

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

In the Matter of)
Universal Service Contribution Methodology)
Request for Review of a Decision of the Universal) WC Docket No. 06-122
Service Administrative Company by Assist 123,)
LLC)

ORDER

Adopted: September 16, 2013

Released: September 16, 2013

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

1. In this Order, we address a request for review filed by Assist 123, LLC (Assist).¹ Assist seeks review and reversal of a decision of the Universal Service Administrative Company (USAC) upholding late fees assessed for Assist’s failure to timely file its quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q) in August and November 2012.² Assist disputes USAC’s conclusion that the FCC Forms 499-Q were not submitted timely and requests that all late fees and related penalties be vacated, or, in the alternative, that penalties be limited to the period from August 1 to November 27, 2012.³ For the reasons stated below, we deny the Petition.

2. *Background.* Section 254(d) of the Communications Act of 1934, as amended (Communications 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.⁴ Pursuant to the Commission’s rules, carriers and certain other providers of interstate telecommunications are required to file FCC Form 499-Q with USAC four times a year (quarterly).⁵ FCC Form 499-Q may be filed electronically, through USAC’s E-file system, or manually using a paper copy of the form. In all instances, the official version of the form approved by the Commission and the Office of Management and Budget must be used. Pursuant to section 54.713 of the Commission’s rules,

¹ Request for Review of a Decision of the Universal Service Administrator by Assist 123, LLC, WC Docket No. 06-122 (filed Mar. 13, 2013) (Petition).

² *Id.*

³ *Id.* at 1-2. Although Assist requests that “penalties” be vacated, Assist actually appears to be appealing the imposition of late fees based on its late filing of the FCC Forms 499-Q. For clarity, our decision today encompasses all interest, penalties, and late fees resulting from Assist’s late filing of these forms. November 27, 2012 is the first date on which Assist attempted to submit an FCC Form 499-Q, but as discussed below, it did not use the correct form.

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-Q); USAC Schedule of Filings, at <http://www.usac.org/cont/499/filing-schedule.aspx> (last visited September 16, 2013).

contributors that fail to make full payment on or before the due date of a monthly USF assessment are subject to late fees, penalties, and interest.⁶

3. *Discussion.* The Petition states that Assist attempted to file the August 2012 FCC Form 499-Q before the August 1 deadline but did not receive a “notice of failure to file” from USAC until November 20, 2012.⁷ However, USAC staff e-mailed Assist on August 22, 2012 to notify the company that it needed to file the August 2012 FCC Form 499-Q because USAC had no record of receiving the filing.⁸ Because Assist attempted to file electronically, it entered data into a “Data Entry Form” screen in USAC’s E-file system. In order to submit the data, Assist should have clicked the “Certify” button at the bottom of the web page, which USAC records indicate Assist did not do.⁹ Apparently, Assist assumed it was sufficient to print out a copy of the “Data Entry Form” screen. This screen, which is not the approved FCC Form 499-Q, clearly displays the warning: “For Data Entry Purposes Only. Please Do Not Print This Form.”¹⁰

4. On November 14, 2012, USAC received a copy of the printed Data Entry Form.¹¹ On November 20, 2012, USAC e-mailed Assist again to explain that the form was rejected because it was not the correct form.¹² On November 21, 2012, Assist mailed a version of FCC Form 499-Q to USAC that reported historical revenues for the second quarter of 2011, even though the August 2012 form was supposed to report revenues for the second quarter of 2012. Since the deadline for reporting second quarter 2011 revenues had long expired, USAC notified Assist that this form was rejected.¹³ In January 2013, Assist resubmitted both the data entry form and an FCC Form 499-Q that reported revenues for the wrong year.¹⁴ In February 2013, Assist, in its fourth attempt, finally submitted the form correctly. By this time, the form was late. Accordingly, Assist was assessed late fees on the submission.¹⁵

5. There were similar problems with Assist’s November 2012 FCC Form 499-Q. Prior to the filing deadline, Assist submitted a 499-Q showing revenues for 2011, not 2012.¹⁶ USAC notified Assist that it had not filed the correct November 2012 FCC Form 499-Q, but Assist continued to submit

⁶ 47 C.F.R. § 54.713.

⁷ Petition at 1.

⁸ See e-mail from Fred Theobald, Senior Manager of Contributions, USAC, to Charles Eberle, Attorney Advisor, FCC, dated Mar. 26, 2013 (USAC Mar. 26, 2013 e-mail) (confidential) (on file with Wireline Competition Bureau, Telecommunications Access Policy Division staff).

⁹ *Id.*

¹⁰ Petition at 1 and Exh. 8-1-A; USAC Mar. 26, 2013 e-mail.

¹¹ USAC Mar. 26, 2013 e-mail.

¹² See e-mail from Fred Theobald, Senior Manager of Contributions, USAC, to Charles Eberle, Attorney Advisor, FCC, dated Mar. 25, 2013 (USAC Mar. 25, 2013 e-mail) (confidential) (on file with Wireline Competition Bureau, Telecommunications Access Policy Division staff) (discussing a Nov. 20, 2012 e-mail from USAC Customer Support to Harvey Berg, President of Assist). The rejection e-mail from USAC clearly stated that Assist had incorrectly filed a data entry form from the USAC website that states “For Date Entry Purpose Only. Please Do Not Print this Form.” *Id.*

¹³ See Petition at Exh. 8-1-B; USAC Mar. 26, 2013 e-mail.

¹⁴ See USAC Mar. 26, 2013 e-mail.

¹⁵ See USAC Mar. 25, 2013 e-mail (discussing a Feb. 15, 2013 e-mail from USAC Customer Support to Harvey Berg).

¹⁶ See USAC Mar. 26, 2013 e-mail.

the form showing revenues for the wrong year.¹⁷ USAC did not receive a correct November 2012 FCC Form 499-Q until February 2013, and assessed late fees based on that date.¹⁸

6. Businesses such as Assist have a responsibility to familiarize themselves with the Commission's rules and regulations.¹⁹ The August 2012 FCC Form 499-Q was due on August 1, 2012, and the revisions were due within 45 days. Similarly, the November 2012 FCC Form 499-Q was due on November 1, 2012, and the revisions were due within 45 days. Assist failed to submit a correct form for both time periods by the appropriate deadlines. The fact that Assist continued to submit incorrect and untimely filings despite multiple notices from USAC²⁰ does not constitute circumstances sufficient to warrant a reversal of USAC's decision.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 4(i) and 254(d) of the Communications Act, 47 U.S.C. §§ 4(i), 254(d), and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the request for review filed by Assist 123, LLC on March 13, 2013 IS DENIED.

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

Chin Yoo
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁷ *Id.*

¹⁸ Administrator's Decision on Contributor Appeal, Letter to Harvey Berg, President, Assist (Feb. 18, 2013).

¹⁹ *See* 47 C.F.R. § 0.406.

²⁰ *See* USAC Mar. 26, 2013 e-mail.