

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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Request for Waiver by Experior Networks	)	
	)	
Request for Review by Coaxial Cable Television	)	
Corporation of Decision of Universal Service	)	
Administrator	)	

**ORDER**

**Adopted: May 11, 2015**

**Released: May 11, 2015**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we address a request for waiver filed by Experior Networks (Experior)<sup>1</sup> and a request for review of a decision of the Universal Service Administrative Company (USAC) filed by Coaxial Cable Television Corporation (Coaxial).<sup>2</sup> Both Experior and Coaxial (collectively, Petitioners) were *de minimis* providers of voice over internet protocol (VoIP) that failed to file their Forms 499-A during the initial years in which they provided service.<sup>3</sup> When Petitioners discovered their error, they submitted the FCC Forms 499-A for multiple filing years in order to come into compliance with the Commission’s filing requirements.<sup>4</sup> Each Petitioner, however, committed a ministerial reporting error on their respective Forms 499-A, which resulted in them being incorrectly shown as over the threshold to qualify for *de minimis* status.<sup>5</sup> USAC permitted Petitioners to revise their current filing year’s Forms 499, but rejected revised Forms 499-A for previous years because the revisions were submitted after the twelve-month deadline for submitting revisions to the Form 499-A.<sup>6</sup>

<sup>1</sup> See Letter from Chris Henshaw, CEO, Experior Networks, to the Federal Communications Commission, WC Docket No. 06-122 (filed Oct. 17, 2014) (Experior Request for Waiver).

<sup>2</sup> Request for Review by Coaxial Cable Television Corporation of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Mar. 7, 2014) (Coaxial Request for Waiver). We note that although Coaxial styled its petition as a “Request for Review,” the company is seeking a waiver of our rules. We therefore refer to Coaxial’s petition as a “Request for Waiver.”

<sup>3</sup> Experior Request for Waiver at 1; Coaxial Request for Waiver at 4-5.

<sup>4</sup> Experior Request for Waiver at 1; Coaxial Request for Waiver at 1-2.

<sup>5</sup> Experior reported all of its recurring revenues on line 404.4 instead of only the VoIP revenues. Experior Request for Waiver at 1. Coaxial reported all of its revenue as assessable for universal service fund purposes instead of only its interstate and international revenue. Coaxial Request for Waiver at 5.

<sup>6</sup> Experior Request for Waiver at 1; Coaxial Request for Waiver at 6-8.

2. As discussed below, we find that in the limited circumstances presented, good cause exists to waive the one-year revision deadline. Accordingly, we grant Petitioners' requests to waive the FCC Form 499-A revision deadline for the filing years at issue to provide an opportunity for them to correct the error that incorrectly placed them in non-*de minimis* status. We note that we are not waiving any late fees, interest, or penalties that may be associated with these late-filed forms.<sup>7</sup> We direct USAC to accept Experior and Coaxial's revised FCC Forms 499 for the years at issue and to adjust invoices and provide refunds as appropriate, consistent with the terms of this order.

## II. BACKGROUND

### A. The Commission's Rules

3. 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.<sup>8</sup> Pursuant to the Commission's rules, carriers and certain other providers of interstate telecommunications are required to file FCC Form 499-A with USAC.<sup>9</sup>

4. Contributors are required to file their FCC Forms 499-A by April 1 of each year reporting, among other things, the prior year's revenues.<sup>10</sup> A filer that discovers errors in the revenue data that it has reported corrects those errors by filing a revised FCC Form 499-A. The filer must submit a revised Form 499-A by March 31 of the year after the original filing due date.<sup>11</sup> The purpose of the one-year deadline for submitting revisions to the Form 499-A is, among other things, to help ensure the stability and sufficiency of the federal universal fund, improve the integrity of the universal service contribution methodology, and promote efficiency in administration of the universal service support

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<sup>7</sup> See *infra* para. 12.

<sup>8</sup> 47 U.S.C. § 254(d).

<sup>9</sup> 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, *Contributors: What and How to File*, <http://usac.org/cont/filers/what-and-how-to-file.aspx> (last visited May 11, 2015).

<sup>10</sup> The Commission requires universal service fund (USF or Fund) contributors to provide certain revenue information on a quarterly and annual basis. See 47 C.F.R. § 54.711(a) (setting forth reporting requirements in accordance with Commission announcements in the Federal Register). The filing schedule is set forth in the instructions to FCC Form 499-A. Under the current filing schedule, the annual FCC Form 499-A is due April 1 of each year, and the quarterly FCC Form 499-Q is due on February 1, May 1, August 1, and November 1. See, e.g., *Comprehensive Review of the Universal Service Fund Management, Administration and Oversight et al.*, WC Docket Nos. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16376, para. 9 n.15 (2007) (*Comprehensive Review Order*).

<sup>11</sup> *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 Associations, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012, 1013, para. 10 (2004) (*One-Year Deadline Order*). In the *One-Year Deadline Order*, the Bureau adopted a deadline for filing revisions to FCC Form 499-A. The Bureau found that a firm one-year deadline for revisions that would result in reduced contributions would improve administrative efficiency and provide certainty, stability and sufficiency for the funds covered by FCC Form 499-As.

mechanisms.<sup>12</sup> The Commission's rules direct USAC to assess interest and penalties on contributors that fail to timely file their Form 499-A.<sup>13</sup>

5. All providers of interconnected VoIP services—including those that satisfy the *de minimis* exemption—are required to register with the Commission in order to facilitate the Commission's enforcement of the obligations imposed on providers of interconnected VoIP services.<sup>14</sup> Although interconnected VoIP providers that qualify for the *de minimis* exemption are not required to make USF contributions, they are required to file the annual FCC Forms 499-A for purposes of contributing to other regulatory programs.<sup>15</sup>

#### **B. Requests for Waiver**

6. *Experior Request for Waiver.* Experior filed for and received a Filer ID in March 2014, at which time it filed Forms 499-A for both 2014 and 2013 (for calendar year revenues for 2013 and 2012, respectively).<sup>16</sup> On July 22, 2014, USAC determined that Experior was *de minimis* for calendar year 2013, based on the information reported on its 2014 Form 499-A.<sup>17</sup> Experior then discovered that it had mistakenly reported all revenues, including internet and interconnected VoIP, on Line 404.4 of the 2013 Form 499-A, which reported revenues for calendar year 2012.<sup>18</sup> Experior attempted to revise its 2013 Form 499-A, but USAC rejected the corrected submission because it was filed more than one year from its original due date.<sup>19</sup> Experior states that it would qualify for *de minimis* status in 2012 because it had earned less revenue in that year than in 2013, and requests that the Commission waive the one year filing deadline to allow USAC to accept its revised 2013 FCC Form 499-A.<sup>20</sup>

7. *Coaxial Cable Request for Waiver.* In 2013, Coaxial, an interconnected VoIP provider, discovered that for several years it had failed to file its annual Form 499-A.<sup>21</sup> On August 29, 2013, Coaxial filed its Forms 499-A for the years 2007 through 2013.<sup>22</sup> Coaxial's Forms 499-A for these years contained an identical error that made it appear that Coaxial was not *de minimis* for 2011, 2012, and

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<sup>12</sup> *One-Year Deadline Order*, 20 FCC Rcd at 1013, para. 10.

<sup>13</sup> 47 C.F.R. § 54.708; 47 C.F.R. § 713(a) 47 C.F.R. § (b), (c); *Comprehensive Review Order*, 22 FCC Rcd at 16379-80, para. 14 (2007).

<sup>14</sup> *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7548-49, para. 61 (2006).

<sup>15</sup> See 47 C.F.R. § 54.708 (filing obligations of *de minimis* VoIP providers); see also 47 C.F.R. § 64.601(b), 64.604 (requiring every VoIP provider (including interconnected and non-interconnected) to contribute to the Telecommunications Relay Service fund); 47 C.F.R. § 52.17 (requiring interconnected VoIP providers to contribute to North American Numbering Administration); 47 C.F.R. § 52.17 (requiring interconnected VoIP providers to contribute towards the cost of Local Number Portability). See also, e.g., 2014 FCC Form 499-A Instructions at 33-34.

<sup>16</sup> Experior Request for Waiver at 1.

<sup>17</sup> *Id.*

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Coaxial Request for Waiver at 1-2.

<sup>22</sup> *Id.* at 5.

2013.<sup>23</sup> Coaxial submitted revisions to the forms to correct the errors. USAC accepted Coaxial's revised 2013 Form 499-A, but rejected its revised 2011 and 2012 Forms 499-A, because the forms were filed more than one year from their original due date.<sup>24</sup> Coaxial requests that the Commission reverse USAC's decision to reject Coaxial's revised 2011 and 2012 FCC Form 499-A.

### III. DISCUSSION

8. The Commission may waive any provision of its rules for good cause shown.<sup>25</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>26</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>27</sup> In sum, waiver is appropriate 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>28</sup>

9. In both cases, Petitioners filed Forms 499-A for multiple years concurrently. Experior committed an error in one of the two years' Forms 499-A, and Coaxial's filings contained an identical ministerial error that was repeated in each year's Form 499-A.<sup>29</sup> But for their respective errors, both Petitioners would have qualified for *de minimis* status for those years.<sup>30</sup> In both cases, USAC accepted Petitioners' revised Form 499-A for the current year, but the companies were unable to correct the same mistakes in their submissions for previous years because the revisions were filed more than a year from their original due date.<sup>31</sup>

10. We rarely grant requests for waiver of the one-year deadline for revisions to FCC Form 499.<sup>32</sup> In the limited circumstances presented here, however, we find that equitable considerations weigh in favor of granting the waiver request. In each case, the Petitioner would have owed no contributions at

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<sup>23</sup> *Id.* at 2, 5. Coaxial mistakenly reported its total VoIP revenue as assessable for USF purposes instead of only its interstate and international revenue. *Id.* Coaxial states that despite the fact that the same error was committed on its Forms 499-A for filing years 2007 through 2010, there was no need to revise the Forms 499 for the earlier years because Coaxial was a *de minimis* contributor for those years based on the amount of total revenue reported. Coaxial states that it has not sought to revise the Forms 499 for those years since doing so would have no financial impact on the company. *Id.* at 5 n.9.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> 47 C.F.R. § 1.3.

<sup>26</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>27</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>28</sup> *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); *Northeast Cellular*, 897 F.2d at 1166.

<sup>29</sup> Experior Request for Waiver at 1; Coaxial Request for Waiver at 2, 5.

<sup>30</sup> Experior Request for Waiver at 1; Coaxial Request for Waiver at 2-3.

<sup>31</sup> Experior Request for Waiver at 1; Coaxial Request for Waiver at 2.

<sup>32</sup> See, e.g., *Universal Service Contribution Methodology, Request for Waiver by Mercury Wireless*, WC Docket No. 06-122, Order, 27 FCC Rcd 11178 (Wireline Comp. Bur. 2012) (*Mercury Wireless Order*); *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).

all if it had filed correctly. Since neither Petitioner was required to contribute to the Fund during the years at issue, their failure to file the Forms 499 on time caused minimal harm to the Fund.<sup>33</sup>

11. We emphasize that notwithstanding our decision above, we are not waiving any late fees or interest associated with these late-filed Forms.<sup>34</sup> The Commission's rules direct USAC to assess interest and penalties on contributors that fail to timely file their Form 499-A.<sup>35</sup> Consistent with precedent, to the extent Petitioners have been assessed late fees for their failure to timely file their Forms 499, they are liable for those amounts.<sup>36</sup>

12. We find that in the limited circumstances presented here, good cause exists to waive the one-year revision deadline. Accordingly, we grant Experior and Coaxial's requests and waive FCC Form 499-A revision deadline to allow the companies an opportunity to correct the error that disqualified them from *de minimis* status. We direct USAC to accept Experior and Coaxial's revised FCC Forms 499 for the years at issue and to adjust invoices and provide refunds as appropriate, consistent with the terms of this order.

#### IV. ORDERING CLAUSES

13. 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 the authority delegated by sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the request for waiver filed by Experior Networks on October 17, 2014 IS GRANTED.

14. 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 the authority delegated by sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the request for waiver filed by Coaxial Cable Television Corporation on March 7, 2014 IS GRANTED.

15. 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.

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<sup>33</sup> See, e.g., *2007 Comprehensive Review Order*, 22 FCC Rcd at 16378, para. 12 (discussing the harms to the Fund caused by late payments by contributors).

<sup>34</sup> We note that neither Petitioner has requested waiver of late fees.

<sup>35</sup> See 47 C.F.R. § 54.713(a) ("A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed"), (c) ("If a universal service fund contributor is more than 30 days delinquent in filing a Telecommunications Reporting Worksheet Form 499-A or 499-Q, the Administrator shall assess an administrative remedial collection charge equal to the greater of \$100 or an amount computed using the rate of the U.S. prime rate (in effect on the date the applicable Worksheet is due) plus 3.5 percent, of the amount due per the Administrator's calculations."); *Comprehensive Review Order*, 22 FCC Rcd at 16379-80, para. 14 ("[I]f a contributor is more than 30 days delinquent in filing an FCC Form 499-A or 499-Q . . . [t]he sanction will be the greater of \$100 per month or the amount derived from a rate of interest equal to the U.S. prime rate plus 3.5 percent assessed on the amount due.").

<sup>36</sup> See, e.g., *Mercury Wireless Order*, 27 FCC Rcd 11178 (denying a request for waiver where the company claimed to be unaware of its obligation to file an FCC Form 499-A for the years at issue); *Universal Service Contribution Methodology, Request for Waiver by BelWave Communications*, WC Docket 06-122, Order, 27 FCC Rcd 11176 (Wireline Comp. Bur. 2012) (denying a request for waiver of late filing fees where the company claimed it was unaware of its obligation to file an FCC Form 499-A for the years at issue); *Requests for Review of a Decision of the Universal Service Administrator by Achilles Networks, Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646 (Wireline Comp. Bur. 2012) (denying requests for reversal of late fees associated with the untimely filing of the FCC Forms 499-A and 499-Q).

FEDERAL COMMUNICATIONS COMMISSION

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