

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

In the Matter of)
)
 Universal Service Contribution Methodology) WC Docket No. 06-122
)
 Request for Review and Waiver by NetDiverse,)
 LLC)

ORDER

Adopted: May 11, 2015

Released: May 11, 2015

By the Deputy Chief, Wireline Competition Bureau:

1. In this order, we grant a request filed by NetDiverse, LLC (NetDiverse) to waive a late FCC Form 499-Q filing fee.¹ NetDiverse states that it initially expected to remain a *de minimis* interconnected Voice over Internet Protocol (VoIP) provider in calendar year 2013, and therefore did not file the FCC Form 499-Q.² It subsequently forecasted, however, that its contribution obligation may exceed the *de minimis* threshold in 2013 due to a new project that would generate assessable revenues.³ In anticipation of this change in status, NetDiverse filed the FCC Form 499-Q, which was due on November 1, on December 15, 2012, forty-five days after the filing deadline.⁴ Because it filed after the deadline, USAC assessed NetDiverse a late filing fee.⁵ NetDiverse requests that the Commission waive the late filing penalty fee.⁶

2. The Commission’s rules may be waived if good cause is shown.⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸ Additionally, the Commission may take into account considerations of hardship,

¹ Letter from Gary Nieboer, NetDiverse, LLC, to Secretary, FCC, WC Docket No. 06-122 (filed Mar. 13, 2013) (Request for Review).

² Request for Review at 1. Section 254(d) of the 1996 Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms if the “carrier’s contribution to the preservation and advancement of universal service would be *de minimis*.” 47 U.S.C. § 254(d). A *de minimis* provider is one whose annual universal service fund contribution is expected to be less than \$10,000. 47 C.F.R. § 54.708.

³ Request for Review at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 47 C.F.R. § 1.3.

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

equity, or more effective implementation of overall policy on an individual basis.⁹ Waiver of the Commission's rules is appropriate only when both special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁰

3. FCC Form 499-Q is due quarterly on February 1, May 1, August 1, and November 1 of each year.¹¹ *De minimis* providers, however, are not required to file the FCC Forms 499-Q; they only file the FCC Form 499-A.¹² On November 1, 2012, NetDiverse expected to continue to remain a *de minimis* interconnected VoIP provider and as such, was not required to file the FCC Form 499-Q.¹³ Because it expected to remain *de minimis* as of the November 1 filing date, NetDiverse was justified in not filing the Form 499-Q on November 1.

4. Later, after the filing deadline had passed, NetDiverse finalized a customer project that would generate revenues, which if assessable, would cause NetDiverse to no longer qualify for the *de minimis* exemption in the coming year.¹⁴ It was not required to file Form 499-Q at that time under Commission rules, but rather could have waited until the next FCC Form 499-Q (due the following February) to notify USAC it no longer was a *de minimis* provider. By filing the Form 499-Q on December 15, 2012, after the due date, NetDiverse in fact enabled USAC to bill the company for universal service contributions sooner than it would if NetDiverse had waited to report the revenue the following quarter.

5. The Commission has recognized the difficulties *de minimis* providers face in forecasting whether they will continue to qualify for the exemption, particularly as their contribution obligations near the \$10,000 threshold.¹⁵ The Commission noted that a *de minimis* provider could face late filing fees and other sanctions if it does not timely file its quarterly FCC Forms 499-Q if it projected its assessable revenue incorrectly and it, in fact, no longer qualifies for the *de minimis* exemption.¹⁶

6. Given these difficulties and the fact that there was no harm to the Fund, we find in this particular case that there is good cause to waive the late filing fee. We conclude that strict enforcement of the late filing penalty in this case would be inconsistent with the public interest, and unfairly penalize NetDiverse. We therefore direct USAC to reverse the 2012 FCC Form 499-Q late filing fee associated with the November 1st filing.

7. 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 and 254, and 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, that the request for review and waiver filed by NetDiverse IS GRANTED to the extent described above.

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

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

¹² *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, 7549, para. 61 (2006).

¹³ Request for Review at 1.

¹⁴ *Id.*

¹⁵ *See Contribution Methodology Reform and Modernization Further Notice*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5435, para. 216 (2012).

¹⁶ *See id.*

8. IT IS FURTHER ORDERED that, pursuant to section 1.102 of the Commission's rules, 47 C.F.R. § 1.102, this Order SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau