

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
AT&T Inc. Application for Review of a)	
Decision of the Wireline Competition Bureau)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

USTelecom¹ submits these comments in response to the Federal Communications Commission’s (“Commission’s”) Public Notice (“Notice”) requesting comments *In the Matter of AT&T Inc. (“AT&T”) Application for Review of a Decision of the Wireline Competition Bureau (“Application for Review”)*.² USTelecom supports the application for review filed by AT&T of the decision of the Wireline Competition Bureau (“Bureau”) in which the Bureau upheld a decision by the Universal Service Administrative Company (“USAC”) that AT&T’s wholly-owned subsidiaries Southwestern Bell Telephone, L.P. and Centennial Communications Corp. had not timely filed revisions to their respective 2005 FCC Forms 499-A and denied AT&T’s request for waiver of the filing deadline.³

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See FCC Public Notice, *Comment Sought on AT&T Inc. Application for Review of a Decision of the Wireline Competition Bureau*, WC Docket No. 06-122, (released Sept. 24, 2010).

³ See *Requests for Review of Decisions of Universal Service Administrator by Southwestern Bell Telephone, L.P. and Centennial Communications Corp.*, Applications for Review of Action Taken Pursuant to Delegated Authority of AT&T Inc., WC Docket 06-122 (filed Sept. 13, 2010).

These comments will focus on the asymmetrical nature of the Bureau's Form 499-A revision deadline. USTelecom will not repeat the clear and persuasive recitation of facts provided by AT&T in its Application for Review in support of its waiver requests, except to note that each deadline was missed by only a few days at the most, AT&T has a history of submitting its Form 499 filings on time, AT&T took preventive action to prevent a recurrence of the one-time error and Centennial took action to ensure that its future filings will be timely, and Centennial relied to its detriment on inaccurate information supplied by USAC and acted in good faith. Nor will USTelecom recount the more than adequate reasons in their Requests for Review that "were as legitimate as – and, in many cases, identical to – those offered by the seventeen petitioners whose requests for waiver of Form 499 filing deadlines were granted."⁴ AT&T and its Southwestern Bell and Centennial subsidiaries should not bear the hardship of approximately \$1 million in overpayments that will force them to contribute more than their equitable share of the universal service support burden.

I. The Bureau's Form 499-A Modification Order Is Contrary to Sound Public Policy

If allowed to stand, the Bureau's decision is profoundly bad policy, encouraging carriers not to correct errors in reported revenues on their Form 499-As. The asymmetrical "heads I win, tails you lose" nature of the *Form 499-A Modification Order*⁵ discourages contributors from reviewing their prior year Form 499-A filings and correcting honest mistakes. Liability for underpayments but lack of credit for

⁴ See *Application for Review* at page 15.

⁵ *Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 98-171, 97-21, DA 04-3669 (rel. Dec. 9, 2004) (*Form 499-A Modification Order*).

overpayments is not only unfair, but it undermines the integrity of the universal service support program. Contributors calculate and make payments to the fund, and pass through those charges to end users, based on good faith compliance with the Commission's reporting requirements. That good faith should not be unnecessarily tested by imposition of unfair and inequitable requirements that discourage constant vigilance to ensure contribution amounts are accurate.

II. It is 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 the *Form 499-A Modification Order*, the Commission never explained why the consequences to the Universal Service Fund of an overpayment were not the same as for an underpayment. The Bureau concluded that establishing a hard deadline for only those revisions that would decrease a provider's contributions "will help ensure the stability and sufficiency of the federal universal service fund . . . [and] a firm deadline for revised [Form 499-A filings] will improve the integrity of the universal service contribution methodology and promote efficiency in administration of the universal service support mechanisms, consistent with the Commission's rules and policies."⁶

It is unclear how Fund "stability," which presumably refers to the size of the fund and the level of the contribution factor, is not equivalently impacted by overpayments as underpayments. Swings in the contribution factor far in excess of those that would, in most if not all cases, be caused by corrected 499-A forms are frequent and attributed to "prior period adjustments" which appear perfectly acceptable to the Commission.

"Sufficiency" of the Fund has been defined from both a distribution and contribution standpoint. A Fund that is larger than necessary paid by excess

⁶ See *Form 499-A Modification Order*, paragraph 10.

contributions is just as insufficient as a Fund that is too small.⁷ So it is unclear as to how the goal of sufficiency is enhanced by an asymmetric rule.

Certainly a system that discourages contributors from reviewing their prior year Form 499-A filings and correcting honest mistakes and that may force some carriers to pay more than the proper amount does not enhance the integrity of the collection mechanism. It does just the opposite. The integrity of the Fund is supported by a system that permits and encourages providers to calculate and report the most accurate data available, even if that data is corrected more than one year after the original deadline for submission.

Whether the issue is overpayment or underpayment, there can be good reasons why a provider may not be able to meet the one-year deadline for amending the Form 499-A. For example, a provider may discover an accounting error that impacted data from more than just the prior year, and thus need to correct Form 499-As from years before that.

Moreover, by choosing to establish a hard deadline for informing USAC of overpayments while not having a deadline for underpayments, the Bureau created a situation that will result in deliberately requiring excessive contributions by some providers. This is in violation of the statutory requirement that providers are required to contribute to the universal service fund on an “equitable and non-discriminatory basis.”⁸

⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir., 2000)

⁸ See 47 U.S.C. Sec. 254(d)

III. The Bureau's Deadline is Procedurally Defective

The deadline that the Bureau is attempting to enforce in the *Form 499 Revision Denial Order*⁹ was never subject to notice and comment. Moreover, it is a substantive change to the Commission's contribution rules which the Bureau lacked the authority to promulgate. The Bureau's authority only allows it "to mak[e] changes to the administrative aspects of the reporting requirements, not to the substance of the underlying programs."¹⁰ Promulgating a rule which denies contributors the ability to recover overpayments after a period of time while requiring them to file revisions resulting in an increased contribution, resulting in some providers overpaying universal service support contributions, is clearly substantive and should be subject to notice and comment.

IV. Conclusion

The asymmetrical application of deadlines to amended 499-A payments, depending on whether the amendments expose overpayments or underpayments is procedurally and substantively defective and should be overturned. Providers such as

⁹ *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, DA 10-1514 (rel. Aug. 13, 2010)

¹⁰ *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 et al.*, CC Docket Nos. 96-45 et al., FCC 99-175, para. 39 (rel. July 19, 1999) (explaining that such "administrative aspects" include "where and when worksheets are filed").

AT&T adversely affected by the relevant Bureau decisions should receive refunds based on late-filed Form 499-A revisions.

Respectfully submitted,

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