

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

In the Matter of
Federal-State Joint Board on
Universal Service
GatewayUSA Holding Company Inc., Cosmos
Telecom Marketing, Inc., and Sitel, Inc.
Petition for Partial Waiver or, Alternatively,
Clarification of Section 54.703 of the
Commission's Rules
Inteleca Communications Corporation
Petition for Waiver of Rules 54.705, 54.707,
54.709, 54.711, and 54.713
Microdevices Worldwide Inc.
Petition for Partial Waiver or, in the Alternative,
Clarification of Universal Service Contribution
Requirements Contained in Section 54.703 of the
Commission's Rules
Minimum Rate Pricing, Inc.
Petition for Partial Waiver of the Universal
Service Contribution Requirements Under
Sections 54.703, 54.709 and 54.711 of the
Commission's Rules
RealWorld Advanced Technology Inc.
Petition for Waiver of Rules 54.705, 54.707,
54.709, 54.711, and 54.713

ORDER

Adopted: September 8, 2004

Released: September 8, 2004

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we dismiss several petitions for waiver currently pending before the Federal Communications Commission ("Commission"). First, Inteleca Communications Corporation ("Inteleca") and RealWorld Advanced Technology Inc. ("RealWorld"), two resellers of international long distance service, each request a waiver of sections 54.705, 54.707, 54.709, 54.711, and 54.713 of the

Commission's rules,<sup>1</sup> and seek authorization to calculate their universal service obligations based solely on their revenues from calls terminating within the United States.<sup>2</sup> Second, in similar petitions, GatewayUSA Holding Company Inc., Cosmos Telecom Marketing, Inc., and Sitel, Inc. (collectively, the "Gateway Affiliates"), and Microdevices Worldwide Inc. ("Microdevices") request a partial waiver of section 54.703 of the Commission's rules<sup>3</sup> so they may exclude from their universal service contribution bases revenues derived from foreign originating and U.S. terminating services.<sup>4</sup> Third, Minimum Rate Pricing, Inc. ("MRP") requests a waiver from the Commission's rules requiring that current year universal service contributions be based on revenues from the previous year.<sup>5</sup> Since these petitions were filed, the Commission has addressed each of these issues in rulemaking proceedings. Accordingly, we deny these petitions.

## II. BACKGROUND

2. The *Universal Service First Report and Order* generally required all telecommunications carriers providing interstate telecommunications service to contribute to universal service on the basis of their end-user telecommunications revenues as calculated using the entity's prior year revenue. The Commission found that carriers that provide only international telecommunications services are not "telecommunications carriers that provide interstate telecommunications services," and, therefore, are exempt from the mandatory universal service contribution obligation.<sup>6</sup> Carriers that provide both interstate and international telecommunications, however, are required to contribute to the universal service support mechanism based on their total revenue from both categories of service.<sup>7</sup> In addition, at the time these waiver requests were filed, carriers were required to contribute to the universal service support mechanism based on their historical gross billed revenues.<sup>8</sup>

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<sup>1</sup>47 C.F.R. §§ 54.705, 54.707, 54.709, 54.711, 54.713 (1998).

<sup>2</sup>Inteleca Communications Corporation, Request for Waiver, CC Docket No. 96-45 (filed July 24, 1998) ("Inteleca Petition"); RealWorld Advanced Technology Inc., Request for Waiver, CC Docket No. 96-45 (filed August 11, 1998) ("RealWorld Petition").

<sup>3</sup>47 C.F.R. § 54.703.

<sup>4</sup>Microdevices Worldwide Inc., Petition for Partial Waiver or, in the Alternative, Clarification of Universal Service Contribution Requirements Contained in Section 54.703 of the Commission's Rules, CC Docket No. 96-45 (filed March 26, 1998) ("Microdevices Petition"); GatewayUSA Holding Company Inc., Cosmos Telecom Marketing, Inc., and Sitel, Inc., Petition for Partial Waiver or, Alternatively, Clarification of Section 54.703 of the Commission's Rules, CC Docket No. 96-45 (filed April 22, 1998) ("Gateway Affiliates Petition").

<sup>5</sup>Minimum Rate Pricing, Inc., Petition for Partial Waiver of the Universal Service Contribution Requirements Under Sections 54.703, 54.709 and 54.711 of the Commission's Rules, CC Docket No. 96-45 (filed September 17, 1999) ("MRP Petition").

<sup>6</sup>See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9174 para. 779 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom.* Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 120 S. Ct. 2212 (2000) ("*Universal Service First Report and Order*").

<sup>7</sup>*Universal Service First Report and Order*, 12 FCC Rcd at 9203, paras. 836-37; see also *Startec Global Communications Corporation Request for Forbearance or Exemption from the Universal Service Contribution Requirement*, Memorandum Opinion and Order, CC Docket No. 96-45, 14 FCC Rcd 8030 (1999).

<sup>8</sup>*Federal-State Joint Board on Universal Service*, Report and Order and Second Order on Reconsideration, CC Docket No. 96-45, 12 FCC Rcd 18400 (1997); *Federal-State Joint Board on Universal Service, Petition of Federal Transtel, Inc. for Waiver of the Universal Service Fund Contribution Requirements Under Section 54.703, 54.709,*

(continued....)

3. On July 24, 1998, Inteleca filed a petition requesting a waiver of then-sections 54.705, 54.707, 54.711, and 54.713 of the Commission's rules.<sup>9</sup> Several weeks later, on August 11, 1998, RealWorld filed a petition requesting identical relief.<sup>10</sup> Both carriers assert that nearly all of their traffic originates and terminates internationally, and request authorization to calculate their universal service obligations based solely upon their revenues of calls terminated within the United States.<sup>11</sup>

4. On March 26, 1998, Microdevices filed a petition for waiver of section 54.703 of the Commission's rules, which at that time required all carriers providing interstate services to contribute to the universal service fund based on their intrastate, interstate, and international revenues.<sup>12</sup> Microdevices seeks a waiver to exclude revenues derived from providing services that originate in foreign points and terminate in the U.S from its universal service contribution base.<sup>13</sup> In the alternative, Microdevices requests that the Commission clarify that section 54.703 permits it to perform its universal service contribution calculation in such a way.<sup>14</sup> Similarly, on April 22, 1998, the Gateway Affiliates filed a petition for waiver of section 54.703 of the Commission's rules, or, in the alternative, ask that the Commission clarify that section 54.703 permits them to exclude international revenue from traffic originating in foreign points from the calculation of their universal service contribution obligation.<sup>15</sup>

5. On September 17, 1999, MRP filed a petition for partial waiver of sections 54.703, 54.709, and 54.711 of the Commission's rules.<sup>16</sup> In its petition, MRP, a reseller of intrastate and interstate telecommunications services, seeks relief from the universal service assessment methodology that bases current year universal service contributions on revenues from the previous filing period.<sup>17</sup> Specifically, MRP states that its "revenues have declined dramatically over the past twelve months," and that, on February 26, 1999, it filed for relief under Chapter 11 of the U.S. Bankruptcy Code.<sup>18</sup> MRP argues that the Commission's universal service contribution calculation methodology would "result[] in a contribution assessment against MRP that is both inequitable and discriminatory, and which [would] result[] in an assessment that is grossly disproportionate to MRP's [current] end-user telecommunications revenue."<sup>19</sup>

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and 4.711 of the Commission's Rules, Memorandum Opinion and Order and Order on Reconsideration, CC Docket No. 96-45, 16 FCC Rcd 17414, 17417, para. 7 (2001). See 47 C.F.R. §§ 54.703, 54.709 (1998). Cf. 47 C.F.R. § 54.706 (b) (currently requiring carriers to contribute to the federal universal service support mechanisms on the basis of their projected revenues).

<sup>9</sup>Inteleca Petition, *supra* n. 2.

<sup>10</sup>RealWorld Petition, *supra* n. 2.

<sup>11</sup>Inteleca Petition at 1; RealWorld Petition at 1.

<sup>12</sup>47 C.F.R. § 54.703 (1998).

<sup>13</sup>Microdevices Petition at 1.

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

<sup>15</sup>Gateway Affiliates Petition at 1.

<sup>16</sup>MRP Petition, *supra* n. 5.

<sup>17</sup>*Id.* at 1.

<sup>18</sup>*Id.* at 3-4.

<sup>19</sup>*Id.* at 4.

### III. DISCUSSION

6. *Petitions for Waiver Filed by Inteleca, RealWorld, Microdevices, and the Gateway Affiliates.* Pursuant to section 1.3 of our rules, the Commission's rules may be waived for good cause shown.<sup>20</sup> However, "an applicant for waiver faces a high hurdle even at the starting gate."<sup>21</sup> The Commission may exercise its general discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>22</sup> A waiver applicant traditionally has a heavy burden to demonstrate that the arguments advanced in support of the waiver request are substantially different from those that have been carefully considered at the rulemaking stage.<sup>23</sup> Generally, the Commission need not revisit a matter and reconsider policy every time it receives an application for a waiver.<sup>24</sup> In this instance, we conclude that Inteleca, RealWorld, Microdevices, and the Gateway Affiliates have all failed to present the special circumstances necessary to justify grant of a waiver.

7. The Commission, in the rulemaking proceeding that implemented the statutory contribution requirement, considered and rejected the proposition that revenue from the provision of international telecommunications service should be excluded.<sup>25</sup> Moreover, during the time since these petitions for waiver were filed, the Commission has reexamined this requirement. In 1998, the Commission enacted section 54.706 of its rules, which requires in part that "[a]ny entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 8 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms . . . based only on such entity's interstate end-user telecommunications revenues."<sup>26</sup> This rule was intended to exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution would exceed the amount of its interstate end-user telecommunications revenues.<sup>27</sup> In 2002, the Commission increased this limited international revenues exception from eight to twelve percent to ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues.<sup>28</sup> At that time, the Commission explicitly declined to exclude international revenues from the contribution requirement altogether.<sup>29</sup> We find that the petitions filed by Inteleca, RealWorld,

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<sup>20</sup>47 C.F.R. § 1.3.

<sup>21</sup>*WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("WAIT Radio").

<sup>22</sup>*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>23</sup>*Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970); see also *WAIT Radio*, 418 F.2d at 1157.

<sup>24</sup>*WAIT Radio*, 418 F.2d at 1157.

<sup>25</sup>*Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779.

<sup>26</sup>47 C.F.R. § 54.706(c) (1999).

<sup>27</sup>See *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*, Further Notice of Proposed Rulemaking and Report and Order, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 17 FCC Rcd 3752, 3805, para. 123 (2002).

<sup>28</sup>*Id.* at 3806, para. 125.

<sup>29</sup>*Id.* at 3806, para. 127.

Microdevices, and the Gateway Affiliates each fail to present special circumstances to justify granting waivers in these instances. Accordingly, these carriers should comply with the Commission's requirements set forth in section 54.706.

8. *MRP's Petition for Waiver.* As stated above, pursuant to section 1.3 of our rules, the Commission may waive any provision of its rules or orders if "good cause" is shown.<sup>30</sup> The standard for good cause requires the petitioner to demonstrate that special circumstances warrant deviation from the rules and that such a deviation would better serve the public interest than the general rule.<sup>31</sup> We note that in an order released in 2002, the Commission addressed the issue raised by MRP's petition by modifying its methodology for assessing contributions to the universal service fund by basing them on projections provided by contributors of their collected end-user interstate and international telecommunications revenues for the following quarter.<sup>32</sup> In light of this order, MRP has failed to demonstrate special circumstances that would warrant waiver of the contribution requirement that was in effect at the time. Accordingly, we deny this petition.

9. We also find unpersuasive MRP's contention that the "unique circumstances" surrounding its bankruptcy proceeding warrant a waiver.<sup>33</sup> The Bureau denied a nearly identical request for relief in 1997.<sup>34</sup> In that case, the petitioner claimed that, because it had recently filed for bankruptcy under Chapter 11, universal service contributions "could disrupt its agreements with lenders and would divert capital needed to run its operations," and requested a waiver of section 54.703 of the Commission's rules.<sup>35</sup> Here, MRP similarly argues that "a strict application of the rules [would] threaten[] the viability" of its business.<sup>36</sup> In denying the similar request for relief in 1997, the Bureau reasoned that "[u]niversal service contributions, once assessed, are a financial obligation and this obligation shall not be waived because of potential financial problems that may be created by the financial obligation."<sup>37</sup> We find that denial of MRP's waiver request is consistent with precedent, and thus deny MRP's Petition for Waiver.

#### IV. ORDERING CLAUSES

10. IT IS FURTHER ORDERED, that, pursuant to sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the

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<sup>30</sup>47 C.F.R. § 1.3.

<sup>31</sup>See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1157-58.

<sup>32</sup>See *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*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 17 FCC Rcd 24952, 24969, para. 29 (2002).

<sup>33</sup>MRP Petition at 4.

<sup>34</sup>*Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, Order, CC Docket Nos. 96-45, 97-21, 12 FCC Rcd 15235 (Acc. Aud. Div. 1997).

<sup>35</sup>*Id.*

<sup>36</sup>MRP Petition at 4.

<sup>37</sup>*Id.*

Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the Request for Waiver from the Universal Service Contribution Requirement filed by Inteleca Communications Corporation, IS DENIED.

11. IT IS FURTHER ORDERED, that, pursuant to sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the Request for Waiver from the Universal Service Contribution Requirement filed by RealWorld Advanced Technology Inc., IS DENIED.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that GatewayUSA Holding Company Inc., Cosmos Telecom Marketing, Inc., and Sitel, Inc. Petition for Partial Waiver is DENIED.

13. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that Microdevices Worldwide Inc. Petition for Partial Waiver is DENIED.

14. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that Minimum Rate Pricing's Petition for Partial Waiver is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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