

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

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| In the Matter of |) | |
| |) | |
| Universal Service Contribution Methodology |) | WC Docket No. 06-122 |
| |) | |
| Request for Review of a Decision of the Universal |) | |
| Service Administrator and Request for Waiver by |) | |
| Baltimore-Washington Telephone Company |) | |

ORDER

Adopted: October 16, 2012

Released: October 16, 2012

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we address a request filed by Baltimore-Washington Telephone Company (BWTel).¹ BWTel seeks review and reversal of a decision of the Universal Service Administrative Company (USAC) assessing late fees for BWTel's failure to timely file annual Telecommunications Reporting Worksheets (FCC Form 499-A) for 2008, 2009 and 2010.² In the alternative, BWTel seeks a waiver or partial waiver of the Commission's rules.³ For the reasons stated below, we deny BWTel's request.

2. Section 254(d) of the Communications Act of 1934, as amended, 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.⁴ Pursuant to the Commission's rules, carriers and certain other providers of interstate telecommunications are required to file FCC Form 499-A with USAC on April 1 each year.⁵ Providers whose contribution to the universal service fund (USF) would be *de minimis*, that is under \$10,000, however, are exempt from directly contributing.⁶ *De minimis* providers for USF purposes are therefore not required to file the FCC Form 499-A, unless required to do so by the Commission's rules governing contributions to other federal regulatory programs.⁷

¹ Request by Baltimore-Washington Telephone Company for Review of a Decision of the Universal Service Administrator and Petition for Waiver of Sections 54.711 and 54.713(c) of the Commission's Rules, WC Docket No. 06-122 (filed Aug. 29, 2011) (BWTel Petition).

² Administrator's Decision on Contributor Appeal, Letter to Kenneth L. Menken, CEO, Baltimore-Washington Telephone Company (June 28, 2011) (USAC Decision).

³ BWTel Petition at 4-6.

⁴ 47 U.S.C. § 254(d).

⁵ See 47 C.F.R. §§ 54.706, 54.711, 54.713 (requiring all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to file FCC Form 499-A); USAC Schedule of Filings, at <http://www.usac.org/cont/499/filing-schedule.aspx> (last visited Sept. 25, 2012).

⁶ 47 C.F.R. § 54.708.

⁷ *Id.*; 47 C.F.R. § 52.17(b) (numbering administration); 47 C.F.R. § 52.32(b) (local number portability); 47 C.F.R. § 64.604(c)(5)(iii)(B) (telecommunications relay service).

3. Generally, the Commission's rules may be waived for good cause shown.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.¹¹

4. We deny BWTel's request for a reversal of USAC's decision. We find that USAC correctly assessed the late fees for the filing years at issue in accordance with Commission rules and requirements.¹² BWTel timely filed its FCC Form 499-A from 2003 through 2007, but failed to make filings for 2008, 2009, and 2010. BWTel asserts that USAC failed to consider the relevant facts and circumstances raised in its appeal.¹³ BWTel states that the employee responsible for filing FCC Form 499-A failed to do so beginning in 2008, and that this employee has since been dismissed for cause.¹⁴ The FCC Form 499-A Instructions require filers to notify USAC of any changes to contributor identification information, including contact information.¹⁵ USAC sent multiple notices and invoice statements regarding BWTel's failure to file Form 499-A to the contact person listed on BWTel's 2007 FCC Form 499-A.¹⁶ The fact that BWTel did not receive the communications from USAC regarding the company's failure to file the forms in question does not alter BWTel's obligation to timely file the FCC Form 499-A. USAC is under no obligation to notify filers of delinquent filings.¹⁷ Businesses have a responsibility to familiarize themselves with the rules and regulations that are relevant to their industry.¹⁸

⁸ 47 C.F.R. § 1.3.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125–28 (D.C. Cir. 2008) (*NetworkIP*); *Northeast Cellular*, 897 F.2d at 1166.

¹² 47 C.F.R. § 54.713.

¹³ BWTel Petition at 4. BWTel also argues that USAC failed to consider that the late fees at issue “are grossly excessive and overly punitive relative to the size and revenues of the company.” *Id.*

¹⁴ *Id.* at 2.

¹⁵ See USAC Decision at 3, 4 (*citing* 2007 FCC Form 499-A Instructions at 10, 17; *accord* 2008-2010 FCC Form 499-A Instructions at 17); *see also* 2012 FCC Form 499-A Instructions at 7-8 (requiring filers to submit a revised FCC Form 499-A if there is any change in certain information, including regulatory contact information and agent for service of process).

¹⁶ BWTel Petition at 2; USAC Decision at 3–4.

¹⁷ See *Universal Service Contribution Methodology, Requests for Waiver of Decision of the Universal Service Administrator by ComScape Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC*, WC Docket No. 06-122, Order, 25 FCC Rcd 7399, 7401, para. 6 (Wireline Comp. Bur. 2010) (stating that “USAC’s courtesy email [to contributors, notifying them of a missed filing] is just that, a courtesy notification”) (*ComScape Order*).

¹⁸ See 47 C.F.R. § 0.406.

Further, even though BWTel met the *de minimis* status for USF contribution purposes,¹⁹ the company was required to file the FCC Form 499-A for purposes of other federal regulatory programs.²⁰

5. We also deny BWTel's request for waiver. In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²¹ Consistent with our prior decisions, we conclude that BWTel has not demonstrated that there is good cause to grant the requested waiver of the late fees. The circumstances raised by BWTel – the negligence of a former company employee and the failure to receive timely notification from USAC that the FCC Forms 499 were overdue – do not constitute unique circumstances sufficient to warrant waiver of the filing deadline. We have previously held that simple negligence on the part of a filer is insufficiently unique to justify waiver of a filing deadline.²²

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154 and 254, and pursuant to sections 0.91, 0.291, 1.3 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722, the request for review and petition for waiver filed by Baltimore-Washington Telephone Company IS DENIED.

7. IT IS FURTHER ORDERED that this order SHALL BE transmitted to the Universal Service Administrative Company.

¹⁹ See *ComScope Order*, 25 FCC Rcd at 7401, para. 6 (finding that the company's failure to receive notice of USAC's courtesy email did not alter its obligation to file its FCC Form 499-A revision in a timely manner).

²⁰ See *supra* n. 7; see also 2012 FCC Form 499-A Instructions at 4 (noting that some providers may be exempt from contributing to USF, but nevertheless must file the Worksheet because they are required to contribute to TRS, NANPA, or LNPA).

²¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²² See, e.g., *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (Wireline Comp. Bur. 2010) (denying deadline waivers where claims of good cause amount to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control); *ComScope Order*, 25 FCC Rcd 7399 (denying waiver requests when negligence caused late filing); *Universal Service Contribution Methodology, Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646, 4648-49, paras. 5, 8 (Wireline Comp. Bur. 2010); *Federal-State Joint Board on Universal Service, Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (Wireline Comp. Bur. 2007) (good cause not shown when filer claimed it did not have skilled personnel to interpret and correctly apply FCC 499 instructions). In *NetworkIP*, the party seeking waiver had filed a timely complaint with the Commission but included a payment that was \$5 short of the recently increased filing fee; when the party's complaint was rejected for not including the full filing fee, the party re-filed after the deadline and sought a waiver of the deadline. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-26 (D.C. Cir. 2008). The court rejected the Commission's decision to grant a waiver, noting that "procrastination plus the universal tendency for things to go wrong (Murphy's Law)—at the worst possible moment (Finagle's Corollary)—is not a 'special circumstance,' as any junior high teacher can attest." *Id.* at 127.

8. 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

Vickie S. Robinson
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