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

In the Matter of	)	
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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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ORDER

Adopted: June 13, 2002 **Released:** June 13, 2002

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a request filed by AT&T Communications, Inc. (AT&T) to contribute to universal service based on its projected, rather than its historical, revenues on a going-forward basis.[1] AT&T states that the combination of assessing contributions on revenues from two quarters prior and its declining revenues forces it to recover its universal service contributions from a smaller customer base than the one on which it is assessed. As a result, AT&T asserts that it must charge consumers an amount higher than the amount of the contribution factor.[2] AT&T states this places them at a competitive disadvantage vis-à-vis Bell Operating Companies that are entering the long distance market and have increasing interstate revenues. AT&T asserts that, if it is permitted to contribute on the basis of projected, rather than historical, revenues, it will decrease its universal service line item on residential customers' bills. Grant of this waiver, however, would also increase the contribution factor and amounts paid by all other contributors to universal service.

2. Based on the facts presented, we conclude that AT&T has not demonstrated good cause

[1] *See* Letter from Robert W. Quinn, Jr., AT&T to Magalie Roman Salas, Federal Communications Commission, filed Dec. 13, 2001 (*AT&T Request*). In order to grant AT&T's request, the Commission must waive sections 54.709 and 54.711 of the Commission's rules. Thus, we have treated AT&T's request as a request for waiver of the Commission's rules governing universal service contributions. In subsequent filings, AT&T renewed its request and specifically requested a waiver of the universal service contribution rules. *See* Letter from Robert W. Quinn, Jr., AT&T to Magalie Roman Salas, Federal Communications Commission filed Feb. 7, 2002; Letter from Robert W. Quinn, Jr., AT&T to Marlene Dortch, Federal Communications Commission, filed May 15, 2002 (*AT&T Supplemental*).

[2] Carriers currently contribute a percentage of interstate and international end user telecommunications revenues to universal service. This percentage is known as the "contribution factor." The contribution factor is the ratio of total projected quarterly costs of the universal service support mechanisms to total end-user interstate and international telecommunications revenues.

to justify waiver of the Commission's universal service contribution rules at this time, and we therefore deny AT&T's request for waiver. Specifically, we find that AT&T has not sufficiently distinguished itself from other similarly-situated contributors that are also experiencing declining revenues. Indeed, as described below, all other contributors are opposing this waiver.[3] Thus, AT&T has failed to demonstrate special circumstances warranting grant of a waiver. Moreover, we find that grant of a waiver would not serve the public interest because it would result in an increase in the amount all other contributors make to universal service and therefore an increase for non-AT&T customers.

3. Although we do not believe AT&T has sufficiently justified its request for waiver of the universal service rules, the Commission has recognized that changes in the evolving telecommunications marketplace may warrant more fundamental reform of the contribution system.[4] The Commission recently launched a proceeding to examine in detail whether reform of the contribution system is warranted in light of changes in the telecommunications market, including declines in interstate telecommunications revenues and migration away from traditional long distance service to new technologies and bundled wireless service packages.[5] The Commission is actively reviewing the record developed in that proceeding and working with industry and other affected parties, such as consumer groups and state regulatory commissions, to ensure the stability and sufficiency of universal service as the marketplace evolves. By examining the contribution assessment methodology as a whole and developing a comprehensive strategy for reform, the Commission will determine the most appropriate contribution system for the approximately 2200 entities that contribute to universal service, while ensuring that contribution obligations continue to be equitable and nondiscriminatory for *all* contributors.

II. BACKGROUND

A. Section 254 and the Commission's Rules

4. Section 254 of the Communications Act of 1934, as amended (Act), instructs the Commission to establish explicit support mechanisms to help ensure the accessibility of affordable telecommunications services to all Americans.[6] Section 254(d) requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the

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3 *See infra* at para. 9.

4 The Commission may waive any provision of its rules upon a showing of good cause. *See* 47 C.F.R. § 1.3. Specifically, the FCC may exercise its discretion to waive a rule where "particular facts would make strict compliance inconsistent with the public interest" and where "special circumstances" might warrant a waiver. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Thus, the rules would not preclude AT&T from filing another petition for waiver if it can demonstrate "special circumstances" not raised in its current waiver.

5 *See also Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review, Telecommunications Services for Individuals with Hearing and Speech Disabilities, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, 67 FR 11268, paras. 8-14, 16 (2002) (*Contribution Methodology Notice*).

6 47 U.S.C. § 254.

Commission to preserve and advance universal service."[7] Section 254(d) provides further that "any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."[8]

5. In the *First Report and Order*, the Commission adopted rules that imposed contribution obligations on telecommunications carriers and providers of interstate telecommunications.[9] Specifically, section 54.709(a) provides, in relevant part, that contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and a contribution factor determined quarterly by the Administrator, the Universal Service Administrative Company (USAC).[10] To collect information about end-user telecommunications revenues from contributors, the Commission adopted a rule requiring contributors to submit Universal Service Worksheets at regular intervals.[11] Contributors must file a Form 499-A in April to report their annual revenues from the prior year. Contributors must also file a Form 499-Q on a quarterly basis to report their revenues from the prior quarter. The Commission and USAC use the revenue information from a particular quarter to set the contribution factor for the second following quarter.[12] Thus, contributions are assessed on historical revenues from two quarters prior to the assessment.

6. Carriers currently have significant flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory.[13] Some elect to recover their contributions from their customers through line-item charges, while others elect to collect their contribution requirement through their rates. Therefore, although the contribution factor is uniform for all contributors, universal service line items to consumers vary widely among contributors.

B. AT&T's Petition for Waiver

7. AT&T asks the Commission to permit it to contribute to the universal service support mechanisms based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on its historical revenues from two quarters prior.[14] AT&T contends that grant of its request is warranted because the interval between reporting and

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[7] 47 U.S.C. § 254(d).

[8] *Id.*

[9] *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9173-9179, paras. 777-786 (1997) (subsequent history omitted) (*First Report and Order*).

[10] 47 C.F.R. § 54.709(a).

[11] *See* 47 C.F.R. § 54.711(a).

[12] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5753, para. 11 (2001) (*Six-Month Interval Order*).

[13] *See First Report and Order*, 12 FCC Rcd 9210-11, para 853.

[14] *See AT&T Request* at 1-2. AT&T proposes to submit a projection of its revenues for the third quarter of 2002 and to contribute to universal service in the third quarter of 2002 based on that projection. *AT&T Supplemental* at 4-5.

assessment of contributions, under the current rules, combined with AT&T's declining interstate and international revenues, force it to recover its universal service contributions from a smaller revenue base than the one on which it was assessed.[15] AT&T further contends that the Commission should grant its waiver because AT&T's revenue declines are a function of "fundamental structural changes, including RBOC long distance entry and chronic shifts of transitional long-distance traffic to new wireless and Internet substitutes."[16]

8. AT&T claims granting its waiver will serve the public interest because the waiver will permit AT&T to reduce its residential line item by two percent.[17] Although AT&T notes that grant of its waiver will increase the contribution factor by approximately 0.3 percent for all contributors, it believes the savings to AT&T residential customers will outweigh the increases experienced by all other contributors and their customers.[18]

9. In response to a Public Notice seeking comment on AT&T's request, several commenters argue that AT&T failed to demonstrate special circumstances warranting grant of a waiver, because many contributors are also experiencing declining revenues and face similar recovery concerns.[19] Consequently, these commenters contend that it is more appropriate for the Commission to modify the assessment methodology for all affected contributors through the Commission's pending *Contribution Methodology* rulemaking.[20]

III. DISCUSSION

10. As discussed in greater detail below, we deny AT&T's request for waiver of the Commission's universal service contribution rules and conclude that AT&T has not demonstrated good cause to justify the waiver. Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown."[21] Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.[22] The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[23] The Commission may take into account considerations of hardship, equity, or more effective

[15] *See AT&T Request* at 1-2.

[16] *See AT&T Supplemental* at 4.

[17] *Id.*

[18] *Id.*

[19] *See Commission Seeks Comment on AT&T Request to Contribute to Universal Service Based on Projected Revenues*, Public Notice, DA 02-376, rel. Feb. 26, 2002. *See, e.g.,* ASCENT Comments at 7-8; BellSouth Comments at 1; SBC Comments at 2; Sprint Comments at 2-3; Verizon Comments at 1-4.

[20] *See, e.g.,* SBC Comments at 2; Sprint Comments at 4; Verizon Comments at 4-5.

[21] 47 C.F.R. § 1.3.

[22] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972).

[23] *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

implementation of overall policy.[24]

11. Applying this standard for waiver, we find that AT&T has failed to demonstrate that it is experiencing special circumstances that warrant grant of a waiver. We do not agree with AT&T that its declining revenues coupled with the Commission's reliance on historical revenues to calculate contributions place it at a unique disadvantage because it must recover its contribution from a smaller revenue base. The recovery concerns experienced by AT&T are shared among all contributors with declining revenues.[25] AT&T has in a manner acknowledged this fact by suggesting that the Commission allow all carriers a one-time election to base their contributions on projected revenues.[26] Indeed, we note that, if the Commission were to grant AT&T's waiver because it is experiencing declining revenues, the Commission would likely receive numerous waiver requests from all other carriers with declining revenues, thereby making the exceptions as common as the rule.[27]

12. Moreover, the Commission has already denied waivers filed by similarly-situated contributors claiming that declining revenues hindered their ability to recover their contributions.[28] The Commission found in those cases that declining revenues do not present special circumstances warranting a waiver, because many carriers may experience declining revenues. Informed by the Commission's previous findings, we conclude that AT&T's declining revenues do not sufficiently distinguish AT&T from other contributors to justify grant of a waiver.

13. AT&T also alleges that it can be distinguished from other carriers with declining revenues because its declines are a function of fundamental structural changes in the telecommunications industry, particularly RBOC long distance entry and shifts of traditional long-distance traffic to new wireless and Internet substitutes, rather than normal industry fluctuations.[29] We find, however, that these structural changes in the industry do not constitute special circumstances, because they affect other similarly situated IXCs and long-distance resellers in the same manner.[30]

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

[25] *See, e.g.,* ASCENT Comments at 3-6; Worldcom Comments at 2-3, 10.

[26] AT&T Reply Comments at 8 ("Rather, AT&T acknowledges that if it grants AT&T relief, the Commission should allow all carriers a one-time election to base their USF contributions on projected revenues pending elimination of the lag. This would avoid any competitive inequity by allowing carriers with declining interstate and international revenues to elect to base their USF contributions on projected revenues …"). *See also* ASCENT Reply Comments at 5-7 (seeking similar treatment for all IXCs with declining revenues).

[27] *See* Worldcom Comments at 3, 14.

[28] *See Federal-State Joint Board on Universal Service, Petition of Federal Transtel for Waiver of the Universal Service Contribution Requirements,* CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, 16 FCC Rcd 17,414 (2001); *Federal-State Joint Board on Universal Service, Petition for Waiver filed by Affinity Corporation Hotel Communications Inc. et al,* CC Docket No. 96-45, Memorandum Opinion and Order and Seventeenth Order on Reconsideration, 15 FCC Rcd 20,679 (1999).

[29] *See AT&T Supplemental* at 4.

[30] *See, e.g.,* ASCENT Comments at 3-6; Worldcom Comments at 2-3, 10.

14. In addition, we conclude that granting a waiver to AT&T would not serve the public interest. Although AT&T claims such action would allow it to reduce its residential universal service line item for its customers by two percent, granting the waiver would necessarily raise the contribution factor for all contributors by at least .3 percent.[31] This would increase the amount that all contributors other than AT&T would pay to universal service and could increase the amounts paid by non-AT&T customers for universal service. Moreover, granting AT&T's waiver would raise USAC's administrative costs and add uncertainty to the fund's administration.[32] If granted, USAC would have to administer two assessment mechanisms; one based on historical revenues and one based on projected revenues. This would increase USAC's administrative costs, because it would have to create new systems to calculate and true-up AT&T's contributions. In addition, basing AT&T's contribution on projected revenues would add uncertainty to the contribution process because contribution factors might fluctuate more than necessary as a result of the true-ups imposed to correct inaccurate projections.[33] For all of these reasons, we conclude that the public interest would not be served by granting AT&T's waiver request.

15. Finally, we find that granting AT&T's request would not be competitively neutral. We agree with Worldcom that allowing AT&T to contribute based on projected revenues would provide AT&T a competitive advantage vis-à-vis other carriers with declining revenues, particularly other IXCs.[34] AT&T would receive a competitive advantage because it would be the only contributor with declining revenues not required to contribute on the basis of historical revenues and not affected by any associated recovery problems. AT&T itself acknowledges that granting a waiver only to AT&T might provide a competitive advantage relative to similarly situated long distance carriers.[35] To remedy possibly competitive inequities, AT&T proposes to allow all carriers to elect to base contributions on projected revenues.[36] We, however, do not believe it is appropriate to conclude that grant of a waiver can be made competitively neutral by providing waivers to other carriers with declining revenues. We believe it is more appropriate to resolve such situations through a rulemaking.

16. Although we do not believe AT&T has sufficiently justified its request for waiver of the Commission's rules, we recognize that our current contribution system may create competitive advantages for contributors with increasing interstate telecommunications revenues, while disadvantaging those with declining revenues.[37] If the Commission's contribution rules negatively impact a class of contributors, we believe a rulemaking, rather than individual waivers, is the appropriate vehicle to solve

[31] *See id.* at 2.

[32] *See* Beacon Telecommunications Advisors Comments at 1-2; Verizon Wireless Comments at 2-4. *See also Six-Month Interval Order*, 16 FCC Rcd at 5755, para. 15 (declining to base contributions on projected revenues because of increased administrative costs and increased incentives to under- or over-report revenues).

[33] *See* Beacon Telecommunications Advisors Comments at 2.

[34] Worldcom Comments at 2-3, 10. *See also* Sprint Comments at 3.

[35] AT&T Reply Comments at 8.

[36] *Id. See also* ASCENT Reply Comments at 5-7, Worldcom Reply Comments at 4 (requesting same relief for similarly situated contributors if AT&T waiver is granted).

[37] *See* ASCENT Reply Comments at 5-7; Worldcom Reply Comments at 2-3. *See also Contribution Methodology Notice*, para. 10.

possible problems with the underlying rules.[38] The Commission has already launched a proceeding to examine in detail whether reform of the contribution system is warranted in light of changes in the telecommunications market, including declines in interstate telecommunications revenues and migration away from traditional long distance service to new technologies and bundled wireless service packages.[39] In seeking comment on possible changes, the Commission has indicated that its primary goal is to ensure the stability and sufficiency of universal service as the marketplace continues to evolve. The Commission also seeks to identify the best means of ensuring that contributions continue to be assessed in an equitable and nondiscriminatory manner. The Commission is actively reviewing the robust record in that proceeding and will ensure that its contribution assessment methodology remains consistent with section 254(d) and appropriate for *all* contributors in the dynamic communications marketplace of today and tomorrow.

IV. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 254 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. ss 151, 154(i), 254, and 405, and sections 1.3, 1.429 of the Commission's rules, 47 C.F.R. ss 1.3, 1.429, that the Petition for Waiver filed December 13, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood

Chief, Wireline Competition Bureau

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[38] *See, e.g.,* Sprint Comments at 4; Verizon Wireless Comments at 4-5; Worldcom Reply Comments at 3-4.

[39] *See Contribution Methodology Notice* at paras. 8-14, 16.