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
	)	
Petition for Reconsideration Filed By USTA	)	
	)	

ORDER ON RECONSIDERATION

Adopted: October 31, 2001 **Released:** November 6, 2001

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny the request of the United States Telecom Association (USTA) to reconsider portions of the *Contribution Interval Order*[1] modifying the methodology used to assess contributions that carriers make to the federal universal service support mechanisms.[2] Specifically, we deny USTA's request to reconsider the imposition of additional filing requirements and the method of calculating contributions from carriers that either under-report or over-report quarterly revenue. In so doing, we affirm our prior conclusion that the provision of sufficient and competitively neutral funding for the universal service support mechanisms depends on the timely submission of accurate revenue information from contributors.

II. BACKGROUND

A. Contribution Interval Order

2. On March 14, 2001, the Commission released the *Contribution Interval Order* modifying the methodology used to assess contributions to the federal universal service support mechanisms. The new methodology reduced the interval, from 12 months to six months, between the accrual of revenues and the assessment of universal service contributions based on

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[1] *Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T,* Report and Order and Order on Reconsideration, CC Docket No. 96-45, 16 FCC Rcd 5748 (2001) (*Contribution Interval Order*).

[2] *Petition for Reconsideration of the United State Telecom Association* filed in CC Docket 96-45 on April 23, 2001 (USTA Petition). *See also Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings,* Public Notice, Report No. 2481 (rel. May 3, 2001). Sprint and WorldCom filed comments in response to USTA's petition on May 25, 2001.

those revenues.[3] The Commission concluded that reducing this interval would allow contributions to better reflect market trends influencing carriers' revenues. These trends include new providers entering into the interstate marketplace and generating interstate revenues, as well as, existing carriers experiencing declines in their revenue bases.[4] In light of these trends, the 12 month interval meant that a carrier's current revenue base may have significantly changed from the historic revenue base upon which its current contribution obligation is assessed. For carriers with declining revenues, this may have resulted in the need to increase their current collection rates to satisfy contribution obligations assessed on higher historic revenues. In response to these trends, the Commission adopted a revised methodology to further the goal of maintaining competitive neutrality.[5]

3. Under the revised methodology, the number of carrier revenue filings increased from two (*i.e.*, semi-annually) to five per year (*i.e.*, quarterly and annual).[6] The Commission directed the Administrator of the fund, the Universal Service Administrative Company (USAC), to use the revenue data provided annually by carriers in the FCC Form 499-A to true-up the quarterly revenue data submitted by carriers during the prior calendar year. Carriers have up to three months to file revised quarterly filings (Form 499-Q) to ensure accuracy.[7] The Commission directed that, if the combined quarterly revenues reported by a carrier are greater than those reported on its annual revenues report, then a refund will be provided to the carrier based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a carrier are less than those reported on its annual revenue report, then USAC shall collect the difference from the carrier using an average of the two highest contribution factors from that year.[8] The Commission concluded that this would provide an incentive for carriers to accurately report their quarterly revenues.

B. USTA Petition for Reconsideration

4. On April 23, 2001, USTA filed a petition for reconsideration of the *Contribution Interval Order*. Specifically, USTA requests that the Commission reconsider its decision to increase the number of revenue filings submitted by carriers to USAC.[9] USTA contends that increasing the administrative burden on carriers serves no purpose because the prior contribution methodology satisfied the requirements of the Act. In addition, USTA requests that the

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[3] *See Contribution Interval Order*, 16 FCC Rcd at 5752, para. 10. A detailed description of how universal service contributions are calculated can be found in the *Seventeenth Order on Reconsideration*. *See Federal-State Joint Board on Universal Service; Petitions for Waiver or Reconsideration of Section 54.706, 54.709, and/or 54.711 of the Commission's Rules*, Memorandum Opinion Order and Seventeenth Order on Reconsideration, CC Docket No. 96-45, 15 FCC Rcd 20769 (1999).

[4] *Contribution Interval Order*, 16 FCC Rcd at 5753, para. 13.

[5] *Contribution Interval Order*, 16 FCC Rcd at 5751-52, para. 9.

[6] *Contribution Interval Order*, 16 FCC Rcd at 5752, para. 11. Carriers now file on a quarterly basis the new FCC Form 499-Q to report their revenue from the prior quarter. In addition, carriers continue to file FCC Form 499-A annually.

[7] *Contribution Interval Order*, 16 FCC Rcd at 5752-53, para. 12. Carriers may file a revised FCC Form 499-Q to correct errors prior to the filing date of the next Form 499. *See id.* at n.22.

[8] *Contribution Interval Order*, 16 FCC Rcd at 5752-53, para. 12.

[9] USTA Petition at 2-3.

Commission reconsider its method of calculating additional contributions or refunds relating to revenues that carriers either under-report or over-report to USAC. USTA contends that such measures are punitive, particularly given the shortened timeframe by which carriers must now report data. USTA also contends that such measures are unnecessary given the existing prohibition on false statements under federal law.[10] In the alternative, USTA suggests that if the quarterly reported revenues and the annual reported revenues are within 10 percent, this method not be used to calculate collections or refunds.[11]

III. DISCUSSION

5. We deny the request of USTA to reconsider portions of the *Contribution Interval Order*. We find that USTA has raised no new issues or facts to persuade us to reconsider the decisions made in the *Contribution Interval Order*.[12] Specifically, we conclude that the accurate submission of quarterly revenue data is essential to ensure that sufficient contributions are made to the federal universal service support mechanisms on a competitively neutral basis. The Commission carefully considered the implications of imposing additional reporting requirements on carriers in the *Contribution Interval Order* and concluded that such requirements were necessary. In addition, we conclude that the method adopted by the Commission of calculating contributions from carriers that under-report or over-report revenues provides an appropriate incentive for carriers to accurately report quarterly revenues to USAC.

6. Reporting Requirements. We deny USTA's request to reconsider the Commission's decision to increase carriers' reporting requirements. USTA's petition raises no new arguments that would convince us to reconsider the conclusion that the benefits of substantially reducing the contribution interval outweigh any increased administrative burden on carriers.[13] Although the Commission acknowledged that the prior contribution methodology was competitively neutral and satisfied the requirements of the Act, as discussed above, the Commission concluded that revisions were necessary to ensure that the contribution methodology remains competitively neutral in light of recent changes in the telecommunications marketplace, such as the entry of new carriers into the interexchange market and the declining revenue bases faced by some existing carriers.[14] The submission of quarterly revenue data allows us to reduce the interval, from 12 months to six months, between the accrual and assessment of revenues for contribution to the universal service fund.[15] The shortened interval

[10] USTA Petition at 4 *citing* 47 U.S.C. § 503(b)(1)(B).

[11] *See also* WorldCom Reconsideration Comments at 2-3 (suggesting that the Commission delay the effective date of the "trueup" provision in order to allow carriers an opportunity to gain experience with the shortened reporting cycle).

[12] *See* 47 C.F.R. § 1.429(b).

[13] *Contribution Interval Order*, 16 FCC Rcd at 5751-52, para. 9.

[14] *Contribution Interval Order*, 16 FCC Rcd at 5753, para. 13. *See also* Sprint Reconsideration Comments at 2-3; WorldCom Reconsideration Comments at 1-2.

[15] Under the revised contribution methodology, the revenue information submitted from a particular quarter is used to set the contribution factor for the second following quarter. For example, contributions in the third quarter will be assessed based on revenues accrued in the first quarter.

between the accrual and assessment of revenues therefore reduces the possibility that certain carriers will be placed at a competitive disadvantage as they lose market share. As a result, the revised methodology furthers the Commission's goal of maintaining competitive neutrality.[16]

7. <u>*Under and Over-Reporting of Revenues*</u>. We find no basis to reconsider the method adopted by the Commission to calculate refunds from carriers that over-report revenue or the collection of additional contributions from carriers that under-report revenue. Contrary to USTA's contention, we do not find the method of calculating such adjustments to be punitive. A true-up mechanism merely ensures that carriers' contributions to the universal service mechanisms are based on accurate revenue data over the course of the year. Moreover, the Commission allows carriers up to three months after each filing to correct errors that appear on the Form 499-Q.[17] Thus, we find unpersuasive USTA's contention that carriers will be penalized as a result of insufficient time to ensure the complete accuracy of the information submitted. Only if such errors are not corrected in a timely fashion will USAC apply the refund and additional collection rules. Based on the record before us, we have no reason to overturn the prior conclusion that three months should be sufficient time for carriers to compute, and correct if necessary, revenue information.

8. We affirm our conclusion that the methodology adopted in the *Contribution Interval Order* encourages carriers to provide accurate data and discourages "gaming." For example, the methodology will deter carriers that otherwise might be tempted to under-report revenue to reduce their current contributions and free up capital for other uses. A carrier that did so would be forced to contribute additional funds following the annual true-up based on the average of the two highest quarterly contribution factors for the year. We are convinced that assessment of contributions based on this higher contribution rate will reduce the incentive for such conduct while giving carriers ample time to correct honest mistakes.

9. We are not persuaded by USTA's contention that it is sufficient to rely on existing federal law prohibiting willful false statements to protect against abuse of our rules. The methodology set forth in the *Contribution Interval Order* also provides incentives to carriers to avoid negligent or careless errors in reporting revenues to USAC. In order to maintain sufficient and competitively neutral support mechanisms, it is essential that carriers provide accurate revenue information to USAC in a timely manner. For similar reasons, we also decline to adopt USTA's alternative proposal to exclude from this calculation methodology those carriers whose reported quarterly revenues fall within 10 percent of their reported annual revenues. This proposed 10 percent margin of acceptable error may translate into significant contributions for some carriers, who would be able to avoid payment by intentionally under-reporting their revenues by 10 percent or less. Thus, USTA's proposal may provide carriers with a substantial incentive to under-report their revenues. In light of the opportunity provided each quarter to correct such errors, we believe that adopting this proposal would also be contrary to our goal of encouraging carriers to report accurate information.

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[16] *Contribution Interval Order*, 16 FCC Rcd at 5751-52, para. 9.

[17] *Contribution Interval Order*, 16 FCC Rcd at 5753, n.22 ("[c]arriers will be allowed an opportunity to file a revised Form 499-Q prior to the filing date of the next Form 499").

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and 254, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, that the Petition for Reconsideration filed April 23, 2001 by USTA IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary