inc., Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, DA 06-1861 (rel. Sep. 12, 2006) (*Verizon Order*); *Federal-State Joint Board on Universal Service, Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, DA 05-2829 (rel. Oct. 27, 2005) (*Citizens/Frontier Order*).

deadline in future.[12] Likewise, AT&T promptly sought to remedy its oversight within two business days and has implemented procedures to ensure that it timely files line count data in future.

For the foregoing reasons, AT&T respectfully requests that the Bureau promptly grant this petition and direct USAC to accept AT&T's third-quarter 2006 line count data.

Respectfully submitted,

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[12] *Citizens/Frontier Order* at para. 9; *Verizon Order* at para. 9.