

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
Request for Review by )
ABS-CBN Telecom North America, Incorporated )
of Decision of Universal Service Administrator )
Request for Review by )
Southwest Communications, Inc. of )
Decision of Universal Service Administrator )
Request for Review by )
Trans National Communications International, Inc. )
of Decision of Universal Service Administrator )

ORDER

Adopted: March 14, 2007

Released: March 14, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny requests for review filed by ABS-CBN Telecom North America, Incorporated (ABS-CBN), Southwest Communications, Inc. (SCI), and Trans National Communications International, Inc. (TNCI) (collectively Petitioners). Each contributor alleges that it erred in completing either its quarterly FCC Form 499-Q (ABS-CBN and TNCI) or its annual FCC Form 499-A (SCI) filed with the Universal Service Administrative Company (USAC or Administrator), and subsequently missed the Commission's deadline for either the initial filing or for filing revisions to the FCC Form 499-Q. As a result of these events, the contributors state that USAC rejected their late-filed revisions and over-billed them for their universal service contribution obligations. ABS-CBN, SCI, and TNCI each seek review of the Administrator's Decision on Contributor Appeal.

1 Request for Review by ABS-CBN Telecom North America, Incorporated, CC Docket No. 96-45 (filed November 12, 2004) (ABS-CBN Petition); Letter from Paul F. Kirby, Operations Manager, SCI, to Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed February 25, 2005) (SCI Petition); Letter from Erick Robinson, Tax and Regulatory Specialist, TNCI, to Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed December 20, 2004) (TNCI Petition).

2 ABS-CBN Petition at 3; TNCI Petition at 1; SCI Petition at 1-2.

## II. BACKGROUND

2. Contributors to the Commission's universal service mechanisms must submit to USAC quarterly Telecommunications Reporting Worksheets (FCC Form 499-Q), reporting their projected interstate and international telecommunications revenue information. USAC uses this revenue information to bill the filer for the subsequent quarter.<sup>3</sup> Beginning in 2003, contributors have had the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.<sup>4</sup> In addition, all filers must submit an annual Telecommunications Reporting Worksheet (FCC Form 499-A), which contains the filer's actual revenues from the previous calendar year. To the extent that contributors have under- or overestimated their revenue information and have paid too little or too much, the FCC Form 499-A is used to true-up universal service billings and payments.<sup>5</sup>

3. ABS-CBN asks the Commission to direct USAC to refund its overpayment, with interest.<sup>6</sup> In its petition, ABS-CBN argues that, due to a typographical error contained in its fourth quarter 2003 FCC Form 499-Q, it projected collecting \$400,000 for the first quarter of 2004 instead of \$40,000.<sup>7</sup> ABS-CBN states that it filed a revised fourth quarter FCC Form 499-Q on January 29, 2004, as soon as it discovered the error.<sup>8</sup> Because the revision was filed outside of the 45-day revision window established by the Commission, USAC rejected it.<sup>9</sup>

4. SCI requests that the Commission accept its late-filed third quarter 2004 FCC Form 499-Q.<sup>10</sup> SCI argues that it erroneously overstated its revenue in its 2004 FCC Form 499-A, reporting its calendar year 2003 revenue.<sup>11</sup> Since USAC did not receive SCI's third quarter 2004 FCC Form 499-Q, which was due August 2, 2004, until October 1, 2004, USAC estimated SCI's fourth quarter projected collected revenue based on SCI's annual filing. SCI argues that USAC's fourth quarter estimate is four times the amount of universal service fees SCI collected over the quarter.<sup>12</sup>

5. TNCI asks the Commission to accept its late-filed, revised second quarter 2004 FCC Form 499-Q.<sup>13</sup> According to TNCI, its regulatory reporting company filed inaccurate revenue figures for the reporting period at issue, which TNCI did not notice until its July 2004 invoice. TNCI argues that the reporting error resulted in an additional liability of \$252,038. Because TNCI filed the revised second

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<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969, para. 29 (2002) (*Interim Contribution Methodology Order*).

<sup>4</sup> *Id.* at 24972, para. 36.

<sup>5</sup> *Id.*

<sup>6</sup> ABS-CBN Petition at 7.

<sup>7</sup> *Id.* at 3.

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

<sup>9</sup> *Id.*, Exh. A (Administrator's Decision on Contributor Appeal).

<sup>10</sup> SCI Petition at 1-2.

<sup>11</sup> *Id.* (noting that it filed its FCC Form 499-A on May 21, 2004).

<sup>12</sup> *Id.* at 2.

<sup>13</sup> TNCI Petition at 1. We note that TNCI attached USAC's Administrator's Decision on Contributor Appeal to its petition.

quarter 2004 FCC Form 499-Q outside of the 45-day revision window, USAC rejected it.<sup>14</sup>

### III. DISCUSSION

6. The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider petitions for review of decisions by the Administrator.<sup>15</sup> Section 54.723 of the Commission's rules specifies that the Bureau shall conduct a *de novo* review.<sup>16</sup>

7. We deny Petitioners' requests and find that, in accordance with the Commission's instructions and rules, USAC correctly billed ABS-CBN, CSI and TNCI.<sup>17</sup> In each instance, Petitioner's have received the requested adjustments to their obligations through the annual true-up process and the reconciliation of their quarterly filings.<sup>18</sup> Accordingly, we dismiss these requests as moot.

8. Moreover, even if we were to address the petitions on their merits, we would still deny the requests. Petitioners are essentially asking the Commission for a waiver of its 45-day revision deadline for FCC Form 499-Q filings.<sup>19</sup> As noted above, in its *Interim Contribution Methodology Order*, the Commission established a 45-day period within which carriers may revise their FCC Forms 499-Q.<sup>20</sup> This deadline is essential in order to eliminate incentives for carriers to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter.<sup>21</sup> Where the Petitioners failed to meet these deadlines, USAC's rejection of the form and use of an estimate for billing purposes was thus appropriate.<sup>22</sup>

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<sup>14</sup> See TNCI Petition, Administrator's Decision on Contributor Appeal at 1 (noting that TNCI filed its revised form on October 15, 2004).

<sup>15</sup> 47 C.F.R. § 54.722(a).

<sup>16</sup> *Id.* § 54.723.

<sup>17</sup> We note that only ABS-CBN contests the legality of USAC's procedures. See *infra* note 22. SCI and TNCI concede that they erred in both completing their FCC Form 499-A (SCI) and FCC Form 499-Q (TNCI) and missing the Commission-established submission deadlines.

<sup>18</sup> See, Appx. A, Letter from USAC to Belinda Nixon, Federal Communications Commission (Mar. 21, 2006) (*SCI True-Up Letter*); Appx. B., Letter from USAC to Belinda Nixon, Federal Communications Commission (March 6, 2007) (*TNCI True-Up Letter*); Appx. C, Letter from USAC to Belinda Nixon, Federal Communications Commission (Mar. 17, 2006) (*ABS-CBN True-Up Letter*).

<sup>19</sup> Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown." 47 C.F.R. § 1.3. Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*). 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." *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio*, 418 F.2d at 1159.

<sup>20</sup> See *supra* at para. 2 & n.4. See also 67 Fed. Reg. 79525.

<sup>21</sup> *Interim Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36. We also disagree with ABS-CBN's assertion that this Commission-established deadline is not a validly promulgated rule. If ABS-CBN disagreed with the Commission's decision to reduce the FCC Form 499-Q revision window from 90 to 45 days, it could have timely filed a petition for reconsideration, but did not.

<sup>22</sup> 47 C.F.R. § 54.709(d). USAC's actions also do not violate the equitable and nondiscriminatory requirements set forth in section 254(d) of the Communications Act, as amended, as alleged by ABS-CBN. ABS-CBN must adhere to the same procedures as other filers – namely, the 45-day revision deadline. In addition, we reject ABS-CBN's request for interest. ABS-CBN Petition at 7. Such exceptional relief is not warranted when, as here, the requestor

9. Petitioners have also failed to show good cause why the Bureau should waive the Commission's 45-day revision deadline. ABS-CBN states only that it filed a revised FCC Form 499-Q "upon discovery of its error," but offers no explanation for its failure to do so in a timely manner.<sup>23</sup> SCI suggests that its financial hardship justifies waiver, but does not support its claim.<sup>24</sup> TNCI merely states that its regulatory reporting company, which prepared its form, populated the final version of the FCC Form 499-Q with incorrect figures.<sup>25</sup> We note that this form, like the FCC Form 499-A, requires an officer of the reporting entity to certify that the information contained therein is accurate and that the revenue projections represent a good-faith estimate.<sup>26</sup> TNCI offers no explanation why its officer was unable to notice on this one-page form that the company's total interstate revenue was allegedly overstated by almost \$3 million dollars, which is significant when the company's total revenue was \$6.9 million – the figure cited by TNCI as its accurate revenue for the relevant period of time.<sup>27</sup> Nonetheless, the annual true-up process has remedied TNCI's claims.<sup>28</sup> We find that TNCI has failed to show good cause why we should waive the Commission's 45-day revision deadline.

10. Accordingly, in light of the fact that each Petitioner received the requested adjustments to their obligations through the true-up process, and because USAC's actions were appropriate, we deny the Petitioners' requests and dismiss the petitions as moot.

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failed to follow Commission-established procedures. Finally, we disagree that USAC's actions with respect to ABS-CBN's payment amounted to a takings. ABS-CBN Petition at 7-8. As explained above, Commission procedures, which ABS-CBN never contested when they were established, provided the means by which ABS-CBN could revise its FCC Form 499-Q to prevent any overpayment. Moreover, as noted in the *ABS-CBN True-Up Letter*, USAC posted credits to ABS-CBN's account as a result of the annual reconciliation process. *See* App. C.

<sup>23</sup> ABS-CBN Petition at 2.

<sup>24</sup> SCI Petition at 2.

<sup>25</sup> TNCI Petition at 1.

<sup>26</sup> *See also* 47 C.F.R. § 54.711(a).

<sup>27</sup> TNCI Petition at 1.

<sup>28</sup> *See* App. B (*TNCI True-up Letter*). In its *TNCI True-Up Letter*, USAC confirms that the reconciliation process was completed and that adjustments resulting from this process were posted to SCI's account. *Id.* at 1.

**IV. ORDERING CLAUSE**

11. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Requests for Review filed by ABS-CBN Telecom North America, Inc., Southwest Communications, Inc., and Trans National Communications International, Inc. ARE DENIED.

12. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon  
Acting Deputy Chief  
Wireline Competition Bureau

APPENDIX A



## Universal Service Administrative Company

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March 21, 2006

VIA EMAIL

Belinda Nixon, Esquire  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Southwest Communications, Inc. - (Filer ID 824472)

Dear Ms. Nixon:

This letter is in response to your request for confirmation of whether USAC has performed the annual reconciliation process, as referenced in its December 28, 2004 *Administrator's Decision on Contributor Appeal* (Appeal Decision), issued to Southwest Communications, Inc. (SCI). USAC has completed this process.

The August 2004 FCC Form 499-Q (August 499-Q) had a due date of August 1, 2004 and an FCC-established 45-day revision deadline of September 17, 2004. Because SCI did not timely file an original August 499-Q (projecting fourth quarter 2004 revenue) USAC, as required by FCC rules<sup>1</sup>, relied on revenue previously provided by SCI in order to estimate SCI's fourth quarter 2004 projected collected revenue. USAC relied on this estimate in order to calculate charges that posted to SCI's October, November, and December 2004 invoices.

On October 1, 2004 SCI submitted its August 499-Q. On October 7, 2004 USAC rejected the form as untimely filed. On December 6, 2004, SCI appealed USAC's rejection of the revision. On December 28, 2004 USAC issued the Appeal Decision and denied SCI's request. On February 25, 2005 SCI appealed USAC's decision to the FCC.

The annual reconciliation process compares and reconciles annual revenue, reported on FCC Form 499-A, with projected collected quarterly revenue reported on previously filed FCC Forms 499-Q. Thus, the 2005 FCC Form 499-A reporting annual 2004 revenue reconciled the projected collected quarterly revenue reported on FCC Forms 499-Q for: November 2003 (reporting first quarter 2004 revenue), February 2004 (reporting second quarter 2004 revenue), May 2004 (reporting third quarter 2004 revenue), and August 2004 (reporting fourth quarter 2004 revenue).

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<sup>1</sup> See 47 C.F.R. § 54.709 (d). USAC is required to estimate revenue for carriers that fail to file the required worksheets and to bill those carriers based on the estimated revenue.

Belinda Nixon  
March 21, 2006  
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SCI filed a 2005 FCC Form 499-A, reporting 2004 annual revenue, on April 1, 2005. Adjustments resulting from the annual reconciliation process were posted to SCI's account during the months of July, August, and September 2005.<sup>2</sup>

Sincerely,

**USAC**

Universal Service Administrative Company

cc: Cathy Carpino, FCC Wireline Competition Bureau

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<sup>2</sup> Although the true-up reconciled SCI's 2004 billings, including fourth quarter billings, because the annual revenue reported was greater than the revenue the company had projected on its FCC Form 499-Qs covering 2004, SCI's 2004 obligation was greater than what it had been billed. Thus, SCI received upward adjustments which posted to SCI's account during third quarter 2005.

**APPENDIX B**



Universal Service Administrative Company

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March 6, 2007

Via Electronic Mail

Belinda Nixon, Esquire  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Status of 2004 Annual Revenue Reconciliation for Trans National Communications International, Inc. (Filer ID 817852)

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Dear Ms. Nixon:

This letter is in response to your request for confirmation of whether USAC has performed the annual reconciliation process, as referenced in its December 7, 2004 *Administrator's Decision on Contributor Appeal* (Appeal Decision), issued to Trans National Communications International, Inc. (TNCI). USAC has completed this process. Following is a summary of the events related to this matter.

On April 30, 2004 TNCI filed an original May 2004 FCC Form 499-Q (projecting third quarter 2004 revenue) and on October 15, 2004 filed a revision to that form and USAC rejected the revised form as untimely filed on the same date. On November 1, 2004, TNCI appealed USAC's rejection of the revision. On December 7, 2004 USAC issued the Appeal Decision and denied TNCI's request.

The annual reconciliation process compares and reconciles annual revenue, reported on FCC Form 499-A, with projected collected quarterly revenue reported on previously filed FCC Forms 499-Q. The 2005 FCC Form 499-A reporting annual 2004 revenue reconciled the projected collected quarterly revenue reported on FCC Forms 499-Q for: November 2003 (reporting first quarter 2004 revenue), February 2004 (reporting second quarter 2004 revenue), May 2004 (reporting third quarter 2004 revenue), and August 2004 (reporting fourth quarter 2004 revenue).

TNCI filed a 2005 FCC Form 499-A, reporting 2004 annual revenue on April 1, 2005. Credits resulting from the annual reconciliation process were posted to TNCI's account during the months of July, August, and September 2005. USAC has completed the 2004 annual revenue reconciliation for the Filer ID listed above.

Sincerely,

USAC

cc: Greg Guice, FCC Wireline Competition Bureau

APPENDIX C



Universal Service Administrative Company

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March 17, 2006

VIA EMAIL

Belinda Nixon, Esquire  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: ABS-CBN Telecom North America, Inc. (Filer ID 815865)

Dear Ms. Nixon:

This letter is in response to your request for confirmation of whether USAC has performed the annual reconciliation process, as referenced in its September 13, 2004 *Administrator's Decision on Contributor Appeal* (Appeal Decision), issued to ABS-CBN Telecom North America, Inc. (ABS-CBN). USAC has completed this process.

On October 30, 2003 ABS-CBN filed an original November 2003 FCC Form 499-Q (projecting first quarter 2004 revenue) and on January 29, 2004 filed a revision to that form. On June 8, 2004, USAC rejected the revised form as untimely filed. On July 7, 2004, ABS-CBN appealed USAC's rejection of the revision. On September 13, 2004 USAC issued the Appeal Decision and denied ABS-CBN's request.

The annual reconciliation process compares and reconciles annual revenue, reported on FCC Form 499-A, with projected collected quarterly revenue reported on previously filed FCC Forms 499-Q. Thus, the 2005 FCC Form 499-A reporting annual 2004 revenue reconciled the projected collected quarterly revenue reported on FCC Forms 499-Q for: November 2003 (reporting first quarter 2004 revenue), February 2004 (reporting second quarter 2004 revenue), May 2004 (reporting third quarter 2004 revenue), and August 2004 (reporting fourth quarter 2004 revenue).

ABS-CBN filed a 2005 FCC Form 499-A, reporting 2004 annual revenue, on April 1, 2005. Credits resulting from the annual reconciliation process were posted to ABS-CBN's account during the months of July, August, and September 2005.

Sincerely,

**USAC**

Universal Service Administrative Company

cc: Cathy Carpino, FCC Wireline Competition Bureau