

Dated: January 18, 2000.

Michael M. Stahl,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

Therefore, 40 CFR Part 167 is amended as follows:

PART 167—[AMENDED]

1. The authority citation for Part 167 continues to read as follows:

Authority: 7 U.S.C. 136(e) and (w)

2. In § 167.90(b), the address at the end of the paragraph is revised to read:

§ 167.90 Where to obtain and submit forms.

* * * * *

(b) * * *

U.S. Environmental Protection Agency,
Office of Enforcement and Compliance
Assurance, Office of Compliance, Agriculture
and Ecosystems Division (2225A), Ariel Rios
Building, 1200 Pennsylvania Avenue, N.W.,
Washington, DC 20460, ATTN: FIFRA
Foreign Establishment Registration Contact.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96-45; FCC 99-280]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service addresses several petitioners asking for reconsideration or waiver of the Commission's contribution rules. The Commission requires carriers to contribute on the basis of prior year revenues, and the petitioners wanted to use current year revenues instead. The Commission denies the petitions.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order and Seventh Order on Reconsideration, CC Docket No. 96-45; FCC 99-280, released on October 13, 1999. 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. Affinity Corporation, Hotel Communications, Inc., LDC Telecommunications, Inc. (LDC), MobileTel, Inc., National Telephone & Communications, Inc. (MobileTel), Network Operator Services, Inc. (NOS), Operator Communications, Inc. (OCI), and U.S. Network, Inc. (collectively, Petitioners) have filed petitions for waiver or, alternatively, reconsideration of § 54.706, § 54.709, and/or § 54.711 of the Commission's rules. Specifically, Petitioners seek waiver or reconsideration of the requirement that their contributions to the universal service support mechanisms be calculated on the basis of their prior year revenues. For the reasons that follow, we deny the petitions.

II. Discussion

A. Reconsideration of the Method for Calculating Contributions

1. Timeliness of Petitions

2. NOS and LDC have petitioned the Commission to reconsider its decision to assess contributions on prior year revenues instead of current year revenues, and OCI has asked the Commission to consider assessing contributions on estimated future revenues with periodic reconciliations. As NOS recognizes, however, a petition for reconsideration in a rulemaking proceeding must be filed within 30 days after public notice of the Commission action. The Commission's rules provide that public notice in a rulemaking proceeding occurs upon publication of the document, or a summary thereof, in the **Federal Register**. Even if we assume that NOS, LDC, and OCI seek reconsideration of the *Universal Service Second Order on Reconsideration*, 62 FR 41294 (August 1, 1997), our last decision concerning this issue, that decision was published in the **Federal Register** on August 1, 1997. Thus, petitions for reconsideration of the *Universal Service Second Order on Reconsideration* were due on or before September 1, 1997. OCI, NOS, and LDC filed their petitions for reconsideration on July 14, 1998, August 28, 1998, and October 22, 1998, respectively, and they are therefore untimely. Recognizing this untimeliness, NOS urges the Commission to reconsider the issue of prior year revenues on our own motion. For the reasons discussed, however, we decline to reconsider on our own motion our decision to assess universal service contributions on prior year revenues.

3. Although the petitions for reconsideration are untimely, we wish to take this opportunity to address NOS's claim that "it is not clear * * * [whether] the Commission followed the [notice] requirements of the Administrative Procedure Act (APA)" in establishing the universal service assessment methodology, and the Commission should therefore reconsider its decision. Section 553(b) of the APA requires an agency to provide published notice of its proposed rulemaking in the **Federal Register**. The notice must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved."

4. Here, the Commission sought comment in the *Universal Service NPRM*, 61 FR 10499 (March 14, 1996), on how universal service contributions should be assessed. The Commission described three potential contribution bases: gross interstate revenues; gross interstate revenues net of payments to other carriers; and per-line or per-minute units. The Commission also specifically asked for comment on the approach used for the TRS fund, *i.e.*, gross interstate revenues for the prior calendar year, and provided a citation to the *TRS Third Report and Order*, 58 FR 39671 (July 26, 1993).

5. Given that the Commission sought comment on two revenue-based contribution methods in the *Universal Service NPRM*, it necessarily follows that, if the Commission adopted a revenue-based method, it would also need to select some period for which revenues would be measured. Moreover, the Commission specifically directed commenters to consider the TRS approach, which was established in 1993 and assesses contributions based on prior calendar year revenues. Indeed, in response to the *Universal Service NPRM*, commenters stated that the industry was already familiar with the TRS approach. Considering the Commission's expressed interest in a revenue-based contribution method and its reference to the TRS approach, we believe that the question of what period's revenues to use was necessarily raised for comment. Accordingly, we find that the Commission's *Universal Service NPRM* satisfies the Administrative Procedure Act's notice requirement.

2. Substantive Proposals for Alternative Calculation Methodologies

6. Although we deny the petitions for reconsideration as untimely, we also take this opportunity to explain why we believe that the calculation methodologies proposed by Petitioners do not present viable alternatives to the

methodology the Commission adopted in the *Universal Service Second Order on Reconsideration*. Consistent with the directives of section 254, the Commission adopted a contribution methodology that is equitable, nondiscriminatory, and competitively neutral. Pursuant to the Act and our rules, all entities that provide interstate telecommunications are required to contribute to the universal service support mechanisms. The contribution methodology does not discriminate against one class of carrier or favor one market segment over another. Contributions are calculated using a contribution factor, which is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues. Thus, contributors pay only an equitable, *pro rata* share of the total projected quarterly expenses. The fact that some carriers may have difficulty recovering their contributions from a declining customer base is the product of a competitive marketplace, not an inequitable, discriminatory, or competitively-biased Commission rule. We emphasize that using prior year revenues to calculate contributions to the universal service support mechanisms is consistent with Congress's directive that all providers of interstate telecommunications services shall contribute to the preservation and advancement of universal service on an equitable and nondiscriminatory basis.

7. Contrary to the methodology the Commission adopted, however, NOS proposes allowing carriers to make a one-time election to base their universal service contributions on current year revenues, instead of prior year revenues. Under this plan, the Commission would estimate total industry revenues, which, according to NOS, will remain relatively constant from year to year. We find that NOS's proposal does not fulfill congressional objectives as well as the methodology the Commission adopted.

8. For example, under NOS's proposal, the Commission would have to forecast total end-user telecommunications revenues when calculating contribution factors for the universal service support mechanisms. Contrary to NOS's claim, we do not believe that such revenues are likely to remain relatively constant. Our most recent assessment of the telecommunications industry shows that, from 1992 to 1998, gross telecommunications revenues increased by approximately \$93 billion. Annual increases have ranged from approximately \$10 billion to \$22 billion since 1992. Moreover, although the

Commission has used forecasts of gross industry revenues in calculating contribution factors for the TRS fund, the universal service support mechanisms are significantly larger than the TRS fund. Thus, errors in forecasting total industry revenues will have a much greater effect on the universal service support mechanisms than on the TRS fund. Consequently, the use of forecasting increases the likelihood that universal service contributors will be overbilled in some periods and underbilled in other periods, resulting in funding surpluses or shortfalls in the universal service support mechanisms. Such a result is contrary to Congress's directive that the universal service support mechanisms be specific, predictable, and sufficient.

9. In addition, NOS's proposal allowing carriers to make a one-time election to base their contributions on current year revenues or prior year revenues would impose significant administrative burdens on USAC. Instead of a single procedure for handling contributor reporting and assessment, USAC would need to have two sets of procedures running concurrently, one for prior year contributors and one for current year contributors. Thus, we conclude that the potential for forecasting errors and the increased administrative burdens make NOS's plan less likely than the Commission's current methodology to satisfy the congressional directive that universal service support mechanisms should be specific, predictable, and sufficient.

10. We find similar problems with the proposal set forth by OCI. OCI claims that the current contribution method places a heavier burden on carriers with declining revenues, and therefore it is neither equitable, nondiscriminatory, nor competitively neutral. OCI proposes that carriers estimate their revenues for the upcoming six months and USAC calculate carriers' contributions based on those estimates. To prevent carriers from intentionally underestimating their revenues, carriers would also report their actual revenues from prior periods. USAC could then annually compare carriers' estimated revenues with their subsequently reported actual revenues and reconcile any differences between estimated revenues and actual revenues.

11. Whereas NOS's plan requires one entity (the Commission) to estimate total industry end-user telecommunications revenues, OCI's plan requires *each carrier* to submit an estimate of its end-user telecommunications revenues for the upcoming six months. We believe that some carriers will overestimate revenues and others will underestimate

revenues. As discussed, such forecasting errors are likely to result in universal service support mechanisms that are neither specific, predictable, nor sufficient. Such a result also is contrary to the congressional mandate that carriers make equitable and nondiscriminatory contributions.

12. Moreover, OCI's plan would increase the administrative burden on both carriers and USAC. In addition to reporting actual prior year revenues, carriers would have to semi-annually prepare and submit revenue estimates for the upcoming six months. After entering, verifying, and potentially auditing the actual prior year revenue data, USAC also would have to process the carriers' six month revenue estimates. Furthermore, the reconciliation procedure suggested by OCI would complicate the billing process for USAC because bills would be based on data from multiple periods. Because of the potential negative effects of forecasting errors and the increased administrative burdens, we decline to adopt OCI's plan.

B. Requests for Waiver

13. Section 1.3 of the Commission's rules governs petitions for waiver and provides that waiver may be granted upon "good cause shown." Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden. The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy. Although the Commission must give meaningful consideration to waiver petitions, it should not tolerate evisceration of a rule by waivers.

14. For various reasons, each Petitioner alleges that it has experienced a decline in revenues. Each Petitioner asks for a waiver of the contribution requirements and seeks either to exclude a portion of its prior year revenues from its revenue base or to apply the contribution factor to its decreased present year revenues. Most Petitioners claim that, absent such waivers, they will have difficulty recovering their contributions from their shrinking subscriber bases.

15. We are not persuaded that Petitioners' alleged inability to recover contributions is a special circumstance warranting waiver of the prior year revenue contribution requirement. The Commission does not require carriers to recover their universal service

contributions from end users. Rather, the Commission has given carriers the flexibility to decide whether and how they should recover their contributions as markets become increasingly competitive. Although the Commission permits carriers to pass through all or part of their universal service contributions to their end users, the requirement to contribute is not dependent upon a carrier's ability to successfully pass through such contributions. We agree with AT&T and BellSouth that annual revenue variations are an inherent part of the competitive environment in the telecommunications industry. Even OCI recognizes that "carriers with declining revenues are not unique and that there may be various circumstances which cause carriers to experience such revenue declines from year to year." Thus, we conclude that a decline in revenues, without more, is an insufficient basis for a waiver of the requirement that universal service contributions be based on prior year revenues. Moreover, now that carriers are familiar with the contribution process, they have the ability to ameliorate the effects of declining revenues and/or subscribers by reserving a portion of their current revenues to meet the contribution obligations that arise from those current revenues in the following year.

16. NTC, OCI, and MobileTel have attempted to explain the circumstances underlying their revenue declines, which include, respectively, regulatory action to correct improper marketing practices, increased competition, and an adverse Commission licensing decision. We are not persuaded that any of these circumstances rise to the level of the special circumstances necessary to warrant a waiver. It is not unusual for a state to take corrective action against a company that improperly markets its services, or competitors to compete for subscribers and marketshare. Furthermore, although the Commission rescinded MobileTel's Louisiana 8 and 9 RSA cellular B block licenses in 1996, the Commission granted MobileTel interim authority to continue operating until qualified applicants were licensed and ready to begin service. The grant of interim authority, while limited, allowed MobileTel to generate significant, additional revenues that it otherwise would have foregone absent such interim authority. By accepting the interim authority, however, MobileTel subjected itself to the obligations and responsibilities associated with being a provider of interstate telecommunications services in the

Louisiana 8 and 9 Rural Service Areas. The fact that those obligations and responsibilities subsequently included a requirement to contribute to universal service using a methodology based on prior year revenues—a requirement applicable to all providers of interstate telecommunications services—does not constitute a special circumstance warranting waiver of our contribution rules. Accordingly, we deny Petitioners' requests for waiver.

III. Ordering Clauses

17. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, § 1.429 of the Commission's rules, the Memorandum Opinion and Order and Seventh Order on Reconsideration is adopted.

18. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration are denied.

19. The authority contained in section 4(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, the petitions for waiver are denied.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2040 Filed 1–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 2000–6798]

RIN 2127–AH74

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, partial response to petitions for reconsideration; technical amendment.

SUMMARY: On April 27, 1999, NHTSA published a final rule which revised the test procedure in Standard No. 216, *Roof Crush Resistance*, to make it more suitable to testing motor vehicles with raised roofs. The final rule provided that

the new test procedure would be used for vehicles manufactured on or after October 25, 1999.

The Recreation Vehicle Industry Association (RVIA) petitioned for reconsideration of the rule, stating that some manufacturers of conversion vans with raised roofs must cease production of their vehicles because they are unable to demonstrate compliance with the new test procedure. Ford Motor Company (Ford) also petitioned for reconsideration of the test procedure used to test vehicles with raised roofs.

We are issuing this final rule in partial response to those petitions. The effect of this document is to stay, until October 25, 2000, the provision specifying the new test procedure as the sole test procedure. This document amends Standard No. 216 so that, for vehicles manufactured during the stay, vehicle manufacturers have an option of using either the new test procedure or the test procedure that was specified in Standard No. 216 immediately prior to October 25, 1999 ("former test procedure"). For vehicles manufactured after the stay, i.e., on or after October 25, 2000, the new test procedure will apply (unless the standard is further amended in a subsequent final rule). This stay will provide us additional time to complete our analysis of the petitions for reconsideration and decide whether the new test procedure should be amended. The agency is also amending the definition of "windshield trim" in the manner announced in the preamble, but not reflected in the regulatory text, of the April 1999 final rule.

DATES: This rule is effective January 31, 2000. *Petitions for Reconsideration:* You may submit a petition for reconsideration of this rule. We will consider petitions received no later than March 16, 2000. Petitions received after that date will be treated as petitions for rulemaking.

ADDRESSES: In preparing a petition for reconsideration, you should refer to the docket and notice number of this final rule. You should submit the petition to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For *technical issues*, you may contact Maurice Hicks, Office of Crashworthiness Standards, at telephone (202) 366–6345.

For *legal issues*, you may contact Deirdre Fujita, Attorney, Office of the Chief Counsel, at telephone (202) 366–2992.

You may send mail to both of these officials at National Highway Traffic