

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

REQUEST FOR REVIEW BY)	
AT&T INC. OF DECISION OF)	CC Docket No. 96-45
UNIVERSAL SERVICE)	WC Docket No. 05-337
ADMINISTRATOR)	

COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments on AT&T's above-referenced request for review of decisions of the Universal Service Administrator.¹ ITTA members provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to over 30 million customers in 44 states. ITTA members are, respectively, predominantly composed of multiple local operating companies, many of which have undergone audits during the past several years pursuant to the Improper Payments Information Act (IPIA),² as conducted under the aegis of the Commission's Office of the Inspector General (OIG). As ITTA has described to the Commission previously, ITTA supports efforts intended to

¹ *Request for Review by AT&T of Decision of the Universal Service Administrator*, CC Docket No. 96-45, WC Docket No. 05-337 (filed Apr. 24, 2009) (AT&T Request).

² Improper Payments Information Act, PL 107-300, 116 Stat. 2350 (2002).

ensure proper execution of the Universal Service Fund (USF) program.³ The current audits as they are conducted, however, have often been hampered by several factors, including, but not limited to, contract auditors who are not familiar with the telecommunications industry and relevant regulations, and audit processes that have created great costs for carriers and the USF without discernible benefit. ITTA is pleased that, following communications between the industry and the Commission, some improvements to the process have been implemented. And, ITTA remains committed to working with the Commission to ensure that the reasonable steps can be implemented to ensure compliance with Commission regulations and the goals of the IPIA. Nevertheless, the recent request of AT&T for review of several Universal Service Administrator decisions highlights one aspect of the process that warrants immediate change.

II. DISCUSSION

AT&T requests review of three findings of “material noncompliance” that were issued in audits of certain of the company’s subsidiaries. These findings relate to audits conducted of several AT&T mobile affiliates, namely: Acadiana Cellular General Partnership, Lafayette MSA Limited Partnership, and New Cingular Wireless PCS, LCC (collectively, AT&T Mobility Louisiana); New Cingular Wireless PSC, LLC (referred to in the AT&T filing and herein as AT&T Mobility Mississippi); and, CCPR Services, Inc. (referred to in the AT&T filing and herein as AT&T Mobility Puerto Rico). In each instance, the finding was triggered by an under- or over-payment that exceeded a static \$100,000.00 threshold, but which bore no relationship to the total USF receipts of the

³ See, *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight: Reply Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 05-195 (Dec. 15, 2008).

particular company. Qualitatively, the errors reflected, of the various carriers, an underpayment of 0.10 percent (AT&T Mobility Louisiana); and overpayment 1.17 percent (AT&T Mobility Mississippi); and, an overpayment of 0.65 percent (AT&T Mobility Puerto Rico). The findings of material noncompliance based on these amounts are troubling because they do not reflect evidence of substantial malfeasance, willful or inadvertent. To the contrary, the errors relate to circumstances that have been predicted and are anticipated by the Commission. Accordingly, the ascription of “material noncompliance” in such circumstances demonstrates why the quantitative threshold is too low, and why it should be replaced with a percentage-based standard that would more accurately portray performance of the USF as manifested by carrier actions.

The single \$100,000.00 threshold should be eliminated. A finding of material noncompliance should not be imposed when discrepancies do not evidence systemic internal carrier processes that would result in perpetual problems. A finding of material noncompliance is best reserved for situations in which the scope of error indicates a break-down, intentional or inadvertent, that leads to substantial discrepancies in the USF distribution process. Accordingly, the threshold for material noncompliance should not be established by a static amount that offers no comparative analysis with the specific company’s USF receipts. As described above, as applied to the AT&T companies, the current threshold triggered a finding of material noncompliance for under- and over-payments that ranged from 0.10 percent to 1.17 percent. A more rational approach would be to establish a threshold set at a percentage of a carrier’s annual USF support. That type of approach would introduce a dynamic indicator that provides a far more relevant view of carrier performance within the overall analysis of the USF program.

ITTA supports AT&T's suggestion that five percent may be a reasonable starting point at which material noncompliance might be triggered.⁴ ITTA does not imply that discrepancies of lesser amounts should not be noticed. Rather, smaller discrepancies should be corrected, but the finding of material noncompliance should be reserved solely for errors whose size and scope indicate systemic internal procedural failures. The \$100,000.00 threshold as it exists bears no rational relationship to the performance of the USF program or the carriers since, as evidenced among the AT&T companies, it can reflect fractions of percentages of a carrier's total USF receipts. A carrier's performance should not be measured by minute deviations occasioned by normative error. Ascribing a finding of material noncompliance where a carrier is overwhelmingly in compliance with applicable regulations obscures the purpose of the audits by depriving carriers, regulators, and policy-makers with a focused and well-defined image of total overall USF program performance. The broad-brush effect of the current threshold hardly delivers findings that can inform a studied analysis of USF.

In the case of the AT&T companies, specifically, the utter lack of relationship between the \$100,000.00 threshold and so-called "material noncompliance" can be discerned by examining the underlying facts leading to the auditor's findings. As reported by AT&T, the subsidiary companies submitted inaccurate line counts on their respective Form 525 during the period that was later audited. Subsequent to that initial submission, however, and prior to the audit, each of the subsidiaries corrected the filing by submitting a revised Form 525.⁵ As noted by AT&T, Form 525, in fact, recognizes

⁴ AT&T Request at 8.

⁵ AT&T Request at 4.

that incorrect line counts are a common occurrence, and on the Form itself directs carriers to indicate whether the filing is an “original” or a “revision.”⁶ By including this alternative language on the Form itself, it is evident that the Commission anticipated that under normal and ordinary circumstances carriers will find that incorrect data has been submitted, and that carriers will then file a revision. Accordingly, the AT&T subsidiaries’ actions in filing revised line counts can hardly be characterized as “material noncompliance” since those actions are entirely consistent with the range of compliance and circumstances the Commission anticipated and provided for in Form 525. These processes, which are consistent with what the Commission evidently envisioned, cannot be categorized reasonably as “significant deficiencies in the related internal control environment.”⁷ Ultimately, although these normal and anticipated errors were corrected, the auditors issued a finding of “material noncompliance” because the deviations exceeded a static threshold that lacks reasonable proportional correlation to the total amounts audited.

Materiality should not be defined only by a single quantified value. “Materiality,” by definition, implies a subjective measure: it is defined as substantive, noticeable, or relevant. It is difficult to discern where the findings arising out of the AT&T audits, which ranged from 0.10 percent to 1.17 percent, would be considered substantive, noticeable, or relevant. Reliance on a static threshold, without consideration of a contextual analysis relating to the proportion of those amounts to the total carrier receipts, ignores the meaning of the term “material.” The universally-applicable

⁶ See AT&T Request at 4.

⁷ AT&T Request, Appendix A at 6; Appendix B at 6; Appendix C at 5.

\$100,000.00 threshold appears to presume that discrepancies that would have a “material” effect on some financial statements or regulatory findings would have a similarly substantive effect on *all* financial statements or regulatory findings, including those of differently-sized entities. That sort of assumption simply robs the designation of any meaning because it eliminates the subjective evaluation implied by “material.”

It fails reason to declare that a discrepancy of \$100,000.00 for a small carrier should bear the same result of \$100,000.00 for a carrier with exponentially larger operations, significantly more access lines, and greater USF receipts that may well eclipse the total USF receipts tendered to the smaller carrier. To reiterate, ITTA does not propose that errors beneath a material threshold should be ignored. Rather, ITTA proposes that a dynamic percentage, rather than static, “one size fits all” threshold, be employed to depict more accurately program performance as manifested in carrier activity.

An article on government accounting offers valuable perspective for the Commission’s consideration in this regarding. Addressing the gradations of findings in auditors’ reports, the author explains:

Materiality for financial reporting is the risk of error or misstatement that could occur in a financial report that would impact management’s or user’s decisions or conclusions based on such a report. . . . Management must determine if there is more than a remote likelihood that errors or misstatements in a financial report individually or in the aggregate could have a material effect on the financial report.⁸

The current \$100,000.00 threshold fails to demonstrate whether, in fact, a carrier is in “material noncompliance” because the threshold bears no proportional relationship to a carrier’s overall actions. Accordingly, that quantitative trigger should be replaced

⁸ Relmond P. Van Daniker, “Materiality in Government Auditing,” *Journal of Accountancy* (Feb. 1, 1994).

with a percentage-based threshold that would provide a more accurate depiction of performance.

III. CONCLUSION

The \$100,000.00 threshold should be replaced with a percentage-based trigger by which a finding of a material noncompliance could be applied. The static, “one size fits all” threshold undermines the meaning of the term “material,” and deprives regulators, policy-makers, and the industry of a meaningful contextual portrait of the USF and carrier activity.

Respectfully submitted,

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