

**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: September 19, 2005

Released: September 20, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, the Wireline Competition Bureau (Bureau) grants the petition for waiver filed by BellSouth Long Distance (BellSouth LD) and grants, in part, the petition for waiver filed by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (SouthernLINC).¹ On July 20, 2004, the Federal Communications Commission (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 In addition, on December 17, 2004, and February 3, 2005, the Bureau released orders granting the same relief to nine similarly situated petitioners.³ BellSouth LD and SouthernLINC request the relief sought and received by the previous twelve petitioners in the Commission's *True-Up Order* and the Bureau's two orders. Specifically, BellSouth LD and SouthernLINC state that they underestimated their first quarter 2003 projections and, as a result, will have paid true-up amounts in excess of their appropriate contributions for the second through fourth quarters of 2003.⁴ In addition to this requested relief, SouthernLINC also seeks a waiver of the Commission's rules concerning the filing deadline for the Form 499-Q so that it may file its actual collected first quarter 2003 revenues instead of its first quarter 2003 projected collected revenues.⁵

¹ BellSouth Long Distance, Inc. Petition for Waiver, CC Docket No. 96-45, filed February 28, 2005 (BellSouth LD Petition); SouthernLINC Wireless Petition for Waiver, CC Docket No. 96-45, filed March 31, 2005 (SouthernLINC Petition).

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

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 24049 (WCB 2004); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 20 FCC Rcd 2243 (WCB 2005).

⁴ See BellSouth LD Petition at 2, 6; SouthernLINC Petition at 8.

⁵ SouthernLINC Petition at 8-10. Alternatively, SouthernLINC requests that the Commission permit it to revise its historical gross-billed revenues for the first quarter 2003 as reported in its May 1, 2003 Form 499-Q. *Id.*

2. As explained in the *True-Up Order*, three 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.⁶ During the implementation period, the Commission did not use carriers' first quarter 2003 historical gross-billed or projected collected 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 mechanisms⁷ 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.⁸ 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.⁹

II. DISCUSSION

3. We grant BellSouth LD's request and grant, in part, SouthernLINC's request for waiver of the Commission's universal service true-up procedures for 2003 and conclude that they 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."¹⁰ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.¹¹ 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."¹² The Commission may take into account considerations of hardship, equity, or more

⁶ See *True-Up Order*, 19 FCC Rcd at 13580-81, para. 2.

⁷ See 47 C.F.R. § 54.701 (stating that the Universal Service Administrative Company is the Administrator of the universal service support mechanisms).

⁸ *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)).

⁹ *Id.* at 13582, para. 7.

¹⁰ 47 C.F.R. § 1.3.

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹² *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

effective implementation of overall policy.¹³

4. As the Commission concluded in its *True-Up Order*, we find that BellSouth LD and SouthernLINC 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 and the nine petitioners in the Bureau's two orders, BellSouth LD and SouthernLINC's actual collected revenues for first quarter 2003 exceeded their projections of collected revenues for that quarter. As a result, even if BellSouth LD and SouthernLINC's projections for the second through fourth quarters of 2003 were completely accurate and BellSouth LD and SouthernLINC made appropriate contributions for these quarters, they would have contributed more through the annual true-up process than their equitable share.

5. We deny, however, SouthernLINC's additional request to waive the Commission's Form 499-Q filing deadlines to permit it to revise either its Form 499-Q filed on February 1, 2003 (to provide the Commission with its actual collected revenues from the first quarter of 2003) or its Form 499-Q filed on May 1, 2003 (to provide the Commission with revised historical gross-billed revenues from the first quarter of 2003). SouthernLINC states that, like its projected collected revenues, it mistakenly underestimated its historical gross-billed revenues for the first quarter of 2003.¹⁴ For reasons provided in the Commission's *True-Up Order*, we decline to permit SouthernLINC to file its actual collected revenues for the first quarter 2003.¹⁵ Specifically, permitting a carrier to file new data would require the Administrator to develop new systems to accept and process this information thus creating administrative difficulties.¹⁶ We also deny SouthernLINC's request to file revised historical gross-billed revenues for the first quarter of 2003. SouthernLINC has failed to demonstrate good cause why it was unable to file accurate historical gross-billed revenues for that quarter or why it was unable to file revised historical gross-billed revenues in a timely manner.¹⁷ Indeed, SouthernLINC has failed to offer any explanation.¹⁸

¹³ *WAIT Radio*, 418 F.2d at 1159.

¹⁴ SouthernLINC Petition at 9.

¹⁵ See *True-Up Order*, 19 FCC Rcd at 13583, para. 8.

¹⁶ *Id.*

¹⁷ See 47 C.F.R. § 54.711. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (stating that filers have 45 days after the due date of each Form 499-Q filing to make corrections); Telecommunications Reporting Worksheet, FCC Form 499-Q, Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms, OMB 3060-0855 (April 2003) (located at: <http://www.universalservice.org/download/499Q.pdf>). Since carriers submit their first quarter historical gross-billed revenues on May 1, SouthernLINC had until June 16, 2003 to submit a revised Form 499-Q or 77 days after the close of the first quarter of 2003.

¹⁸ We note that SouthernLINC omitted such basic information as why SouthernLINC made this mistake, why it failed or was unable to correct this mistake prior to March 31, 2005 (when it filed its petition), and what is the difference between its historical gross-billed revenues as reported in its May 1, 2003 Form 499-Q and what it contends is the correct historical gross-billed figure for the first quarter 2003. Absent such essential information, we are unable to find, as we must, any special circumstances warranting a waiver of the Commission's Form 499-Q filing deadlines as requested by SouthernLINC.

Therefore, we grant BellSouth LD's waiver request and grant in part SouthernLINC's waiver request as described above, and adopt the same methodology to determine an appropriate contribution as that set forth in the *True-Up Order*.¹⁹

III. ORDERING CLAUSE

6. 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 Petition for Waiver filed by BellSouth Long Distance, Inc. IS GRANTED and the Petition for Waiver filed by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless IS GRANTED, IN PART, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

¹⁹ 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).