

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	)	
Alliance Group Services, Inc. of	)	CC Docket No. 97-21
Universal Service Administrator's Decision on	)	
Remand	)	

**ORDER**

**Adopted: April 27, 2010**

**Released: April 27, 2010**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we deny the request filed by Alliance Group Services, Inc. (Alliance) seeking review of the decision on remand issued by the Universal Service Administrative Company (USAC).<sup>1</sup> Specifically, Alliance challenges USAC's decision not to accept Alliance's April 13, 2001 filing of its 2000 FCC Form 499-A.<sup>2</sup> For the reasons set forth below, we affirm the USAC's decision on remand.

**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.<sup>3</sup> To this end, the Commission has determined that any entity that provides interstate telecommunications services to the public for a fee must contribute to the universal service fund.<sup>4</sup> The Commission further directs that contributions should

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<sup>1</sup> Request for Review by Alliance Group Services, Inc. of Universal Service Administrator's Decision on Remand, CC Docket Nos. 96-45 and 97-21 (filed July 30, 2005) (Alliance Request for Review). The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider requests for review of decisions by USAC. 47 C.F.R. § 54.722(a).

<sup>2</sup> Alliance Request for Review at 1.

<sup>3</sup> 47 U.S.C. § 254(d).

<sup>4</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

be based on contributors' interstate and international end-user revenues.<sup>5</sup>

3. In the *Second Order on Reconsideration*, the Commission set forth the specific method of computation for universal service contributions.<sup>6</sup> Under these initial contribution rules and requirements, the Commission required contributors to submit semi-annually a Telecommunications Reporting Worksheet to collect information from contributors about their end-user telecommunications revenues.<sup>7</sup> Contributions were to be based on billed end-user telecommunications revenues from the prior year.<sup>8</sup> On September 1, carriers were required to submit revenue data for the six-month period from January 1 through June 30 of that year. This information was then used to calculate universal service support contributions for January through June of the following year. On April 1, carriers were required to submit revenue data for the previous calendar year. This information was then used to calculate contributions for July through December of the same year in which the data was filed, by subtracting the previously filed data for the first half of that year. Thus, for example, under these initial rules, revenue data due on September 1, 1999, would be used to calculate contributions for January through June 2000. Revenue data due on April 1, 2000, would be used to calculate contributions for July 2000 through December 2000, by subtracting the revenues contained in the data filed September 1, 1999.<sup>9</sup> This contribution methodology was in effect when Alliance filed its 2000 FCC Form 499-A.<sup>10</sup> The Commission modified its contribution methodology to assess contributors based on their projected collected revenues in 2003, such that contributors now file revenue projections on a quarterly basis and receive a monthly invoice of their obligation from USAC.<sup>11</sup>

4. *Alliance Request for Review*. On December 23, 1999, Alliance purchased, among other

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<sup>5</sup> *Id.*; see 47 C.F.R. § 54.706.

<sup>6</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

<sup>7</sup> The Commission adopted the Telecommunications Reporting Worksheet and attached it as Appendix C to the *Second Order on Reconsideration*. *Id.* at Appendix C. Subsequent to its issuance of the *Second Order on Reconsideration*, in an effort to reduce administrative burdens on contributors, the Commission consolidated the reporting requirements of the universal service mechanism along with other reporting requirements into the FCC Form 499 Telecommunications Reporting Worksheet (Form 499). *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 (1999).

<sup>8</sup> *Second Order on Reconsideration*, 12 FCC Rcd 18400, Appendix C.

<sup>9</sup> *Federal-State Joint Board on Universal Service; Petition for Forbearance from Enforcement of Sections 54.709 and 54.711 of the Commission's Rules by Operator Communications, Inc. d/b/a Oncor Communications, Inc.*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947 (2000).

<sup>10</sup> Alliance Request for Review at 3-6.

<sup>11</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, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, 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, 24970, para. 29 (2002) (*2002 Contribution Methodology Order*).

things, “all of the long distance Customer base and accounts” owned by US Republic Communications, Inc. (US Republic), a subsidiary of VarTec Telecom Holding Company, pursuant to a purchase and sale agreement.<sup>12</sup> Prior to the sale of its customer base, US Republic was a contributor to universal service and continued to make universal service filings and contributions until June 2000.<sup>13</sup> On April 13, 2001, more than one year after its initial due date, Alliance filed the 2000 FCC Form 499-A reporting 1999 revenues.<sup>14</sup> On June 7, 2001, USAC rejected the form as untimely filed.<sup>15</sup> On July 2, 2001, Alliance sought review by USAC of this rejection pursuant to the Commission’s rules.<sup>16</sup> On October 1, 2001, USAC affirmed its earlier decision, finding that Alliance failed to justify its request that USAC accept Alliance’s revised form after the filing deadline, noting that Alliance did not include “an explanation of the cause for the change along with documentation showing how the revised figures derive from corporate financial records.”<sup>17</sup> USAC also concluded that Alliance’s filing improperly sought to exclude revenue associated with the customer base of US Republic, which it had purchased prior to the filing date for the form.<sup>18</sup> On October 29, 2001, Alliance filed with the Commission a request for review of USAC’s decision.<sup>19</sup>

5. On December 9, 2004, the Wireline Competition Bureau (Bureau) issued an order that, among other things, remanded to USAC for limited reconsideration appeals that were pending at the Commission related to the Telecommunications Reporting Worksheet filing deadline.<sup>20</sup> Petitioners with pending cases were required to: (1) demonstrate good cause for submitting the revision beyond the one-year revision window; and (2) provide “an explanation of the cause for the change along with complete documentation showing how the revised figures derive from corporate financial records.”<sup>21</sup> Alliance’s

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<sup>12</sup> Alliance Request for Review, Attach. B (US Republic and Alliance Group Services, Inc., Purchase and Sale Agreement) (dated Dec. 23, 1999) at 1.

<sup>13</sup> Alliance Request for Review, Attach. F (Declaration of Lawrence M. Brenton) at para. 8.

<sup>14</sup> Alliance Request for Review at 2.

<sup>15</sup> Alliance Request for Review, Attach. A (USAC’s Decision on Remand) at 2. Under then existing Commission rules and requirements, a contributor was required to submit revisions to its original FCC Form 499-A by December 1 of the filing year. *See* 2004 Telecommunications Reporting Worksheet Instructions at 11. Contributors that failed to meet the nine-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. *See id.*

<sup>16</sup> *See* Alliance Request for Review, Attach. A (USAC’s Decision on Remand) at 2.

<sup>17</sup> *See id.* (citing USAC’s 2001 Decision on Contributor Appeal). USAC treated Alliance’s filing as a “revised” filing because Alliance had failed to timely file the original 2000 FCC Form 499-A and USAC had estimated Alliance’s 1999 contribution obligation based on US Republic’s earlier filings. *Id.* at n.5.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> Request for Review by Alliance Group Services Inc. of a Decision by the Universal Service Administrator, CC Docket Nos. 96-45 and 97-21 (filed Oct. 30, 2001) (2001 Alliance Request for Review).

<sup>20</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 (Wireline Comp. Bur. 2004) (*FCC Form 499-A Modification Order*) (adopting a 1-year revision for filing FCC Form 499-A downward revisions). We note that the 1-year revision deadline was not applicable at the time of Alliance’s initial revised 2000 FCC Form 499-A filing. *See supra* n.15.

<sup>21</sup> *FCC Form 499-A Modification Order*, 20 FCC Rcd at 1018, para. 13 (citing instructions to the FCC Form 499-A).

2001 request for review was one of the appeals remanded to USAC.<sup>22</sup> On remand, USAC reviewed and rejected Alliance's amended 2000 FCC Form 499-A for a second time because Alliance sought "to exclude from its revenue base revenues associated with certain telecommunications assets owned by [Alliance] during the billing period covered by the 2000 FCC Form 499-A."<sup>23</sup>

6. Alliance seeks review of the most recent USAC decision in its 2005 request for review. Alliance argues that USAC unlawfully sought to recover universal service obligations associated with revenues previously generated by US Republic. Alliance claims that its agreement with US Republic made US Republic responsible for payment of associated regulatory fees post-sale. Alliance urges the Commission to acknowledge that a telecommunications provider's obligation to contribute to universal service arises at such time as it provides interstate telecommunications services and bills for such services. Accordingly, Alliance argues that its obligation to contribute to universal service did not arise until it started to provide service pursuant to the purchase and sale agreement with US Republic.<sup>24</sup> Alliance also asserts that USAC was unjustified in rejecting Alliance's 2000 FCC Form 499-A, which was filed on April 13, 2001.<sup>25</sup>

### III. DISCUSSION

7. For the reasons set forth below, we find that USAC properly billed Alliance for the universal service obligations resulting from Alliance's provision of interstate telecommunications services to end-users in calendar year 2000. We further conclude that USAC appropriately rejected Alliance's FCC Form 499-A for 2000. We therefore deny Alliance's request for review.<sup>26</sup>

8. *Universal Service Contributions and Prior Year End-user Revenue.* Alliance is correct in asserting that a carrier's obligation to contribute to universal service arises when the carrier begins to provide telecommunications services to the public for a fee.<sup>27</sup> Alliance purchased US Republic's long distance customer base on December 23, 1999, and began providing interstate telecommunications service to US Republic's former customers on December 24, 1999, the same date that its obligation to contribute based on revenues from those customers arose.<sup>28</sup> The issue in dispute, therefore, concerns the basis for assessing Alliance's contribution obligation. As described above, the contribution methodology in effect during the period of time covered in Alliance's petition assessed contributions based on

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<sup>22</sup> *Id.* at Appendix A. In its 2005 request for review, Alliance argues that USAC was not justified in rejecting Alliance's 2000 Telecommunications Reporting Worksheet because it was submitted a matter of days beyond the subsequently imposed one-year revision deadline. Alliance Request for Review at 24-27. Alliance's April 13, 2001 filing of its 2000 FCC Form 499-A was more than one year beyond the filing deadline. Alliance's arguments regarding USAC's one-year deadline for the 2000 Telecommunications Reporting Worksheet are moot because the Bureau remanded Alliance's 2001 request for review to USAC and USAC did not reject the filing on this basis, but instead rejected Alliance's revised 2000 FCC Form 499-A because it sought to exclude revenues associated with assets owned by Alliance during the period covered by the filing. *See id.*, Attach. A at 3.

<sup>23</sup> Alliance Request for Review, Attach. A (USAC's Decision on Remand) at 3. USAC also rejected Alliance's 2000 FCC Form 499-A because Alliance failed to provide requisite documentation. *Id.*

<sup>24</sup> Alliance Request for Review at 2-3.

<sup>25</sup> *See id.* at 1.

<sup>26</sup> We note that in its request for review, Alliance incorporates by reference all arguments made in its 2001 Request for Review. *See* Alliance Request for Review at 6.

<sup>27</sup> *See* Alliance Request for Review at 3, 11; *see also Universal Service First Report and Order*, 12 FCC Rcd at 9179, para. 787.

<sup>28</sup> Alliance Request for Review at 3-4.

historical gross-billed revenues that were reported six months earlier and that were reflected in USAC's invoices for previously reported revenues.<sup>29</sup>

9. Alliance purchased the entire long distance customer base from US Republic, i.e., all of US Republic's assets that generated assessable revenue for universal service purposes. Thus, under the contribution methodology in effect during the period of time at issue, USAC was correct to bill Alliance based on US Republic's reported revenue.<sup>30</sup> As of December 24, 1999, Alliance owned US Republic's entire long distance customer base and therefore had the ability to pass through the universal service charges contained on USAC's invoices to those customers. Alliance mistakenly contends that, under the contribution methodology in effect at the time, contributions collected by USAC satisfy historical obligations.<sup>31</sup> To the contrary, contributions satisfy *current* obligations that, at the time in question, were based on reported revenues from the prior year.<sup>32</sup> Thus, as required by the Commission's applicable universal service contribution rules and requirements, the amount of Alliance's universal service obligation in 2000 for the customers it obtained from US Republic was based on the end-user revenues that US Republic reported in 1999.<sup>33</sup> Alliance is incorrect when it asserts that it was not required to report US Republic's 1999 revenues on its 2000 FCC Form 499-A. We find that USAC acted properly in rejecting Alliance's 2000 FCC Form 499-A filing due to Alliance's exclusion of required revenue from its contribution base.

10. *Obligation to Report End-user Revenues.* Alliance asserts that the purchase and sale agreement with US Republic evidences an understanding by US Republic to maintain its obligation to pay the universal service obligation in question.<sup>34</sup> Alliance also argues that USAC may not hold the purchaser of an asset liable for regulatory obligations when the seller company has agreed to assume the obligations to pay universal service obligations.<sup>35</sup> Alliance is incorrect. Regardless of what the companies may have agreed to in the purchase and sale agreement, legal duties to comply with a federal regulatory scheme

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<sup>29</sup> *Second Order on Reconsideration*, 12 FCC Rcd 18400, Appendix C.

<sup>30</sup> If Alliance had timely filed its April 1, 2000 FCC Form 499-A, USAC would have continued to invoice Alliance based on US Republic's reported revenue until July 2000, at which time USAC would have begun invoicing Alliance based on revenue it reported in its April 2000 FCC Form 499-A. *See supra* para. 3.

<sup>31</sup> Alliance states, "[p]rior to Alliance's purchase of a customer base in late 1999, Alliance did not own, control, or receive a benefit in the form of revenue from that customer base. Alliance cannot be liable for regulatory obligations associated with the revenues generated during that period." Alliance Request for Review at 13-14. Alliance misinterprets USAC's statements in its 2005 Alliance decision on remand. Alliance claims that USAC concluded that "obligations to contribute to [universal service] arise when USAC calculates the amount of contribution to be invoiced." *Id.* at 15. Contrary to Alliance's assertion, USAC does not link a contributor's obligation to pay universal service to USAC's calculation of the amount to be invoiced. Specifically, USAC states, "the obligation does not arise with the accrual of the historical revenue but arises during the billing period covered by the [FCC] Form 499-A." USAC Decision on Remand at 3.

<sup>32</sup> *See 2002 Contribution Methodology Order*, 17 FCC Rcd at 24959, 24963, paras. 11, 29; *see also* 47 C.F.R. § 54.709(a).

<sup>33</sup> Alliance's contribution obligation for the non-US Republic customers Alliance served was based on the end-user revenues from the customer base it had in 1999 prior to acquiring US Republic's customer base. *See* Alliance Request for Review at 5.

<sup>34</sup> Alliance Request for Review at 10 (citing purchase and sale agreement at §§ 8(e) and 8(c)).

<sup>35</sup> *Id.* at 7.

cannot be “contracted away.”<sup>36</sup>

11. Specifically, “[i]f a regulatory statute is otherwise within the powers of Congress ... its application may not be defeated by private contractual provisions.”<sup>37</sup> Because the Act and the Commission’s rules require carriers to contribute to universal service, a purchaser of assets cannot, by contract, shift this obligation to the seller. The seller may agree to pay on behalf of a purchaser, and USAC may accept payments from the seller, but if the seller does not pay on the purchaser’s behalf, the purchaser must pay.<sup>38</sup> Here, even if US Republic contracted to pay Alliance’s universal service obligations, Alliance retained the contribution obligation. In addition, the Commission will not adjudicate claims arising out of private contractual agreements.<sup>39</sup> Alliance may pursue any claim against US Republic arising from their private contractual agreement in court. We therefore conclude that USAC properly billed Alliance during 2000 for the universal service obligations resulting from Alliance’s end-user revenues.<sup>40</sup>

#### IV. ORDERING CLAUSE

12. 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 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 Alliance Group Services, Inc. IS DENIED.

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

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<sup>36</sup> *Federal-State Joint Board on Universal Service, Petition for Review American Cyber Corp. et al.*, CC Docket Nos. 96-45 and 02- 6, Order, 22 FCC Rcd 4925, 4930, para. 17 (Wireline Comp. Bur. 2007).

<sup>37</sup> *Connolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 224 (1986); *Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket No. 95-59, CS Docket No. 96-83, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 19276, 19304, para. 45 (1996); *Review of the Commission’s Regulations Governing Television Broadcasting Television Satellite Stations Review of Policy and Rules*, MM Docket Nos. 91-221 and 87-8, Memorandum Opinion and Second Order on Reconsideration, 16 FCC Rcd 1067, 1087, para. 54 & n.118 (2001).

<sup>38</sup> *See, e.g., Request for Review by Homer Community Consolidate*, File No. NEC.70C.03-10-00.09700014, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 9353 (Com. Car. Bur. 2001) (rejecting a claim by an applicant that it should be excused for its failure to timely file its form with USAC because it relied upon a third-party who filed the form late).

<sup>39</sup> *See, e.g., Applications of Northwest Broadcasting, Inc., Assignor And Western Pacific, Inc., Assignee*, File No. BAL-951011EA, Memorandum Opinion and Order, 6 Comm. Reg. (P.F.) 685, para. 10 (1997); *Applications of Caribbean SMR, Inc.*, File No. 0000263859 Order, 16 FCC Rcd 15663, 15664, para. 5 (Wireless Tel. Bur. 2001); *Assignment of Call Sign WPFX961, From Elaine Hough, Assignor, To Chadmoore Wireless Group, Inc., Assignee*, File No. 0000350815 Order, 18 FCC Rcd 1875, 1877, para. 7 (Wireless Tel. Bur. 2003).

<sup>40</sup> Because Alliance failed to timely file its 2000 FCC Form 499-A, USAC based Alliance’s billings for January through December 2000 solely upon the historic revenue of the purchased customer base, which US Republic mistakenly reported to USAC. *See* USAC’s Decision on Contributor Appeal at 4, fn. 10. *See also* 47 C.F.R. § 54.709(d) (“If a contributor fails to file a . . . Worksheet by the date on which it is due, [USAC] shall bill that contributor based on whatever relevant data [USAC] has available . . .”).

FEDERAL COMMUNICATIONS COMMISSION

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