

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

In the Matter of
Federal-State Joint Board on
Universal Service
CTIA – The Wireless Association
Petition for Reconsideration
CC Docket No. 96-45

ORDER ON RECONSIDERATION

Adopted: April 24, 2008

Released: April 28, 2008

By the Commission:

I. INTRODUCTION

1. In this Order, we deny the Petition filed by the CTIA – The Wireless Association (CTIA) seeking extension of the relief granted to three Universal Service Fund (USF or Fund) contributors in the Commission’s True-Up Waiver Order to all similarly-situated USF contributors. In that order, the Commission granted, in part, requests for waiver of the Commission’s universal service true-up procedures for 2003 filed by AT&T Corp., SBC Communications, Inc., and Verizon Telephone Companies (Petitioners). The Commission found that Petitioners in that case demonstrated special circumstances specific to the requesting entity that warranted grant of a waiver.

II. BACKGROUND

2. On December 12, 2002, the Commission adopted modifications to the revenue-based universal service assessment system to ensure the sufficiency and predictability of universal service while it considers reforms to sustain the universal service fund for the long term. Among other things, the Commission determined that beginning with the second quarter of 2003, universal service contributions would be based on contributor-provided projections of collected revenues, rather than historical gross-billed revenues. As a result of this change to the assessment system, two quarters of historical revenues

1 See Federal State Joint Board on Universal Service, CC Docket No. 96-45, Petition for Reconsideration of CTIA – The Wireless Association (filed Aug. 18, 2004) (CTIA Reconsideration Petition).

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

3 Id. at 13580, para.1.

4 See id. at 13582, para. 7.

5 See Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (Interim Contribution Methodology Order).

6 See id. at 24970, para. 29.

were not utilized to calculate universal service contributions – fourth quarter 2002 and first quarter 2003. The Commission also adopted an annual true-up designed to ensure that carriers accurately project their revenues and thereby pay appropriate universal service contributions.⁷

3. In the *Order and Second Order on Reconsideration*, the Commission slightly modified the true-up process for universal service contributions to take into account the transition to the new revenue-based methodology on April 1, 2003.⁸ The Commission stated “the [Administrator] will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor’s actual revenues for the second through fourth quarters of 2003. [The Administrator] will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate.”⁹

4. In the *True-Up Waiver Order*, the Commission granted, in part, waiver requests filed by petitioners regarding the true-up process for universal service contributions based on 2003 revenues.¹⁰ Petitioners showed that their actual collected revenues for first quarter 2003 exceeded their projections of collected revenues for first quarter 2003.¹¹ The Commission noted that “even if [Petitioners’] projections for the second through fourth quarters of 2003 were completely accurate, and they made appropriate contributions for those quarters, Petitioners would be billed additional contribution amounts in the true-up process because they under-projected collected revenues for the first quarter of 2003.”¹² As such Petitioners requested that the Commission modify the true-up process and subtract Petitioners actual collected revenue for the first quarter 2003, rather than their projections.¹³ In granting Petitioners’ requests, the Commission relied on company-specific data provided by each of the petitioners.¹⁴

5. In the *True-Up Waiver Order*, the Commission also specifically declined to extend a request by Cingular to extend the waiver to all similarly situated parties.¹⁵ The Commission held that individual carriers seeking similar waiver relief could submit petitions and such petitions would be evaluated consistent with the precedent established in the *True-Up Waiver Order*.¹⁶

III. DISCUSSION

6. We deny the petition for reconsideration filed by CTIA. We find that CTIA has not provided new information sufficient to warrant extending relief to all similarly-situated companies regardless of their individual circumstances.

7. In its petition, CTIA asserts that “all other contributors that underreported revenues for that period” would be “required to make excess contributions to the USF based upon revenues that have not

⁷ *Id.* at 24972, para. 36.

⁸ See *Federal-State Joint Board on Universal Service*, 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 (2003) (*Reconsideration Order*).

⁹ *Id.* at 4825, para. 17.

¹⁰ AT&T Petition for Waiver, CC Docket No. 96-45, (filed Jan. 27, 2004); SBC Petition for Waiver, CC Docket No. 96-45, (filed Feb. 27, 2004); Verizon Petition for Waiver, CC Docket No. 96-45, (filed Feb. 27, 2004).

¹¹ See AT&T Petition for Waiver at 5; SBC Petition for Waiver at 4; Verizon Petition for Waiver at 3.

¹² See *True-Up Waiver Order*, 19 FCC Rcd at 13581, para. 4. Petitioners contended that such a result was unfair since the first quarter revenues were not being used to calculate universal service contributions. *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 13852, n.15.

¹⁶ *Id.*

actually been collected.”¹⁷ CTIA further argues that the public interest “mandates” that all similarly-situated contributors be granted the same relief provided to the petitioners in the *True-Up Waiver Order* because such an extension would provide the relief without requiring similarly-situated contributors to expend additional human and financial resources.¹⁸ CTIA also cites Commission precedent for adopting blanket waivers where “relief was necessary to ensure proper administration of Commission programs or initiatives.”¹⁹

8. We disagree with CTIA’s assertion that the public interest mandates granting blanket relief. As our decision in the *True-Up Waiver Order* shows, individual petitioners can obtain waiver upon a specific showing of good cause.²⁰ The burden on petitioners for relief is a significant one requiring the showing of special circumstances.²¹ Indeed, in the *True-Up Waiver Order*, Petitioners showed through data specific to the individual company that relief was warranted under their particular circumstances.²² The evidence Petitioners provided to support their claims was actual collected revenues data that was submitted with their petitions.²³ It was based on that company-specific information that the Commission could find that its 2003 true-up methodology had an unintended consequence as it related to these contributors.²⁴ Here, CTIA failed to make a similar showing using company-specific data.

9. Although it is the case that the Commission may issue blanket waivers on occasion,²⁵ we conclude, as we did in the *True-Up Waiver Order*, that such action is not appropriate here. In fact, as we stated in our *2007 E-911 Blanket Waiver Denial Order*, inherent in the Commission’s waiver analysis “is a case-by-case approach for analyzing the particular circumstances and factors presented by a carrier seeking waiver relief.”²⁶ In that order, we also reiterated our long-standing determination that continuing to follow an individualized approach to addressing requests for waiver best serves the public interest.²⁷ Like our decision in the *2007 E-911 Blanket Waiver Denial Order*, in the *True-Up Waiver Order* we denied blanket relief, instead opting to permit individual carriers to seek waiver relief.²⁸

10. CTIA’s petition does not provide us with any additional information that would compel us to change our decision in the *True-Up Waiver Order*. Rather, we conclude that a case-by-case analysis of individual contributor’s circumstances continues to be the best course for future action. For the foregoing reasons, we deny CTIA’s Petition for Reconsideration.

¹⁷ See *CTIA Reconsideration Petition* at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 6 (citing, for example, submission of cost data by cable operators, implementation of payphone compensation rules).

²⁰ 47 C.F.R. §1.3.

²¹ *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²² See *True-Up Waiver Order*, 19 FCC Rcd at 13581, para. 4.

²³ *Id.*

²⁴ *Id.* at 13582, para. 7.

²⁵ *CTIA Reconsideration Petition* at 6.

²⁶ See *Joint Petition of CTIA and The Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline*, WT Docket No. 05-288, Order, 22 FCC Rcd 303 (Jan. 5, 2007) (*2007 E-911 Blanket Waiver Denial Order*).

²⁷ *Id.* at 309, para. 19.

²⁸ *True-Up Waiver Order*, 19 FCC Rcd at 13582, n.15.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151, 154(i), 154(j) and 254, the Petition for Reconsideration filed by the CTIA – The Wireless Association, is hereby DENIED.

12. IT IS FURTHER ORDERED that, pursuant to section 408 of the Communications Act of 1934, as amended, 47 U.S.C. § 408, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary