

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Business Service Center, Inc., Mobile Phone of	)	
Texas, Inc., and 3 Rivers PCS, Inc.	)	
Petition for Reconsideration of Small Wireless	)	
Carrier Group	)	

**ORDER**

**Adopted: October 27, 2004**

**Released: October 29, 2004**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we deny a petition for reconsideration currently pending before the Federal Communications Commission (“Commission”). Business Service Center, Inc., Mobile Phone of Texas, Inc., and 3 Rivers PCS, Inc. (collectively, the “Small Wireless Carrier Group”) request that the Commission reconsider its “safe harbor” guidelines, adopted in 1998, which allow several categories of carriers to assume that a certain percentage of their telecommunications revenues is interstate for universal service reporting and contribution purposes.<sup>1</sup> Since this petition was filed, the Commission has reassessed the safe harbor guidelines in a rulemaking proceeding. Accordingly, we deny this petition.

**II. BACKGROUND**

2. In the *Universal Service First Report and Order*, the Commission decided to assess contributions on contributors’ gross-billed end-user telecommunications revenues.<sup>2</sup> In 1998, in response to concerns raised by certain wireless telecommunications providers regarding difficulties associated with distinguishing between their interstate and intrastate revenues, the Commission adopted interim safe harbors for these providers to use when reporting interstate telecommunications revenues for universal

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<sup>1</sup>Business Service Center, Inc., Mobile Phone of Texas, Inc., and 3 Rivers PCS, Inc., Petition for Reconsideration of Small Wireless Carrier Group, CC Docket No. 96-45 (filed January 11, 1999) (“Small Wireless Carrier Group Petition”).

<sup>2</sup>See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9206 para. 844 (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*”).

service contribution purposes.<sup>3</sup> Briefly, an entity electing to report a percentage of interstate telecommunications revenues that is less than the relevant safe harbor percentage is required to document the method used to calculate its percentage and make that information available to the Commission or Universal Service Administrative Company (“USAC”) upon request.<sup>4</sup> Pursuant to these safe harbor provisions, certain wireless telecommunications providers—namely, cellular, broadband Personal Communications Service (“PCS”), and digital Specialized Mobile Radio (“SMR”) providers—were permitted to assume that no more than 15 percent of their revenues were interstate in nature. Similarly, paging providers and analog SMR providers were granted interim safe harbor percentages of twelve and one, respectively.<sup>5</sup>

3. On January 11, 1999, the Small Wireless Carrier Group filed a petition requesting that small wireless carriers be permitted to use a reduced safe harbor of one percent for reporting their percentage of interstate wireless telecommunications revenues for universal service purposes.<sup>6</sup> The Small Wireless Carrier Group asserts that the Commission adopted its 15 percent and twelve percent safe harbors with no consideration for the traffic patterns of small wireless carriers, and that these guidelines “far exceed the interstate traffic actually carried by small, local paging, cellular and PCS providers.”<sup>7</sup> The Small Wireless Carrier Group contends that “the one percent interstate factor for analog SMR providers more accurately reflects [the] service areas, customer bases, and traffic patterns” of small wireless carriers.<sup>8</sup>

### III. DISCUSSION

4. Pursuant to section 1.106 of the Commission’s rules, parties may file for reconsideration of final Commission actions.<sup>9</sup> Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing at the petitioner’s last opportunity to present such matters.<sup>10</sup> A petition for reconsideration of a rulemaking proceeding must state with particularity the respects in which the petitioner believes the action taken by the Commission should be changed.<sup>11</sup> We will deny any petition that merely repeats arguments previously considered and rejected.<sup>12</sup>

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<sup>3</sup>See *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, 13 FCC Rcd 21252, 21254-60, paras. 5-15 (1998) (“*Interim CMRS Safe Harbor Order*”).

<sup>4</sup>*Id.* at 21258, para. 11.

<sup>5</sup>*Id.* at 21258-60, paras. 13-15.

<sup>6</sup>Small Wireless Carrier Group Petition at 2, 11.

<sup>7</sup>*Id.* at ii.

<sup>8</sup>*Id.*

<sup>9</sup>47 C.F.R. § 1.106.

<sup>10</sup>See *Applications of Vodaphone Airtouch, PLC and Bell Atlantic Corporation, et al.*, Order on Further Reconsideration, 17 FCC Rcd 10998, 10999, para. 2 (WTB 2002); *LMDS Communications, Inc.*, Order on Reconsideration, 15 FCC Rcd 23747, 23749, para. 6 (WTB 2000).

<sup>11</sup>47 C.F.R. § 1.429(c).

<sup>12</sup>*Applications of Bennett Gilbert Gaines et al.*, Memorandum Opinion and Order, 8 FCC Rcd 3986, 3987 (Rev. Bd. 1993). See, e.g., *Metrolcall, Inc. v. Southwestern Bell Tel. Co. et al.*, Order on Reconsideration, 17 FCC Rcd 4781, 4782-83, para. 5 (2002).

5. In 2002, to address concerns that the interim safe harbor for mobile wireless telephony providers was inappropriate in light of current market conditions, the Commission raised the safe harbor for such service providers from 15 to 28.5 percent.<sup>13</sup> The Commission increased the safe harbor percentage after concluding that the lower figure no longer reflected the extent to which mobile wireless consumers use their wireless phones for interstate calls.<sup>14</sup> At the same time, the Commission elected not to adjust the safe harbors for analog SMR and paging providers.<sup>15</sup> As such, the members of the Small Wireless Carrier Group are now subject to these new limits.

6. In taking these actions, the Commission rejected the arguments by the American Association of Paging Carriers that the safe harbor for non-nationwide paging carriers should be reduced to one percent.<sup>16</sup> Although not directly cited in the *Interim Contribution Methodology Order*, a similar argument was made by a group called the Concerned Paging Carriers, which maintained (as the Small Wireless Carrier Group does here) that the “safe harbor provision should be reduced to about one percent” for paging carriers.<sup>17</sup> Notably, two of the 17 entities comprising the Concerned Paging Carriers were Business Service Center, Inc. and Mobile Phone of Texas, Inc., which are two of the three carriers of the Small Wireless Carrier Group. Thus, it is evident that the Commission has previously considered and rejected the arguments raised in this petition. In sum, the petition presents no new facts or arguments that would persuade us that further reconsideration is appropriate. Accordingly, we deny the Small Wireless Carrier Group’s petition. We note, however, that each member of the Small Wireless Carrier Group is permitted under our rules to base its contributions upon actual usage if it determines that the safe harbor overestimates its interstate telecommunications revenues, provided that it documents how it calculated the percentage and makes that information available to the Commission or USAC upon request.<sup>18</sup>

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<sup>13</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, NSD File No. L-00-72, 99-200, 95-116, 98-170, 17 FCC Rcd 24952 (2002) (“*Interim Contribution Methodology Order*”).

<sup>14</sup>*Id.* at 24965, para. 21.

<sup>15</sup>*Id.* at 24966, para. 23.

<sup>16</sup>*Id.*

<sup>17</sup>See Comments of the Concerned Paging Carriers, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 95-116, filed April 22, 2002, at 12-13; Reply Comments of the Concerned Paging Carriers, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 95-116, filed May 13, 2002, at 8. Contributors to universal service must submit their revenue information to the Universal Service Administrative Company using the Form 499-A and Form 499-Q, which are the Telecommunications Reporting Worksheets. See 47 C.F.R. § 54.711; see also *Interim Contribution Methodology Order*.

<sup>18</sup>See *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258, para. 11.

**IV. ORDERING CLAUSE**

7. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1-4, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and 405, and sections 1.106 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.429, that the Petition for Reconsideration filed January 11, 1999, by Business Service Center, Inc., Mobile Phone of Texas, Inc., and 3 Rivers PCS, Inc. is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary