

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Requests for Review of Decisions of Universal	)	WC Docket No. 06-122
Service Administrator by Southwestern Bell	)	
Telephone, L.P. and Centennial	)	CC Docket No. 96-45
Communications Corp.	)	

**COMMENTS OF VERIZON<sup>1</sup> AND VERIZON WIRELESS**

The Commission should repeal the asymmetrical one-year deadline for providers to re-file their FCC Form 499As if form amendments would reduce their Universal Service Fund (USF or “fund”) contribution obligations. The one-year deadline to seek a USF refund conflicts with the Wireline Competition Bureau’s limitless obligation re-file forms that would increase a carrier’s contributions. The deadline, set by the Bureau in 2004, suffers from both procedural and substantive defects. The Commission should grant AT&T’s appeal<sup>2</sup> in the present matter and eliminate the one-year deadline altogether, or at a minimum set a symmetrical limitation on any obligation to re-file when a carrier’s universal service contributions would increase.

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> AT&T Application for Review of Action Taken Pursuant to Delegated Authority, *Requests for Review of Decisions of Universal Service Administrator by Southwestern Bell Telephone, L.P. and Centennial Communications Corp.*, WC Docket No. 06-122, CC Docket No. 96-45 (Sept. 13, 2010). Southwestern Bell and Centennial are now part of the combined AT&T.

## DISCUSSION

1. As a procedural matter, the Bureau's *Form 499 Order*<sup>3</sup> that established the one-year deadline to seek a USF refund should be overturned on two grounds. First, the Bureau exceeded its authority in adopting a firm deadline for filing amended Form 499As. The Commission delegated authority to the Bureau only to make "changes to the *administrative* aspects of the reporting requirements," not substantive USF policies. *Form 499 Order* ¶ 9 (emphasis added). The Commission's rules also do not permit the Bureau to engage in rulemaking. 47 C.F.R. § 0.291(e). Second, the Bureau did not give parties notice and opportunity to comment on the then-new Form 499 amendment rules.<sup>4</sup>

The *Form 499 Order* attempted to address both of these problems by asserting that the then-new amendment rules were "procedural, non-substantive changes to the administrative aspects of the reporting requirements." *Form 499 Order* n.31. This is not correct. Rather than merely setting a deadline for filing the forms, the Bureau made a substantive policy decision in setting the criteria to amend forms that contain revenue reporting errors. Specifically, the Bureau set substantive policy by making the one-year 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 the Universal Service Administrative Company (USAC). *Form 499 Order* ¶¶ 10-12. 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 of

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<sup>3</sup> *Federal-State Joint Board on Universal Service, et al.*, Order, 20 FCC Rcd 1012 (2004), *applications for review pending* ("*Form 499 Order*").

<sup>4</sup> *See* 5 U.S.C. § 553 (requiring agencies generally to afford notice of a proposed rulemaking and opportunity for public comment before a rule is adopted).

form revisions. Because the re-filing rules establish “substantive” policy changes, there should have been the opportunity for notice and comment, and full Commission review, before the rules were adopted.<sup>5</sup>

2. The Form 499A re-filing rule is substantively flawed. There often are very good reasons why a carrier cannot meet the one-year deadline for amending a Form 499A. For example, government agencies—such as state public service commissions, taxing authorities, or the Commission itself—and internal and external auditors may make decisions that require restatements extending beyond one year. Moreover, adopting a one-year deadline for filing changes that would decrease a carrier’s USF contributions and a corresponding limitless obligation to re-file an increase in contributions assures that many carriers will make significant USF contributions in excess of what they actually owe.

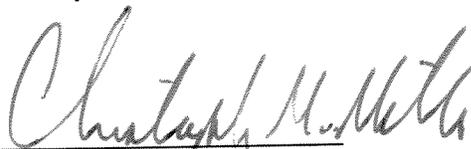
The *Form 499 Order* does not attempt to reconcile the inequity of this situation—except for a passing reference to a need to create an “incentive to submit accurate revenue information in a timely manner.” *Form 499 Order* ¶¶ 10-12. The order does not even discuss why, on the one hand, it is appropriate to limit USF refunds to one year, and on the other hand provide no certainty for carriers—or their customers and investors—with a corresponding limit on required re-filings that would increase contributions. These asymmetrical obligations are arbitrary and capricious and violate the Section 254 requirement that USF contributions be assessed in “equitable and non-discriminatory” manner. *See* 5 U.S.C. § 706 and 47 U.S.C. § 254(d).

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<sup>5</sup> The procedural exception to the APA’s notice and comment requirements, upon which the Bureau attempted 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).

For these reasons, the Commission should grant AT&T's appeal and either eliminate the one-year Form 499A re-filing deadline, or at a minimum set a symmetrical limitation on any obligation to re-file when a carrier's universal service contributions would increase.

Respectfully submitted,

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