

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 American)	
Teleconferencing Services, Ltd. d/b/a Premiere)	
Global Services)	

ORDER

Adopted: June 9, 2015

Released: June 9, 2015

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request for review of a Universal Service Administrative Company (USAC) decision and for waiver filed by American Teleconferencing Services, Ltd. d/b/a Premiere Global Services (ATS).¹ Specifically, we find USAC acted properly when it rejected ATS’s late filed second revised 2012 FCC Form 499-A. Further, for the reasons stated below, we find that ATS has failed to demonstrate that good cause exists to justify waiver of the revision filing deadline for its second revised 2012 Form 499-A.

II. BACKGROUND

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.² Pursuant to the Commission’s rules, carriers and certain other providers of interstate telecommunications are required to file FCC Form 499-A with USAC.³

3. 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.⁴ A filer that discovers errors in the revenue data

¹ Request for Review and Waiver by American Teleconferencing Services, Ltd. d/b/a Premiere Global Services of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Oct. 29, 2013) (Request for Waiver).

² 47 U.S.C. § 254(d).

³ 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).

⁴ 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

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that it has previously 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.⁵ 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 mechanisms.⁶

4. *Request for Review and Waiver.* ATS asks the Commission to reverse USAC's decision to reject the late filed amended revision to its 2012 FCC Form 499-A and to waive the one year deadline for Form 499-A revisions to allow ATS to resubmit its amended revised 2012 form.⁷ ATS submitted two revisions to its 2012 form. First, it timely filed a revised 2012 Form 499-A in order to segregate non-assessable foreign-to-foreign revenue from its assessable revenue. This revision was accepted by USAC.⁸ On this first revision, however, ATS mistakenly reported its foreign-to-foreign revenue on line 417 of the form instead of line 418.3(a).⁹ ATS did not realize this second mistake until well past the revision deadline in March 2013. In August 2013, ATS filed a second revised form that was rejected by USAC.¹⁰

III. DISCUSSION

5. We uphold USAC's decision to reject ATS's late-filed second revised 2012 Form 499-A. Further, we find that ATS has not demonstrated good cause to grant the waiver of the one-year deadline to file the second revised Form 499-A. Accordingly, we deny the request for review of USAC's rejection of the late filed second revised form and the request for waiver of the deadline for revising the Form 499-A.

6. The Commission may waive any provision of its rules for good cause shown.¹¹ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective

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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).

⁵ *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.

⁶ *One-Year Deadline Order*, 20 FCC Rcd at 1013, para. 10.

⁷ Request for Waiver at 1.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

¹¹ 47 C.F.R. § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

implementation of overall policy on an individual basis.¹³ 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.¹⁴

7. We find in this circumstance that ATS's claim of financial hardship does not warrant a waiver of the deadline. ATS relies on several decisions granting waivers of the Form 499-Q revision deadline to establish financial hardship caused by an error in its reporting. Here, however, the hardship to ATS does not rise to the order of magnitude that the petitioners in the precedent cited by ATS would have faced but for the waiver. For example, in each of the precedents cited, the petitioners faced a contribution obligation that amounted to multiple times its actual obligation for the quarter.¹⁵ Due to its error, ATS faces an increased obligation, but the increase in its obligation is a fraction of what it would have owed but for the mistake. We do not find in this circumstance that the equity and hardship considerations weigh in favor of ATS.

8. Further, our Form 499-A revision deadline allows filers a full year to revise their forms. The Form 499-Q has a much shorter deadline – only 45 days. ATS argues that it had a “significantly abbreviated time to revise” its Form 499-A filing.¹⁶ In fact, ATS had a full year to revise its Form 499-A, and it did revise the form during this period. The fact that ATS placed revenue on the wrong line in its *revised* form and did not discover *that* error until after the deadline had passed does not “abbreviate” the time period within which it was permitted to revise the Form 499-A. Filers are required to have an officer certify to the accuracy of information provided on Form 499-A. Common sense suggests that having discovered an error in the original filing, a filer would be careful to ensure that the revised filing contains no further errors. To restart the one-year deadline every time a filer makes a mistake on a revised Form 499-A would render the one-year deadline meaningless.

9. We rarely grant requests for waiver of the one-year deadline for revisions to FCC Form 499-A.¹⁷ In the circumstances presented here, we find that equitable considerations do not weigh in favor

¹³ *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.

¹⁴ *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.

¹⁵ *Universal Service Contribution Methodology, Aventure Communications Technology, LLC Request for Review and Waiver*, WC Docket No. 06-122, Order 23 FCC Rcd 10096, 10097, para. 5 (Wireline Comp. Bur. 2008) (obligation was 20 times its actual corrected obligation); *Universal Service Methodology, Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, 28 FCC Rcd 6150, 6154, para. 10 (Wireline Comp. Bur. 2013) (obligation more than 10 times its average obligation); *Universal Contribution Methodology, Request for Review of a Decision of the Universal Service Administrator and Request for Waiver of American Broadband & Telecommunications*, WC Docket No. 06-122, Order, 28 FCC Rcd 10358, 10363, para. 12 (Wireline Comp. Bur. 2013) (obligation 10 times its actual corrected obligation).

¹⁶ Letter from Steven Augustino, Counsel for ATS, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-122, at 3 (filed Jan. 22, 2014).

¹⁷ 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); but see *Universal Service Contribution Methodology, Request for Waiver by Experior Networks, Request for Review by Coaxial Cable Television Corporation of Decision of Universal Service Administrator*, WC Docket No. 0-122, Order, DA 15-565 (rel. May 11, 2015) (granting relief to otherwise *de minimis* filers).

of granting the waiver request. The magnitude of the claimed financial hardship in this case does not outweigh the benefits of administrative efficiency and Fund integrity of a firm one-year revision deadline.¹⁸

IV. ORDERING CLAUSES

10. 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 review and waiver filed by American Teleconferencing Services, Ltd. d/b/a Premiere Global Services IS DENIED.

11. 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

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

¹⁸ *One-Year Deadline Order*, 20 FCC Rcd at 1013, para. 10.