

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Aventure Communications Technology, LLC,	)	
Form 499 Filer ID: 825749 Request for Review of	)	
USAC Rejection Letter and Request for Waiver of	)	
USAC 45 Day Revision Deadline	)	

**ORDER**

**Adopted: June 26, 2008**

**Released: June 26, 2008**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. In this order, we grant a request for review of the Universal Service Administrative Company's (USAC) decision to reject a revision to Aventure Communication Technology, LLC's (Aventure) FCC Form 499-Q.<sup>1</sup> We find that, given the excessive harm that would occur absent relief in this unique situation, good cause exists to waive the 45-day revision window for Aventure, and we direct USAC to accept Aventure's corrected FCC Form 499-Q.<sup>2</sup>

2. Aventure asserts that it mistakenly input its total company revenues, which included access and other revenues not subject to universal service fund (USF) contributions, rather than its end-user revenues, which are subject to USF contributions, on its FCC Form 499-Q for the fourth quarter of 2007.<sup>3</sup> Aventure states that this filing error has resulted in its USF contribution obligation increasing from \$4,700 per month to \$91,800 per month.<sup>4</sup> Aventure claims that it did not realize its mistake until it received its next invoice from USAC, to which it immediately responded by filing a corrected FCC Form

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<sup>1</sup> Emergency Request for Review and Request for Waiver of USAC 45 Day Revision Deadline of Aventure Communication Technology, LLC, CC Docket No. 96-45 (filed Mar. 6, 2008) (Aventure Request for Review). On March 7, 2008, Aventure also filed a motion requesting that the Commission waive public notice of the request for review given the financial burden of its purported filing error. *See* Motion of Aventure Communication Technology, LLC for Waiver of Public Notice, CC Docket No. 96-45 (filed Mar. 6, 2008). We find that good cause exists to grant Aventure's motion for waiver of public notice, due to the unique circumstances discussed herein. *See infra* paras. 4-7.

<sup>2</sup> *See 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, 24972, para. 36 (2002) (*2002 Interim Contribution Methodology Order*) (adopting the 45-day revision window for the FCC Form 499-Q).

<sup>3</sup> *See* Aventure Request for Review at 1-2.

<sup>4</sup> *See id.* at 3.

499-Q on January 25, 2008.<sup>5</sup> USAC rejected this filing because it was made after the 45-day revision window deadline of December 15, 2007.<sup>6</sup> Aventure argues that it will be severely harmed absent relief because the FCC Form 499-A true-up process will not provide redress until mid-2009.<sup>7</sup>

## II. DISCUSSION

3. The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider petitions for review of decisions by USAC.<sup>8</sup> Section 54.723 of the Commission's rules specifies that the Bureau shall conduct a *de novo* review.<sup>9</sup>

4. We find that Aventure has demonstrated good cause to grant its request for relief.<sup>10</sup> In the *2002 Interim Contribution Methodology Order*, the Commission established a 45-day period within which carriers may revise their FCC Forms 499-Q.<sup>11</sup> This deadline is essential to eliminate carriers' abilities to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter, thereby reducing their contribution obligations, and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter.<sup>12</sup> However, in the limited circumstances presented here, we find that waiver is warranted to avoid requiring Aventure to make excessive, incorrect payments to the USF with no reimbursement for more than a year.

5. Due to its inadvertent reporting error, Aventure is required to pay contributions that are nearly 20 times its actual obligation, causing undue hardship.<sup>13</sup> Aventure states that, absent relief, it will be billed more than \$275,000 for the quarter based on the filing error, but its actual USF contribution obligations would only be \$50,000 for the entire year if the correct revenue had been reported.<sup>14</sup> Absent a waiver of the 45-day filing revision window, Aventure will have overpaid by approximately \$261,000 for the first quarter of 2008, but will not be reimbursed for the overbilled amounts until the third quarter of 2009, after it files its FCC Form 499-A in April 2009.<sup>15</sup> In compliance with USAC's "pay and dispute"

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<sup>5</sup> *See id.*

<sup>6</sup> *See id.* at Attach. B.

<sup>7</sup> *See id.* at 4.

<sup>8</sup> 47 C.F.R. § 54.722(a).

<sup>9</sup> *Id.* § 54.723.

<sup>10</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. Although Aventure has requested review of USAC's decision under section 54.722 of the Commission's rules, we find the appropriate procedural relief is to waive the filing deadline for revising the fourth quarter 2007 FCC Form 499-Q. 47 C.F.R. §§ 1.3, 54.722(a).

<sup>11</sup> *2002 Interim Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36.

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

<sup>13</sup> *See Aventure Request for Review* at 4.

<sup>14</sup> Based on its corrected filing, Aventure states that it should have contributed \$14,100, or \$4700 per month, in the first quarter of 2008. *Id.*

<sup>15</sup> *Interim Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36. As necessary, USAC issues refunds to, or collects contributions from, contributors to correct for any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report

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policy, Aventure has paid the \$275,000 based on its filing error.<sup>16</sup> Aventure, moreover, has put in place measures to ensure that such a filing error will not occur in the future.<sup>17</sup>

6. In this instance, Aventure demonstrates that “strict enforcement of the filing deadline would disproportionately penalize [the carrier] when considered in light of its actions to remedy the error.”<sup>18</sup> In most instances, contributors are made whole for any filing errors through the true-up process, which occurs after the filing of the contributors’ FCC Form 499-A for that year. In this instance, however, Aventure will not file its FCC Form 499-A covering the first quarter of 2008 until April 2009, and USAC would not issue Aventure a refund based on that filing until approximately July 2009. Absent a waiver, Aventure would not be made whole for its \$261,000 overpayment in the first quarter of 2008 for 15 months. We find that good cause therefore exists to grant Aventure a waiver of the 45-day revision deadline.

7. We emphasize that filers must adhere to the 45-day correction deadline, and waiver of this filing deadline will not be routinely granted.<sup>19</sup> A contributor’s timely filing of its FCC Forms 499-Q, including any revisions, is essential for USAC to determine the projected interstate and international revenues for the industry and to meet its requirement to provide the estimated amount of the total contribution base to the Commission 30 days before the start of each quarter.<sup>20</sup> The Commission, in turn, relies, in part, on these USAC submissions to establish the contribution factor each quarter.<sup>21</sup> Based on the amount of overpayment at issue and the length of time that would elapse before Aventure would be

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(FCC Form 499-A), then a refund will be 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 annual revenue report (FCC Form 499-A), then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. *See id.*

<sup>16</sup> USAC’s “pay and dispute” policy requires contributors to pay disputed invoices. In addition, USAC imposes late payment fees on invoices that are not paid in full, and these fees will not be waived unless the disputed charges are later found to be a result of an error by USAC. *See* USAC Website, Fund Administration, Contributors, File and Appeal, <http://www.usac.org/fund-administration/contributors/file-appeal/> (retrieved May 22, 2008); Aventure Request for Review at 4-5 (stating that Aventure had paid its January 2008 invoice and planned to pay its February 2008 invoice). USAC has confirmed that Aventure timely paid all three 2008 first quarter invoices.

<sup>17</sup> Aventure Request for Review at 7-8.

<sup>18</sup> *Federal-State Joint Board on Universal Service, Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155, 10157, para. 7 (Wireline Comp. Bur. 2006).

<sup>19</sup> *See, e.g. Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (Telecom. Acc. Pol. Div. 2007) (denying request for waiver of 45-day revision deadline for failure to show good cause for waiver grant); *Request for Review by i-Tel Long Distance a/k/a Impact Telecommunications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6788 (Telecom. Acc. Pol. Div. 2007) (denying 45-day revision deadline waiver when petitioner had previously been made aware that it did not qualify for *de minimis* status); *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*, CC Docket No. 96-45, Order, 22 FCC Rcd 4965 (Wireline Comp. Bur. 2007) (petitioners failed to show good cause for waiving the 45-day revision deadline); *see also Request for Review by Advantage Telecommunications Corp. of Action by Universal Service Administrator*, CC Docket No. 96-45, Order, 22 FCC Rcd. 5088 (Wireline Comp. Bur. 2007) (dismissing request as moot because petitioner’s contribution had been corrected in the true-up process).

<sup>20</sup> *See* 47 C.F.R. § 54.709(a)(3).

<sup>21</sup> *See id.*

reimbursed, however, we find that grant of Aventure's request for waiver of the 45-day revision window is warranted in this instance. We therefore reverse USAC's decision to reject Aventure's January 15, 2008, FCC Form 499-Q filing, and direct USAC to treat it as timely for purposes of adjusting Aventure's USF contribution obligations on a going-forward basis.

### III. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Aventure Communications Technology, LLC on March 6, 2008, IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Motion for Waiver of Public Notice filed by Aventure Communications Technology, LLC on March 6, 2008, IS GRANTED.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie Veach  
Deputy Chief  
Wireline Competition Bureau