

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

In the Matter of
Universal Service Contribution Methodology
Federal-State Joint Board on Universal Service
Requests for Review of Decisions of Universal
Service Administrator by:
AT&T, Inc.
Eureka Broadband Corporation
WC Docket No. 06-122
CC Docket No. 96-45

ORDER

Adopted: August 13, 2010

Released: August 13, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant two petitions requesting review of decisions by the Universal Service Administrative Company (USAC) that rejected late-filed revisions to FCC Forms 499. Specifically, we find that AT&T, Inc. (AT&T) and Eureka Broadband Corporation (Eureka) have met their burden of showing good cause to justify waiving the deadlines at issue. In so doing, we reaffirm that when special circumstances arise, we will waive the deadline for revising the FCC Form 499. We emphasize that such circumstances are rare, however, and reiterate the importance of filing revisions to the FCC Form 499 promptly and within the windows established by the Commission's rules and requirements.

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. To this end, the Commission determined that contributions should be based on contributors' interstate and international end-user revenues, and adopted a methodology for contributors to use to compute their universal service

1 See AT&T Petition for Expedited Review of a Decision of the Universal Service Administrator, CC Docket Nos. 96-45, 97-21 (filed June 26, 2006) (AT&T Request for Review); Request for Review of a Decision on Remand of the Universal Service Administrator by Eureka Broadband Corporation, CC Docket Nos. 96-45, 97-21 (filed June 23, 2006) (Eureka Request for Review).

2 47 U.S.C. § 254(d).

3 See 47 C.F.R. § 54.706; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9206-07, paras. 843-44 (1997) (discussing why the Commission determined not to assess gross revenues); Federal-State Joint Board on Universal Service; Access Charge Reform, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration and Eighth Report and Order, Sixth Report and Order, 15 FCC Rcd 1679, 1685, (continued . . .)

contributions.<sup>4</sup> Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets with USAC.<sup>5</sup> Contributors report historical revenue on the annual Telecommunications Reporting Worksheet (FCC Form 499-A), which is due on April 1 each year.<sup>6</sup>

3. Prior to 2005, filers had to submit any revisions to their original FCC Form 499-A by December 1 of the same filing year.<sup>7</sup> Contributors that failed to meet the eight-month deadline were required to show good cause, including an explanation of the cause for the change and complete documentation showing how the revised figures derive from corporate financial records.<sup>8</sup> In the *FCC Form 499-A One-Year Deadline Order*, the Wireline Competition Bureau (Bureau) modified the deadline for filing revisions to the FCC Form 499-A, allowing 12 months for revisions that result in reduced contributions, and retaining the good cause showing requirement for revisions filed after the new, March 31 deadline.<sup>9</sup> The modifications to the FCC Form 499-A revision deadline became effective January 10, 2005, and are reflected in the FCC Form 499-A Instructions.<sup>10</sup>

4. *Requests for Review.* On June 24, 2004, AT&T filed 18 revised FCC Forms 499-A for filing years 1999 through 2002 on behalf of five Ameritech operating companies it had recently

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para. 15 (1999) (establishing a single contribution system for all universal service support mechanisms based on interstate and international revenues).

<sup>4</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

<sup>5</sup> 47 C.F.R. § 54.711(a).

<sup>6</sup> See Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited July 29, 2010) (USAC Form 499 Filing Schedule).

<sup>7</sup> See FCC Form 499-A Telecommunications Reporting Worksheet Instructions at 11 (2004), [http://www.usac.org/\\_res/documents/about/pdf/499/499ai\\_2004.pdf](http://www.usac.org/_res/documents/about/pdf/499/499ai_2004.pdf) (2004 FCC Form 499-A Instructions). Under Commission rules, revisions are filed when they are received by USAC. See 47 C.F.R. § 1.7.

<sup>8</sup> See 2004 FCC Form 499-A Instructions at 11.

<sup>9</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012, 1016, para. 10 (Wireline Comp. Bur. 2004) (*FCC Form 499-A One-Year Deadline Order*). The Bureau has delegated authority to waive, reduce, or eliminate the contributor reporting requirements associated with the universal service support mechanisms and to consider requests for review of decisions by USAC. See *Second Order on Reconsideration*, 12 FCC Rcd at 18442, para. 81; see also 47 C.F.R. §§ 54.711(c), 54.722(a). This authority includes making changes to the administrative aspects of the contributor reporting requirements, such as “where and when [Telecommunications Reporting Worksheets] are filed.” *1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16621, para. 39 (1999). In the *FCC Form 499-A One-Year Deadline Order*, the Bureau did not adopt a similar deadline for revisions that result in increased contributions. Before 2005, the instructions were silent as to whether the eight-month deadline would apply to upward revisions as well as downward revisions. See 2004 FCC Form 499-A Instructions at 11.

<sup>10</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, 69 Fed. Reg. 71,812 (Dec. 10, 2005); FCC Form 499-A Telecommunications Reporting Worksheet Instructions at 12 (2010), [http://www.usac.org/\\_res/documents/fund-administration/pdf/forms/form-499A-fy2010-instructions.pdf](http://www.usac.org/_res/documents/fund-administration/pdf/forms/form-499A-fy2010-instructions.pdf) (2010 FCC Form 499-A Instructions).

acquired.<sup>11</sup> In support of its submissions, AT&T explained why the revisions for the acquired companies were necessary and why the revised forms were filed late. AT&T also demonstrated that the revised revenue figures derived from the acquired companies' corporate financial records.<sup>12</sup> Although six of these revised forms would have decreased AT&T's contribution obligation, the remainder would have increased AT&T's obligation so that, in sum, AT&T's obligation would have increased by several million dollars.<sup>13</sup> USAC accepted the 12 filings that increased AT&T's contribution obligation, but rejected the 6 filings that would have decreased AT&T's contribution.<sup>14</sup> When AT&T requested review of USAC's decision rejecting its revised filings, the Bureau remanded the decision back to USAC for further processing and instructed USAC to use the standard in effect at the time that the revisions were filed.<sup>15</sup> On remand, USAC again rejected the 6 filings that would have decreased AT&T's payment obligations.<sup>16</sup> On June 26, 2006, AT&T requested that the Commission review USAC's decision.<sup>17</sup>

5. On May 10, 2004, Eureka, a New York City-based service provider, filed 6 FCC Forms 499-A for 1999 through 2004 on behalf of its affiliate Gillette Global Network (GGN).<sup>18</sup> Following the Bureau's remand of USAC's initial decision rejecting Eureka's filings for 2000 and 2001 as late-filed revisions,<sup>19</sup> USAC again rejected the filings "because Eureka failed to submit supporting documentation" necessary to determine whether good cause exists for the revisions.<sup>20</sup> Eureka argues that because it lost most of its corporate records in the wake of the September 11th terrorist attacks, it was unable to comply with regulatory requirements and has only GGN's 1999 federal tax return to substantiate its revisions.<sup>21</sup>

### III. DISCUSSION

6. We find that AT&T and Eureka have demonstrated good cause to grant their respective requests for relief. Accordingly, we grant the requests for review and waive the relevant revision deadlines.

7. The Commission may waive any provision of its rules only for good cause shown.<sup>22</sup> Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>23</sup> It is the responsibility of contributors to familiarize themselves with any applicable regulations and to ensure that

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<sup>11</sup> AT&T Request for Review at 3–4.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 4–5.

<sup>14</sup> *Id.* at 5–6. See *FCC Form 499-A One-Year Deadline Order*, 20 FCC Rcd at 1018, para. 13.

<sup>15</sup> See *FCC Form 499-A One-Year Deadline Order*, 20 FCC Rcd at 1018, para. 12-14.

<sup>16</sup> AT&T Request for Review Attach. 1 at 4.

<sup>17</sup> AT&T Request for Review at 10.

<sup>18</sup> Eureka Request for Review at 3.

<sup>19</sup> See *FCC Form 499-A One-Year Deadline Order*, 20 FCC Rcd at 1018, paras. 13–14.

<sup>20</sup> Eureka Request for Review at 2, Exh. A (USAC Decision on Remand).

<sup>21</sup> Eureka Request for Review at 10–12. For example, the attacks disrupted New York City's power grid, which "rendered its call records—and the revenue reports associated with that traffic—either unusable or inaccessible." *Id.* at 10.

<sup>22</sup> 47 C.F.R. § 1.3.

<sup>23</sup> *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver).

filings are received by the deadline.<sup>24</sup> As such, and in accordance with federal law, simple negligence on the part of a filer is insufficiently unique to justify waiver of an FCC Form 499 revision deadline.

8. We conclude that AT&T and Eureka have met the high burden of showing special circumstances here. In the case of AT&T, AT&T has shown that it revised the filings of the Ameritech Operating Companies shortly after acquiring them, that it did so even though revising all 18 filings increased AT&T's contribution obligation, and that AT&T submitted the filings in a manner that comported with the governing standard, providing an explanation for the necessity of the revisions and how the revised figures were derived from corporate financial records.<sup>25</sup> In addition, we find that AT&T had a reasonable expectation at the time that its late-filed revisions would be treated in the same manner regardless of whether they resulted in increased or decreased contribution obligations. Specifically, to the extent that USAC found that good cause existed to accept the late filings that increased AT&T's obligations, USAC should have applied the same analysis for the late filings that decreased contribution obligations. In the case of Eureka, many of the records it needed to timely file and substantiate revisions were destroyed in the September 11th terrorist attacks.<sup>26</sup> We find special circumstances exist in both of these cases that warrant the waiver of the relevant deadline for revising FCC Forms 499, and we accordingly grant the requests for review.

9. We remind filers that we will not routinely waive filing deadlines and that timely filing of the FCC Form 499, including any revisions thereto, is essential for the integrity and administration of the universal service fund.<sup>27</sup> We also remind all filers that FCC Forms 499 are considered filed upon their receipt at the location designated by the Commission and that filings, including revisions, can be made electronically through USAC's website.<sup>28</sup>

#### IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, 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, 254, and pursuant to sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that the request for review filed by AT&T Inc. on June 26, 2006 IS GRANTED to the extent discussed herein.

11. IT IS FURTHER ORDERED, 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, 254, and pursuant to sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that the request for review filed by Eureka Broadband Corporation on June 23, 2006 IS GRANTED to the extent discussed herein.

12. IT IS FURTHER ORDERED, 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, 254, and pursuant to sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that

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<sup>24</sup> See 47 C.F.R. § 0.406; see also, e.g., 2010 FCC Form 499-A Instructions at 12 (specifying the deadline for filing revisions to the FCC Form 499-A).

<sup>25</sup> AT&T Request for Review at 6–11; see 2004 FCC Form 499-A Instructions at 11 (not specifying whether the eight-month deadline would apply to upward revisions as well as downward revisions).

<sup>26</sup> Eureka Request for Review at 10–12.

<sup>27</sup> See *Form 499-A One-Year Deadline Order*, 20 FCC Rcd at 1016–17, para. 10.

<sup>28</sup> 47 C.F.R. § 1.7; see *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, para. 5 (Wireline Comp. Bur. 2005) (finding that contributor's FCC Form 499-Q filings were not timely filed when they were postmarked but not received by USAC by the filing deadline); Universal Service Administrative Company, E-File, <https://forms.universalservice.org/usaclogin/login.asp> (last visited July 22, 2010).

the Universal Service Administrative Company SHALL ACCEPT the revised FCC Forms 499-A listed in the Appendix.

13. 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

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

**APPENDIX**  
Requests for Review at Issue

| <b>Company Name</b>          | <b>Filer ID</b>                                | <b>Date Request Filed</b> | <b>Requested FCC Form 499 Revision</b> | <b>Date FCC Form 499 Revision Filed</b> |
|------------------------------|--|---------------------------|--|---|
| AT&T Inc.                    | 803214<br>803217<br>803220<br>803223<br>803226 | June 26, 2006             | 1999, 2000,<br>2001, 2002              | June 24, 2004                           |
| Eureka Broadband Corporation | 820387   | June 23, 2006             | 2000, 2001                             | May 10, 2004                            |