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Dated: March 26, 2003.

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness & Response.

[FR Doc. 03–7685 Filed 3–31–03; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–58]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for interim waiver and several petitions for reconsideration of rules recently adopted in the Interim Contribution Methodology Order regarding the assessment and recovery of contributions to the federal universal service support mechanisms.

DATES: Effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney or Diane Law Hsu, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Second Order on Reconsideration in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–58, released on March 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we address petitions for interim waiver and several petitions for reconsideration of rules recently adopted in the Interim Contribution Methodology Order, 67 FR 79525, December 30, 2002, regarding the assessment and recovery of contributions to the federal universal service support mechanisms. We grant local exchange carriers' request for an interim waiver of § 54.712 of the Commission's rules to permit such carriers to continue to recover through the federal universal service line item certain contribution costs associated with Centrex customers on a per-line basis from multi-line business customers, pending action on petitions for reconsideration of this rule. In addition, we grant, in part, petitions filed by the United States Telecommunications Association (USTA) and SBC Communications Inc. (SBC) seeking reconsideration of § 54.712 to permit eligible telecommunications carriers (ETCs) to recover contribution costs associated with Lifeline customers' occasional interstate revenues through a universal service pass-through charge for such customers. We also address petitions filed by the National Exchange Carrier Association, Inc. (NECA), Verizon Wireless, and WorldCom, Inc. (WorldCom), and clarify how the Universal Service Administrative Corporation (USAC) shall conduct the universal service contribution true-up processes for revenues from 2002 and 2003. Finally, we grant, in part, a petition for reconsideration filed by AT&T Corp. (AT&T) requesting that the Commission announce the universal service contribution factor as a percentage rounded up to the nearest tenth of a percent.

II. Discussion

1. *Centrex.* In this Order, we grant, in part, petitions for interim waiver filed by BellSouth, National Exchange Carrier Association (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), SBC, and Verizon (Petitioners) of § 54.712(a) of our rules as it applies to the multi-line business customers of local exchange carriers, pending the Commission's resolution of petitions for reconsideration of the rule. We find Petitioners have demonstrated special circumstances to warrant deviation from our rule and that the public interest would be served by granting a limited interim waiver. Therefore, we waive § 54.712 on an interim basis to enable local exchange carriers to continue to recover federal universal service contribution costs through universal service line items using the equivalency ratios established for Centrex lines under our rules governing the Presubscribed Interexchange Carrier Charge (PICC). Until the Commission resolves pending petitions for reconsideration of § 54.712, local exchange carriers that utilize the PICC equivalency ratios when recovering contribution costs from Centrex customers will be permitted to recover a share of their contributions associated with the subscriber line charge for a specific Centrex line from their multi-line business customers in a given state.

3. Under §§ 69.131 and 69.158 of our rules, local exchange carriers have the option of recovering their contribution costs from Centrex customers through a universal service line item that uses the equivalency ratios established for Centrex lines under our rules governing the PICC. In the *Access Charge Reform Reconsideration Order,* the Commission adopted, for purposes of the PICC, a ratio of up to nine Centrex lines to one PBX trunk. The Commission subsequently granted local exchange carriers the option of applying this equivalency ratio to the recovery of universal service contribution costs from Centrex customers.

4. In the *Interim Contribution Methodology Order,* the Commission adopted a general prohibition on the recovery of amounts in excess of contribution obligations through federal universal line-item charges. As discussed, the Commission concluded such action would prevent carriers from recovering unrelated costs through universal service line items and from averaging contribution costs across all end-user customers. In addition, it would alleviate end-user confusion regarding universal service line items.

5. We conclude that special circumstances exist that warrant interim waiver of the rule. Petitioners have noted a potential inconsistency between §§ 54.712, 69.131, and 69.158. They assert that if carriers are not permitted to increase recovery charges for multi-line business customers, they may be unable to continue to apply an equivalency ratio to Centrex universal service pass-through charges as permitted by §§ 69.131 and 69.158 of our rules and still recover their contribution costs from their customers. They note the Commission did not indicate its intent in the *Interim Contribution Methodology Order* to overturn its existing policy of permitting local exchange carriers to apply an equivalency ratio to Centrex customer universal service pass-through charges. To the contrary, they argue that the Commission recognized that it may be appropriate to continue applying the one-ninth equivalency ratio to Centrex customer lines in the event that a connection-based universal service contribution methodology is adopted.

6. The petitions for reconsideration of this issue raise important issues we intend to resolve expeditiously. In the meanwhile, we believe the public interest would be served by granting a limited waiver of the general prohibition on averaging contribution

costs among different customers for contribution costs not recovered by operation of the Centrex equivalency ratios to preserve the status quo for a limited period of time. Grant of this interim waiver does not represent a substantive change in Commission policy. To the contrary, grant of this interim waiver is only provided to allow carriers to continue an existing Commission policy, while we examine that policy and contribution issues more broadly. Until the Commission addresses pending petitions for reconsideration of this issue, local exchange carriers will be permitted to continue to average such unrecovered contribution costs across multi-line business customers.

7. Moreover, this interim waiver will prevent an unintended increase in universal service pass-through charges on current Centrex users, pending the Commission's determination of the merits of the petitions for reconsideration on this and other related issues. Because most local exchange carriers currently apply the PICC equivalency ratios to Centrex universal service pass-through charges, the limited waiver we grant today will minimize changes in universal service line items for multi-line business customers in the immediate term, while carriers otherwise implement the new rule on April 1, 2003. In particular, we note that several organizations representing state agencies have submitted letters in support of this action. These commenters note that state governments rely heavily on Centrex service and would be disproportionately affected by increases in universal service line item charges resulting from denial of the interim waiver. We intend to weigh these and other arguments in reviewing the pending petitions for reconsideration.

8. We emphasize the limited nature of our action today. This waiver is limited to the narrow issue of how to accommodate existing Commission policies that the Commission did not directly address in the *Interim Contribution Methodology Order.* Except for this limited exception, all carriers (including local exchange carriers) will continue to be subject to broader limitations on the recovery of contribution costs through federal universal service line-item charges.

9. *Lifeline.* In addition, we grant, in part, petitions filed by SBC and USTA to reconsider § 54.712(b) of our rules, as it applies to the recovery of contributions associated with Lifeline customers. Specifically, we amend § 54.712(b) to permit ETCs to recover from Lifeline customers contribution costs associated with the provision of interstate telecommunications services that are not supported by the Commission's universal service mechanisms. ETCs have always been free to recover such amounts from these customers in the past, and the Commission did not intend to preclude such recovery when it adopted the interim modifications in the *Interim Contribution Methodology Order.*

10. Sections 54.712(a) and (b) read together prohibit ETCs from recovering any contribution costs associated with Lifeline customers either from Lifeline customers directly or through a federal universal service line-item charge assessed on all other customers. When the Commission adopted § 54.712(b), it reasoned that because ''customers of Lifeline services do not generate assessable interstate telecommunications revenues for ETCs, the relevant assessment rate and contribution amounts recovered from such customers would be zero.'' In particular, the Commission focused on the fact that Lifeline customers are not obligated to pay a subscriber line charge, which typically is a major source of interstate revenue for an ETC. Several large local exchange carriers, however, point out that customers of Lifeline services do in fact generate occasional interstate telecommunications revenues from interstate telecommunications services, such as one-time presubscribed interexchange carrier (PIC) change charges and other interstate intraLATA toll charges. These charges, however, are not associated with services subject to Lifeline discounts and, in any event, should not generate substantial contribution amounts. Therefore, we find that ETCs should not be prohibited from recovering these minimal contributions associated with these occasional interstate charges from Lifeline customers.

11. Moreover, this modification will ensure that ETCs are not disadvantaged by our recovery limitations if they provide both local and long distance services to customers who participate in the Lifeline program. The combination of §§ 54.712(a) and (b) could prohibit ETCs that provide both local and long distance services from recovering their contributions associated with such customer's long distance charges through any universal service line items. Interexchange carriers that only provide long distance services to customers who also qualify for Lifeline, however, have always been permitted to recover their contribution costs from these customers and still are free to do so under the current rules. We do not believe this disparity in recovery practices is competitively neutral. Accordingly, we will amend our rules to permit ETCs to recover contribution costs associated with interstate long distance charges from Lifeline customers.

12. *True-Up Process for 2002 and 2003.* In response to petitions for reconsideration filed by NECA, Verizon Wireless, and WorldCom, we clarify how USAC will true up annual revenue data filed by contributors on the FCC Form 499–A against quarterly revenue data filed on the FCC Form 499–Q. Specifically, we clarify that USAC shall only apply the annual true-up to revenue periods for which universal service contributions actually were assessed. The annual true-ups for calendar year 2002 and 2003 revenues, therefore, will not apply to revenues from the fourth quarter of 2002 and the first quarter 2003. As discussed, we deny other proposed modifications to USAC's true-up procedures or to the methodologies for calculating contributions to other support programs.

13. During the third quarter of each calendar year, USAC uses annual revenue data provided by contributors in the FCC Form 499–A to perform a true-up to quarterly revenue data submitted by contributors in FCC Form 499–Qs for the prior calendar year. As necessary, USAC refunds or collects from contributors any over-payments or under-payments. If the combined quarterly revenues reported by a contributor are greater than those reported on its annual revenue report (FCC Form 499–A), then a refund is provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499–A, USAC collects the difference from the contributor using an average of the two highest contribution factors for the year.

14. Because the purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data, we agree with WorldCom and Verizon Wireless that USAC should only apply the true-up to revenue periods for which universal service contributions actually were assessed. If USAC applied the true-up to revenue periods for which universal service contributions were not assessed, certain providers' contribution obligation could potentially be increased or decreased. Consistent with this conclusion, we direct USAC not to apply the annual true-ups for calendar

years 2002 and 2003 to revenues from the fourth quarter 2002 and first quarter 2003.

15. The true-up for calendar year 2002 revenues will apply to revenues reported for the first three quarters of 2002, which were the basis for assessments in the third and fourth quarters of 2002 and the first quarter of 2003. The true-up for calendar year 2002 revenues will not apply to revenues reported for the fourth quarter of 2002. USAC will subtract revenues reported for the fourth quarter of 2002 from annual revenues reported on the FCC Form 499–A to arrive at an estimate of a contributor's actual revenues for the first three quarters of 2002. Consistent with USAC's current true-up procedures, USAC will then compare this amount to the sum of revenues reported for the first three quarters of 2002 to determine whether a refund or additional collection is warranted. Refunds will be based on the average of the two lowest contribution factors applied to revenues reported for the first three quarters of 2002. Additional collections will be based on the average of the two highest contribution factors applied to revenues reported for the first three quarters of 2002.

16. The true-up for calendar year 2003 revenues will apply to revenues projected for the second through fourth quarters of 2003. The true-up for calendar year 2003 revenues will not apply to revenues projected for the first quarter of 2003. USAC 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. USAC 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. In subsequent years, the annual true-up will continue to apply to any and all revenue periods for which contributions are assessed.

17. We deny NECA's proposal to conduct additional true-ups on a quarterly basis. In addition to the annual true-up, NECA proposes a quarterly true-up mechanism in which a contributor's quarterly revenue projections would be compared to the corresponding quarter's actual revenue filed six months later. Under NECA's proposal, any difference between projections and actual revenues would be applied to the relevant contribution factor for that calendar quarter to arrive at a true-up amount. We disagree with NECA that quarterly true-ups are appropriate because it is more difficult for contributors to project revenues than report historical revenues. As the Commission noted in the Interim Contribution Methodology Order, although the modified contribution methodology relies on the ability of contributors to project gross-billed and collected revenues, it only requires contributors to project for the upcoming quarter, which should minimize the potential for inaccurate estimates. In addition, contributors may correct their projections up to 45 days after the due date of each FCC Form 499–Q. We also note that by eliminating penalties for over-or under-reporting, NECA's quarterly true-up proposal would reduce incentives created under current true-up procedures for contributors to accurately forecast their revenues for the upcoming quarter. We therefore decline to adopt NECA's proposal at this time.

18. *Timing of Revised Safe Harbor for Mobile Wireless Providers.* We also reject Verizon Wireless's contention that the Commission retroactively changed reporting requirements for mobile wireless providers by requiring mobile wireless providers that choose to report their interstate telecommunications revenues based on an interim safe harbor to report an increased percentage of interstate revenues for the fourth quarter of 2002 and the first quarter of 2003. In the Interim Contribution Methodology Order, the Commission increased to 28.5 the interim safe harbor that provides cellular, broadband Personal Communications Service, and certain Specialized Mobile Radio providers with the option of assuming that a fixed percentage of their telecommunications revenues are interstate with the presumption of reasonableness. The Commission's decision to increase the mobile wireless safe harbor was based, in large part, on traffic studies conducted in the third quarter of 2002 by five unnamed large national mobile wireless providers. In the Interim Contribution Methodology Order, the Commission left unchanged mobile wireless providers' option of reporting actual interstate telecommunications revenues if they are able to do so.

19. Contrary to Verizon Wireless's contention, the rules adopted in the Interim Contribution Methodology Order do not impact revenues reported prior to January 29, 2003, the effective date of the order. The requirements adopted in the Interim Contribution Methodology Order only apply to future reporting obligations. For example, contributors to the federal universal service programs first reported revenues for the fourth quarter of 2002 and the first quarter of 2003 on the FCC Form 499–Q filed on February 3, 2003. Moreover, the increased interim safe harbor for mobile wireless providers will apply to universal service contributions beginning in the second quarter of 2003. These contributions will be based on projected revenues for the second quarter of 2003, which contributors reported on the February 3, 2003, FCC Form 499–Q.

20. The Commission also did not retroactively change revenue reporting requirements for other Commission programs, such as Local Number Portability, Numbering Administration, and Telecommunications Relay Service. The reporting of fourth quarter 2002 revenues for purposes of calculating assessment to other Commission programs will not occur until April 1, 2003. Contributions to these other programs are based on annual revenues reported on April 1st of each year. Assessments to these other programs based on calendar year 2002 revenues will not be billed until beginning in the third quarter of 2003. Likewise, reporting of revenues for the first quarter of 2003 for these other Commission programs will not occur until April 1, 2004, and will not be assessed until beginning in the third quarter of 2004. Therefore, we conclude that our decision to apply the revised interim wireless safe harbor to revenues reported for the fourth quarter of 2002 and the first quarter of 2003 does not constitute retroactive changes to reporting obligations or to contribution obligations.

21. *Rounding Up the Contribution Factor.* Finally, we grant, in part, a petition for reconsideration filed by AT&T requesting that the Commission announce the universal service contribution factor as a percentage rounded up to the nearest tenth of a percent. Sprint and Verizon support AT&T's request. We direct the Wireline Competition Bureau (Bureau) to announce a contribution factor rounded up to the nearest tenth of a percent (*e.g.*, .073 or 7.3 percent). In order to allow an individual contributor the ability to recover the full amount of its contribution obligation through its federal universal line item, we also direct the Bureau to account for contribution factor rounding when calculating the circularity discount factor.

22. In the past, the Bureau has announced a contribution factor rounded to the nearest 1/10,000th of a percent (*e.g.*, .072805). AT&T has asserted that some of its billing systems can only accommodate a factor of three digits beyond the decimal point. Our decision today that the contribution

factor be rounded up to the nearest tenth of a percent, and that rounding be accounted for when calculating circularity, accommodates concerns expressed by AT&T and others that billing system limitations, when coupled with the recovery limitations in § 54.712 of our rules, may inhibit some carriers' ability to recover a portion of their contribution costs through their federal universal service line-item charges. This action also will prevent carriers from recovering amounts in excess of contribution obligations. We therefore conclude that each quarter the Bureau shall announce a contribution factor rounded up to the nearest tenth of a percent.

III. Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA), *see generally* 5 U.S.C. 601–612, requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Further Notice,* 67 FR 11254, March 13, 2002. The Commission sought written public comment on the proposals in the *First Further Notice,* including comment on the IRFA. In the *Interim Contribution Methodology Order,* the Commission included a Final Regulatory Flexibility Analysis (FRFA) that conformed to the RFA.

24. In the *Second Order on Reconsideration,* we eliminate § 54.712(b) of the Commission's rules, in order to permit eligible telecommunications carriers (ETCs) to recover from Lifeline customers contribution costs associated with the provision of interstate telecommunications services, such as occasional interstate charges and interstate long distance charges, that are not supported by the Commission's universal service mechanisms. By eliminating this restriction on cost recovery, the *Second Order on Reconsideration* will have a beneficial, deregulatory impact on all ETCs with such customers, including small entity ETCs. We also note that this action will have no impact on the universal service contribution obligations of ETCs and should only minimally impact their contribution recovery practices. We therefore conclude that a FRFA is not required here because the *Second Order on Reconsideration* will have no significant economic impact on a substantial number of small entities.

IV. Ordering Clauses

25. Pursuant to sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order and Second Order on Reconsideration *is adopted.*

26. Pursuant to sections 1, 4(i), 254 and 405 of the Communications Act of 1934, as amended, and §§ 1.3, 1.429 of the Commission's rules, that the Verizon Telephone Companies, SBC Communications Inc., and BellSouth Corporation Joint Petition for Interim Waiver and the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies Joint Petition for Interim Waiver are granted to the extent indicated herein.

27. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration filed by the United States Telecommunications Association and SBC Communications Inc. *are granted* to the extent indicated herein.

28. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by the National Exchange Carrier Association, Inc. *is denied.*

29. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by WorldCom, Inc. *is granted.*

30. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by the Verizon Wireless *is granted,* in part, and denied, in part, to the extent indicated herein.

31. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by AT&T Corp. *is granted* to the extent indicated herein.

32. Section 54.712 of the Commission's rules, is amended as set forth, effective April 1, 2003.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

■ 1. The authority citation for part 54 continues to read as follows:

Authority :47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.712 [Amended]

■ 2. In § 54.712, remove and reserve paragraph (b).

[FR Doc. 03–7702 Filed 3–31–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[FTA Docket No. 98–B]

RIN 2132–AA30

Bus Testing

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is adopting, as a final rule, without change, the current interim final rule that sets forth regulations governing the testing of vehicles used in mass transportation service.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Marcel Belanger, Office of Research and Innovation, Federal Transit Administration, (202) 366–0725. For legal issues, contact Richard L. Wong, Office of the Chief Counsel, Federal Transit Administration, (202) 366–4011.