

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
Proposed Fourth Quarter 2004)	
Universal Service Contribution Factor)	CC Docket No. 96-45
)	
)	
AT&T Petition for Declaratory Ruling Regarding)	WC Docket No. 03-133
Enhanced Prepaid Card Services)	
)	
WilTel Communications, LLC)	
Expedited Petition to Reduce or Adjust the)	
Proposed Fourth Quarter Contribution Factor)	

ORDER

Adopted: May 9, 2007

Released: May 11, 2007

By the Commission:

1. In this Order (Order), pursuant to section 1.429 of the Commission's rules,¹ we dismiss the Expedited Petition to Reduce or Adjust the Proposed Fourth Quarter Contribution Factor filed by WilTel Communications, LLC ("WilTel").² Specifically, we find that the Petition was untimely filed.

2. Section 54.709 of the Commission's rules directs the universal service fund (USF) Administrator (i.e., the Universal Service Administrative Company or USAC), to provide the Commission, on a quarterly basis, with projections of the demand for the universal service support mechanisms and the contribution base.³ The Commission uses that information to determine the quarterly contribution factor for the USF.⁴ Section 54.709 further states that the Commission will announce the quarterly contribution factor for USF in a Public Notice that is made available on the Commission's website.⁵ As stated in the public notices, the Commission has 14 days to review program demand projections and the contribution base projections and make modifications as it deems necessary to serve the public interest.⁶ After the 14 days, the projections and contribution factors are deemed approved by the Commission, unless the Commission determines that changes are warranted.⁷ After the projections

¹ Section 1.429 of the Commission's Rules and section 405 of the Communication Act of 1934, as amended (the Act), state that petitions for reconsideration must be filed within 30 days of public notice of a Commission decision. See 47 C.F.R. § 1.429; 47 U.S.C. § 405.

² See Wiltel Expedited Petition to Reduce or Adjust the Proposed Fourth Quarter Contribution Factor, CC Docket No. 96-45; WC Docket No. 03-133 (filed Sept. 22, 2004) (*WilTel Petition*).

³ 47 C.F.R. § 54.709(a)(3).

⁴ *Id.*

⁵ *Id.*

⁶ See e.g., *Proposed First Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 14427 (2006).

⁷ 47 C.F.R. § 54.709.

are approved, USAC calculates and applies the quarterly contribution factor to determine each entity's contribution and bill and collect contributions from contributors.⁸ The Public Notice, therefore, operates as the instrument through which the Commission provides all interested parties, including recipients and contributors, notice of both the size (projected demand) and cost (contribution factor) of USF on a quarterly basis.

3. In its Petition, WilTel contends that the Bureau's proposed contribution factor does not meet the requirement in section 254 of the Act that contributions to the USF be equitable and nondiscriminatory.⁹ Specifically, WilTel raises concerns regarding individual contributor compliance with the Fund's contribution requirements, citing a then-pending AT&T petition for declaratory ruling as an example of non-compliance.¹⁰ WilTel also claims that the "enhanced" services distinction in the contribution mechanism was resulting in lower revenues being reported by contributors willing to take an "aggressive" legal position on what services are encompassed in that term.¹¹

4. Although the petitioner's request is styled as a Petition to Adjust or Reduce the Contribution Factor, WilTel does not dispute whether the projected demand and contribution factor were calculated in compliance with the Commission's rules,¹² or any other aspect of the Public Notice itself. Rather, the petition seeks reconsideration of the manner in which the Commission determines the amount of and collects USF contributions.¹³ As such, we find the petitioner's request is more appropriately considered a Petition for Reconsideration of the Commission's methodology for calculating and collecting USF contributions set forth in the 1997 *Universal Service Order*.¹⁴ That Order was adopted on May 8, 1997. Petitions for Reconsideration would have been timely filed by June 8, 1997. Therefore, petitioner's request was not timely filed, and is hereby dismissed.

5. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1 through 4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to 47 C.F.R. § 1.429, that the Petition to Reduce or Adjust the Proposed Fourth Quarter Contribution Factor IS DISMISSED.

⁸ *Id.*

⁹ See *WilTel Petition* at 3 (citing 47 U.S.C. §§ 254(a)(4)(sic) and (d) of the Act; the appropriate sections are 254(b)(4) and (d)).

¹⁰ See *WilTel Petition* at 3, 5 (citing *AT&T Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133 (filed May 15, 2003) (*AT&T Petition*)).

¹¹ See *WilTel Petition* at 7 (suggesting that carriers can take "aggressive" legal positions on interpreting contribution payment requirements without penalty from the Commission).

¹² See 47 C.F.R. § 54.709.

¹³ *E.g.*, WilTel states that "discrimination in the collection of USF contribution unfairly burdens some telecommunications customers at the expense of others." *Id.* at 2. See also *id.* at 4 (stating that the USF contribution factor is discriminatory because "[t]he revenue assumptions reflect the self-reporting of the service providers, right or wrong").

¹⁴ See generally *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, 12 FCC Rcd 8776 (1997), and Erratum, 13 FCC Rcd 24493 (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*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000) (*1997 Universal Service Order*).

6. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's Rules, 47 C.F.R. § 1.103, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary