

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

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

ORDER

Adopted: December 17, 2004

Released: December 17, 2004

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we grant several petitions for waiver pending before the Federal Communications Commission (Commission).¹ On July 20, 2004, the Commission released an order granting in part waiver requests made by AT&T Corp. (AT&T), SBC Communications Inc. (SBC), and the Verizon telephone companies (Verizon) concerning the true-up process for universal service contributions based on 2003 revenues.² The Petitioners request the relief sought and received by AT&T, SBC, and Verizon in the Commission's *True-Up Order*. Specifically, the Petitioners contend that they underestimated their first quarter 2003 projections and, as a result, paid true-up amounts in excess of their appropriate contributions for the second through fourth quarters of 2003.³

2. As explained in the *True-Up Order*, two years ago the Commission modified the universal service assessment system from contributions based on carriers' historical gross-billed revenues to contributions based on carriers' projected collected revenues.⁴ During the implementation period, the Commission did not use carriers' first quarter 2003 historical gross-billed or projected collected

¹ ALLTEL Petition for Waiver, CC Docket No. 96-45, filed August 20, 2004 (ALLTEL Petition); Cincinnati Bell Wireless LLC Petition for Waiver, CC Docket No. 96-45, filed August 11, 2004, supplemented on October 1, 2004 (Cincinnati Bell Wireless Supplemented Petition); Cingular Wireless LLC Petition for Waiver, CC Docket No. 96-45, filed July 26, 2004 (Cingular Petition); Dobson Petition for Waiver, CC Docket No. 96-45, filed September 14, 2004 (Dobson Petition); Manhattan Telecommunications Corporation and Metropolitan Telecommunications Holding Company Petition for Waiver, CC Docket No. 96-45, filed August 30, 2004 (MetTel Petition); Nex-Tech, Inc. Petition for Waiver, CC Docket No. 96-45, filed October 12, 2004 (Nex-Tech Petition); Nextel Communications, Inc. Petition for Waiver, CC Docket No. 96-45, filed August 27, 2004 (Nextel Petition); T-Mobile USA, Inc. Petition for Waiver, CC Docket No. 96-45, filed September 29, 2004 (T-Mobile Petition) (collectively, "Petitioners").

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 13580 (2004) (*True-Up Order*).

³ See ALLTEL Petition at 1; Cincinnati Bell Wireless Supplemented Petition at 1; Cingular Petition at 1; Dobson Petition at 2; Met-Tel Petition at 1; Nex-Tech Petition at 1; Nextel Petition at 6; T-Mobile Petition at 1.

⁴ See *True-Up Order*, 19 FCC Rcd at 13580-81, para. 2.

information for billing purposes. Rather, in order to true-up carriers' 2003 revenues, which is done to reconcile contributions based on projected revenues contained in FCC Form 499-Q filings with the actual revenues contained in the FCC Form 499-A filing, the Commission subtracted revenues projected from the first quarter 2003 from annual revenues reported on the FCC Form 499-A to estimate a contributor's actual revenues for the second through fourth quarters of 2003. The Administrator of the universal service support mechanisms⁵ would compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection was appropriate.⁶ Under this formula, if a carrier underestimated its first quarter 2003 projected collected revenues but forecasted its projected collected revenues for the second through fourth quarters of 2003 accurately, it would be billed additional contribution amounts. The Commission agreed with AT&T, SBC, and Verizon that such a result was inconsistent with the public interest since it was the Commission's intention not to use a carrier's projected collected first quarter 2003 information for billing purposes.⁷

II. DISCUSSION

3. We grant Petitioners' requests for waivers of the Commission's universal service true-up procedures for 2003 and conclude that the Petitioners 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."⁸ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.⁹ 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."¹⁰ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.¹¹

⁵ See 47 C.F.R. § 54.701 (stating that the Universal Service Administrative Company is the Administrator of the universal service support mechanisms).

⁶ *True-Up Order*, 19 FCC Rcd at 13581, para. 3 (citing *Federal-State Joint Board on Universal Service, 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, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, 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 and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4825, para. 17 (2003)).

⁷ *Id.* at 13582, para. 7.

⁸ 47 C.F.R. § 1.3.

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹⁰ *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ *WAIT Radio*, 418 F.2d at 1159.

4. As the Commission concluded in its *True-Up Order*, we find that the Petitioners have demonstrated that they experienced special circumstances that warrant the grant of a waiver of the Commission's universal service true-up procedures for 2003. Specifically, like AT&T, SBC, and Verizon, Petitioners' actual collected revenues for first quarter 2003 exceeded their projections of collected revenues for that quarter. As a result, even if Petitioners' projections for the second through fourth quarters of 2003 were completely accurate and the Petitioners made appropriate contributions for these quarters, they would have contributed more through the annual true-up process than their equitable share. Therefore, we grant Petitioners' waiver requests and adopt the same methodology to determine an appropriate contribution as that set forth in the *True-Up Order*.¹²

III. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5, 254 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155, 254, and 405, and sections 1.3, 1.429 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Petitions for Waiver filed by ALLTEL Corporation, Inc., Cincinnati Bell Wireless LLC, Cingular Wireless LLC, Dobson Cellular Systems, Inc. and American Cellular Corporation, Manhattan Telecommunications Corporation and Metropolitan Telecommunications Holding Company, Nex-Tech, Inc., Nextel Communications, Inc., and T-Mobile USA, Inc. ARE GRANTED, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

¹² See *True-Up Order*, 19 FCC Rcd at 13583, para. 8 (directing the Administrator to subtract Petitioners' historical gross-billed revenues for first quarter 2003 reported on their FCC Form 499-Qs, adjusted to reflect their annual uncollectible rates for 2003 reported on their FCC Form 499-As, when conducting true-ups for the Petitioners).