

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

In the Matter of )
)
Universal Service Contribution Methodology ) WC Docket No. 06-122
Requests for Review of Decisions of the Universal )
Service Administrator by Curry IP Solutions, et al. )

ORDER

Adopted: October 7, 2008

Released: October 7, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant six requests for reversal of late fees associated with the filing of the FCC Form 499-A for 2007. Upon review of these requests, we find that the issue raised here was recently addressed in the 2007 499-A Waiver Order. Therefore, we direct the Universal Service Administrative Company (USAC) and the other plan administrators to reverse any late payment fees that have been assessed on the applicants listed in the attached Appendix.

II. BACKGROUND

2. In 1999, the Commission established one consolidated data collection worksheet to determine carrier contribution amounts for the Telecommunications Relay Services Fund (TRS), the North American Numbering Plan (NANP), the universal service fund (USF), and local number portability (LNP). Contributors to these programs submit an annual Telecommunications Reporting Worksheet (FCC Form 499-A), which contains the filer's actual revenues from the previous calendar year. The

1 Letter from John Curry, Curry IP Solutions, to Federal Communications Commission, WC Docket No. 06-122 (dated Aug. 28, 2007) (Curry Letter); Letter from Rick Blachard, Mobilephone of Humboldt, Inc., to Federal Communications Commission, WC Docket No. 06-122 (dated July 26, 2007) (Mobilephone Letter); Letter from Christopher Lattmann, Payphone Solutions, LLC, to Federal Communications Commission, WC Docket No. 06-122 (dated July 24, 2007) (Payphone Letter); Letter from Rasheda Murphy, PowerNet Global Telecommunications, Inc., to Federal Communications Commission, WC Docket No. 06-122 (dated July 13, 2007) (PowerNet Letter); Letter from Marianne Roesner, Ro-Tel Payphones, to Federal Communications Commission, WC Docket No. 06-122 (dated Aug. 6, 2007) (Ro-Tel Letter); Letter from John Talamas, South Miami Wash Bowl, Inc., to Federal Communications Commission, WC Docket No. 06-122 (dated Aug. 3, 2007) (South Miami Letter).

2 See Requests for Review of the Decisions of the Universal Service Administrator by Berkmont Communications Corporation, et al., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 22 FCC Rcd 21505 (Wireline Comp. Bur. 2007) (2007 499-A Waiver Order).

3 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999). Prior to the adoption of the consolidated worksheet, telecommunications carriers and certain telecommunications service providers complied with separate reporting requirements for their contributions to TRS, USF, NANP, and LNP.

4 Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969, para. 29 (2002).

FCC Form 499-A is due each year, generally on the first business day of April.<sup>5</sup> The Commission and USAC provide electronic copies of the FCC Form 499-A on their respective websites, and, as a courtesy, USAC annually mails each registered filer a hard copy of the form prior to the filing deadline.<sup>6</sup> Once filed, USAC then provides the administrators of TRS, NANP, and LNP with revenue data so those administrators can determine the contribution obligation of each filer for the various programs.

3. Over the years the Commission has made various revisions to the FCC Form 499-A, which, pursuant to the Paperwork Reduction Act, required Office of Management and Budget (OMB) approval.<sup>7</sup> In 2006, the Commission revised the rules for the universal service fund to require, among other things, interconnected voice over Internet protocol (VoIP) providers to contribute.<sup>8</sup> In seeking approval for the extension of the FCC Form 499-A information collection, OMB provided a six-month emergency authorization to the Commission so that the changes made in the *2006 Interim Contribution Methodology Order* could take effect in the timeframe the Commission sought.<sup>9</sup> Upon expiration of the emergency approval, the Commission sought continued OMB approval for this information collection, which it received on March 19, 2007.<sup>10</sup> USAC and the Commission posted the FCC Form 499-A on their respective websites that day and the Commission released a public notice announcing the approval.<sup>11</sup> On March 30, 2007, USAC e-mailed, where possible, and otherwise sent by registered mail its courtesy FCC Form 499-A mailing to registered filers. The deadline for filing the 2007 FCC Form 499-A was April 2, 2007.<sup>12</sup>

4. On December 12, 2007, the Wireline Competition Bureau (Bureau) adopted an order reversing late filing fees assessed to ten petitioners that filed their FCC Forms 499-A after the due date.<sup>13</sup> In that order, the Bureau determined that the petitioners should be granted relief because strict enforcement of the filing deadline would unfairly penalize them.<sup>14</sup> Specifically, the Bureau found that it was in the public interest to waive the filing deadline for the 2007 FCC Form 499-A and directed USAC and the other plan administrators to reverse any late payment fees that had been assessed on the applicants.<sup>15</sup>

5. In the six petitions before us, the petitioners similarly allege that late receipt of the 2007 FCC Form 499-A from USAC resulted in their late filings and, therefore, the Bureau should waive the

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<sup>5</sup> See Telecommunications Reporting Worksheet, FCC Form 499-A, Instructions at 4 (2007).

<sup>6</sup> The FCC Form 499-A is available at either the Commission's website, <http://www.fcc.gov/formpage.html>, or at USAC's website, <http://www.usac.org/fund-administration/contributors/revenue-reporting/default.aspx> (last visited Oct. 7, 2008).

<sup>7</sup> Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq.* (1995).

<sup>8</sup> See *Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

<sup>9</sup> See *Wireline Competition Bureau Streamlines Reporting Requirements for Interconnected VoIP Providers and Announces OMB Approval of New FCC Forms 499-A and 499-Q*, Public Notice, 21 FCC Rcd 8623 (Wireline Comp. Bur. 2006).

<sup>10</sup> See *Wireline Competition Bureau Announces OMB Approval of the 2007 FCC Form 499-A*, Public Notice, 22 FCC Rcd 5356 (Wireline Comp. Bur. 2007).

<sup>11</sup> *Id.*

<sup>12</sup> See Telecommunications Reporting Worksheet, FCC Form 499-A (2007).

<sup>13</sup> See *2007 499-A Waiver Order*, 22 FCC Rcd at 21505, para. 1.

<sup>14</sup> *Id.* at 21507, para. 5.

<sup>15</sup> *Id.*

filing deadline for purposes of the assessment of late filing fees. For example, Mobilephone of Humboldt and South Miami Wash Bowl, Inc. state that they received the 2007 FCC Form 499-A from USAC on the day it was due.<sup>16</sup> Petitioners assert that, based on their receipt of the 2007 FCC Form 499-A in close proximity to the filing deadline, their past compliance with filing deadlines, and their filing of the forms shortly after the deadline, reversal of the late filing fees is warranted.<sup>17</sup>

### III. DISCUSSION

6. As in the *2007 499-A Waiver Order*, we here find that good cause exists to waive the April 2, 2007, filing deadline for the petitioners.<sup>18</sup> As noted in that order, the Commission received OMB approval of the FCC Form 499-A on March 19, 2007, which left filers only fourteen days to submit their 2007 FCC Forms 499-A to USAC by the April 2, 2007 deadline.<sup>19</sup> We recognize that this gave the petitioners a very short timeframe to review the revised instructions and complete the revised form. In addition, USAC did not mail its courtesy notification until March 30, 2007, just three days prior to the filing deadline. Finally, all of the petitioners filed their 2007 FCC Forms 499-A shortly after the filing deadline.<sup>20</sup> We therefore find that it is in the public interest to waive the filing deadline for the 2007 FCC Form 499-A for the six filers listed in the Appendix. We direct the TRS, LNP, USF, and NANP plan administrators to reverse any late fees associated with these entities' late filing of the 2007 FCC Form 499-A.

7. In addition, as stated in the *2007 499-A Waiver Order*, we take this opportunity to remind all filers of the FCC Form 499-A that the filing deadline is generally the first business day of April. The Commission's form announces the specific date.<sup>21</sup> We also remind filers that filing can be made electronically through USAC's website and that the FCC Form 499-A can be submitted in advance of the filing deadline.<sup>22</sup> We caution filers that the form is considered filed upon USAC's receipt of the form and not as of the postmark date.<sup>23</sup>

8. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that revenues are accurately reported by contributors.<sup>24</sup> Although we grant the requests addressed here,

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<sup>16</sup> See Mobilephone Letter at 1; South Miami Letter at 1.

<sup>17</sup> See, e.g., Payphone Letter at 1; South Miami Letter at 1.

<sup>18</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 certain petitioners have requested that the Bureau review USAC's decision under section 54.723 of the Commission's rules, we find the appropriate procedural relief is to waive the filing deadline. 47 C.F.R. §§1.3, 54.722(a).

<sup>19</sup> See *2007 499-A Waiver Order*, 22 FCC Rcd at 21506, para. 3.

<sup>20</sup> See Appendix.

<sup>21</sup> See e.g., Telecommunications Reporting Worksheet, FCC Form 499-A (2007) at <http://www.usac.org/fund-administration/forms/> (last visited Oct. 7, 2008).

<sup>22</sup> See <http://www.usac.org/fund-administration/forms/> (last visited Oct. 7, 2008).

<sup>23</sup> *Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 20 FCC Rcd 4224, 4225-26, paras. 3, 5 (2005).

<sup>24</sup> See *AT&T Corp. Petition for Declaratory Ruling regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services*, WC Docket No. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 2846 (2005).

this action in no way affects the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the universal service contribution requirements. Because audits and investigations may provide information showing that a contributor failed to comply with the statute or Commission rules, such proceedings can reveal instances in which interstate and international end-user revenues were improperly reported or reported in a manner inconsistent with the Commission's requirements. To the extent the Commission finds that revenues were not properly reported, it will require USAC to recover contributions based on the correct revenues through its normal process. We emphasize that the Commission retains the discretion to evaluate the reporting of revenues for universal service contribution and to determine on a case-by-case basis that waste, fraud, or abuse of occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

9. 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 the authority delegated in 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), the requests for refund of late filing fees for filers listed in the Appendix ARE GRANTED.

10. IT IS FURTHER 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 the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the TRS, LNP, USF, and NANP PLAN ADMINISTRATORS SHALL REVERSE the late fees charged to the filers listed in the Appendix.

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

FEDERAL COMMUNICATIONS COMMISSION

Dana S. Shaffer  
Chief  
Wireline Competition Bureau

## APPENDIX

<b>Company Name</b>	<b>Filer ID</b>	<b>Actual Filing Date of 2007 499-A</b>	<b>Date Request Filed</b>
Curry IP Solutions	826188	June 26, 2007	August 28, 2007
Mobilephone of Humboldt, Inc.	820306	April 4, 2007	August 1, 2007
Payphone Solutions, LLC	825866	April 5, 2007	July 30, 2007
PowerNet Global Telecommunications, Inc.	813233	April 30, 2007	July 13, 2007
Ro-Tel Payphones	819376	April 2, 2007	August 6, 2007
South Miami Wash Bowl, Inc.	811615	April 4, 2007	August 6, 2007