

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 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
	)	
Requests for Review of Decisions of Universal	)	
Service Administrator by Southwestern Bell	)	
Telephone, L.P. and Centennial	)	
Communications Corp.	)	

**REPLY COMMENTS OF AT&T INC.**

The record developed in response to AT&T's appeal<sup>1</sup> of the Wireline Competition Bureau's (Bureau's) decision to reject Southwestern Bell Telephone, L.P.'s and Centennial Communications Corp.'s 2005 FCC Form 499-A revisions is clear: The Commission should reverse the Bureau's *Form 499 Revision Denial Order*, which attempts to enforce an invalid deadline to the detriment of AT&T's two affiliates,<sup>2</sup> and the Commission should finally grant AT&T's almost six year-old appeal of the Bureau's order establishing the procedurally and substantively defective FCC Form 499-A revision deadline.<sup>3</sup> As the commenters explain, the deadline that the Bureau is selectively enforcing against two of AT&T's affiliates is procedurally

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<sup>1</sup> AT&T Inc. Application for Review of Action Taken Pursuant to Delegated Authority, WC Docket No. 06-122, CC Docket No. 96-45 (filed Sept. 13, 2010) (AT&T Appeal).

<sup>2</sup> *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) (*Form 499 Revision Denial Order*).

<sup>3</sup> *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 *et al.*, 20 FCC Rcd 1012 (WCB 2004) (*Form 499-A Modification Order*); SBC Communications Inc. Application for Review of Action Taken Pursuant to Delegated Authority, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005); USTelecom Comments; Verizon and Verizon Wireless (Verizon) Comments.

flawed as it was never subject to notice and comment and the Bureau lacked the authority to establish it in the first place.<sup>4</sup> Moreover, this deadline is substantively flawed because it has the effect of both requiring carriers to make universal service contributions in excess of what they actually owe (in violation of section 254(d) of the Communications Act of 1934, as amended) and discouraging carriers from reviewing and correcting prior year FCC Form 499-A filings.<sup>5</sup> Finally, the Bureau has acted arbitrarily and capriciously by attempting to enforce this deadline against AT&T's affiliates while waiving this deadline for at least seventeen other similarly situated petitioners.<sup>6</sup>

In 2004, the Bureau issued an order establishing a one year deadline for revisions to the FCC Form 499-A, the form used by universal service contributors to report their assessable and non-assessable revenues, if the revision has the effect of reducing the filer's contribution obligations. If a contributor misses that one year revision deadline by even a single day, as Southwestern Bell did, the Bureau has selectively directed the Universal Service Administrative Company (USAC), which administers the universal service fund on the Commission's behalf, to reject those revisions as untimely. Despite claims about the importance of adopting a "firm deadline for filing revisions" in order to "ensure the stability and sufficiency of the federal universal service fund," along with "improv[ing] the integrity of the universal service contribution methodology and promot[ing] efficiency in administration of [the universal service fund],"<sup>7</sup> the Bureau erroneously concluded that these goals – and the importance of a firm deadline – only apply to revised filings that would decrease, not increase, a filer's contribution obligations. If a contributor discovers that it underreported its assessable revenue years earlier,

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<sup>4</sup> USTelecom Comments at 5; Verizon Comments at 2.

<sup>5</sup> Verizon Comments at 3; USTelecom Comments at 4.

<sup>6</sup> USTelecom Comments at 2.

<sup>7</sup> *Form 499-A Modification Order* at ¶ 2.

the instructions to the FCC Form 499-A state simply that a “filer must submit a revised Worksheet if it discovers an error in the revenue data that it reports.”<sup>8</sup>

We agree with the commenters that this asymmetrical “heads I win, tails you lose” FCC Form 499-A revision deadline was a substantive policy change to the Commission’s contribution rules, which the Bureau lacked the authority to promulgate.<sup>9</sup> As such, the Commission was required to afford parties the opportunity for notice and comment and full Commission review before this re-filing deadline became effective.<sup>10</sup> Had the Commission sought comment on this proposal, parties like AT&T, Verizon, USTelecom and its members likely would have described why adopting an asymmetrical deadline is bad policy. As Verizon explains, there are good reasons why contributors often cannot meet the one-year revision deadline (e.g., governmental authorities or auditors issuing decisions that require restatements going back more than one year).<sup>11</sup> Additionally, establishing a rule that discourages contributors from reviewing prior year revenue information undermines – not “improves”<sup>12</sup> – the integrity of the universal service support program.<sup>13</sup> USTelecom is correct that the Commission must rely on contributors’ good faith compliance with the Commission’s reporting requirements and 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.”<sup>14</sup>

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<sup>8</sup> 2010 Instructions to the FCC Form 499-A at 11.

<sup>9</sup> USTelecom Comments at 2, 5; Verizon Comments at 2-3.

<sup>10</sup> Verizon Comments at 3; USTelecom Comments at 5.

<sup>11</sup> Verizon Comments at 3. We note in this regard that the Bureau has a stack of contributor-related appeals that have been pending before it for years. The Bureau’s failure to act on these appeals in a timely fashion may result in other providers being unable to revise their revenues in the event the Bureau ultimately agrees with the appealing party.

<sup>12</sup> *Form 499-A Modification Order* at ¶ 2.

<sup>13</sup> USTelecom Comments at 3.

<sup>14</sup> *Id.* at 3.

For reasons articulated in AT&T's Appeal and the comments, the Commission should grant *both* of AT&T's pending appeals, thereby overturning the asymmetrical FCC Form 499-A revision deadline and directing USAC to accept the AT&T affiliates' 2005 FCC Form 499-A revised filings.

Respectfully Submitted,

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