

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

In the Matter of
Universal Service Contribution Methodology
Federal-State Joint Board on
Universal Service
Petition for Reconsideration by
ABS-CBN Telecom North America, Inc.
WC Docket No. 06-122
CC Docket No. 96-45

ORDER

Adopted: June 24, 2015

Released: June 24, 2015

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. For the reasons stated below, we waive a filing deadline and instruct Universal Service Administrative Company (USAC) to accept ABS-CBN Telecom North America, Inc. (ABS-CBN)'s request to accept a late-filed revised FCC Form 499-Q for the fourth quarter of 2003.

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (the 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." Section 254(d) further provides that "[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires." To this end, the Commission has determined that common carriers and private carriage providers that provide interstate telecommunications to others for a fee generally must contribute to the USF based on their interstate and international end-user telecommunications revenues.

1 Letter from Jonathan S. Marashlian, Counsel for ABS-CBN, to Secretary, FCC, CC Docket No. 96-45 (filed Aug. 14, 2014) (2014 Petition); Letter from Jonathan S. Marashlian, Counsel for ABS-CBN, to Secretary, FCC, CC Docket No. 96-45 (filed Sept. 23, 2013) (2013 Petition).

2 47 U.S.C. § 254(d).

3 Id.

4 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9183-84, para. 795 (1997) (subsequent history omitted). Although the Commission exercised its permissive authority to assess private carriage providers, it exempted certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers from the contribution requirement. 47 C.F.R. § 54.706(d). The Commission also requires certain other providers of interstate telecommunications to contribute to the Fund. See, e.g., Universal Service Contribution Methodology et al., WC Docket No. 06-122 et al., Report and Order and Notice

3. In the *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use in computing their universal service contributions.⁵ The Commission also designated USAC as administrator of the Fund, pursuant to which USAC performs billing and collection functions for the Commission as part of its administration of the USF support mechanisms.⁶ Under Commission rules, contributors are required to file FCC Form 499-Q each quarter, projecting their interstate and international revenues for the upcoming quarter and providing their interstate and international revenues from the previous quarter.⁷ USAC computes the entities' quarterly universal service contribution obligation based on the projected revenue information reported on the FCC Form 499-Q, and bills entities each month based on this obligation.⁸ Contributors have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.⁹ In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.¹⁰ USAC uses the FCC Form 499-A data to conduct a true-up process whereby USAC determines the actual amount owed by each contributor from the previous year and issues either an invoice for underpayment or a credit for the overpayment.¹¹

4. *ABS-CBN Requests*. On September 23, 2013 and August 13, 2014, ABS-CBN filed letters asking the Commission to "reconsider" a March 2007 Wireline Competition Bureau decision denying ABS-CBN's request that the Commission direct USAC to accept a late filed fourth quarter revised 2003 Form 499-Q. In its original 2003 fourth quarter Form 499-Q filing, ABS-CBN misplaced a decimal point when reporting interstate revenue, thus reporting an amount that was ten times its actual revenue. ABS-CBN did not discover the error until it was invoiced for that period, which was well past the deadline to revise the filing. ABS-CBN paid the invoices in full but the payments were made late. In accordance with the annual true-up process, the principal overpayment was credited to ABS-CBN on subsequent invoices, but the true-up process did not reverse interest and penalties that accrued on the outstanding invoiced amount from the payment deadline to the actual date payment was made. ABS-CBN argues that

(Continued from previous page) _____
of Proposed Rulemaking, 21 FCC Rcd 7518, 7544, para. 52 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the Fund).

⁵ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997).

⁶ *Id.* at 18423-24, para. 42; 47 C.F.R. § 54.702(b).

⁷ See 47 C.F.R. §§ 54.706 (a)-(b), 54.711; see also 2015 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 17-19.

⁸ 47 C.F.R. §§ 54.709, 54.711(a).

⁹ *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (*2002 Contribution Methodology Order*); 2015 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 9.

¹⁰ *2002 Contribution Methodology Order*, 17 FCC Rcd at 24973, para. 37.

¹¹ *Id.* at 24972, para. 36. USAC will refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual FCC Form 499-A, then USAC will provide a refund to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499-A, then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. *Id.* In adopting the true-up process, the Commission created incentives for carriers to accurately report their quarterly revenues by instructing USAC to base overpayment refunds on an average of the lowest two contribution factors for the year, and collect underpayments based on an average of the two highest contribution factors from that year. See *Federal-State Joint Board on Universal Service; Petition for Reconsideration Filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001).

granting its requests will align treatment of ABS-CBN with recent Commission precedent.

III. DISCUSSION

5. Pursuant to Commission rules, petitions for reconsideration of Bureau decisions on delegated authority must be filed with the Commission within thirty days from the date of public notice of the final Commission action.¹² The Wireline Competition Bureau released the order denying ABS-CBN's request for review in March 2007,¹³ and ABS-CBN's right to appeal expired in April 2007. Therefore, if the letters are treated as petitions for reconsideration, ABS-CBN's pleadings are untimely filed.

6. We do, however, exercise our discretion to treat the letters as requests for waiver and grant the requests on that basis.¹⁴ In the March 2007 Order, the Bureau interpreted ABS-CBN's request for review as a waiver and denied it for lack of good cause.¹⁵ Generally, we do not revisit settled agency decisions.¹⁶ It is a well-established principle of federal law that a change in law does not disturb the finality of a settled judgment.¹⁷ Here, however, ABS-CBN did not have an opportunity to fully brief the matter as a waiver in the prior proceeding, including why it might have "good cause" for a waiver.¹⁸ Additionally, as discussed below, the facts underlying the petitions are very similar to those in other instances where we have found good cause for a waiver. Weighing the facts here against the important principle of finality, we find that equity weighs in favor of construing the petitions as a waiver request.¹⁹

7. In its petitions, ABS-CBN relies on Bureau-level orders that waived the FCC Form 499-Q deadlines for the subject petitioners, effectively reversing interest and penalties associated with the petitioners' failure to pay in full their respective quarterly invoices.²⁰ In the orders cited by ABS-CBN, each of the petitioners who were granted a waiver had made a significant clerical error in reporting revenue on a Form 499-Q, did not discover the error until the deadline to revise had passed, and made a

¹² 47 C.F.R. § 1.106(f).

¹³ *Federal-State Joint Board on Universal Service; Request for Review by ABS-CBN Telecom North America, Incorporated of Decision of Universal Service Administrator, et al.*, CC Docket No. 96-45, Order, 22 FCC Rcd 4965 (Wireline Comp. Bur. 2007) (*ABS-CBN Order*).

¹⁴ Although ABS-CBN's letters ask the Commission to "reconsider" the March 2007 Order, petitions for reconsideration of Bureau decisions on delegated authority must be filed with the Commission within thirty days from the date of public notice of the final Commission action. 47 C.F.R. § 1.106(f). Therefore, as petitions for reconsideration, ABS-CBN's pleadings are untimely filed.

¹⁵ *ABS-CBN Order*, 22 FCC Rcd at 4968, para. 9.

¹⁶ *Federal-State Joint Board on Universal Service; Request for Review of Decision of Universal Service Administrator by St. Patrick's Academy Catskill, NY, et al.*, CC Docket No. 96-45 et al., Order, 17 FCC Rcd 3554, 3556, para. 6 (2002) (*St. Patrick's Academy*).

¹⁷ *Id.*

¹⁸ See 47 C.F.R. § 1.3.

¹⁹ While the highly unusual circumstances here justify a waiver many years after the appealable event, in different circumstances, the goals of finality in our decisions and stability of the USF would likely counsel in favor of not granting such a waiver. See *St. Patrick's Academy*, 17 FCC Rcd at 3556, para. 6; *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 et al., Order, 20 FCC Rcd 1012, 1016-7, para. 10 (2004).

²⁰ *Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, 28 FCC Rcd 6150 (Wireline Comp. Bur. 2013) (*Ascent Media*); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, 28 FCC Rcd 10358 (Wireline Comp. Bur. 2013) (*American Broadband*); *Universal Service Contribution Methodology; Emergency Request for Review of a Decision by the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q by Peak Communications, Inc.*, WC Docket No. 06-122, Order, 29 FCC Rcd 9668 (Wireline Comp. Bur. 2014) (*Peak Communications*).

significant payment to the Universal Service Fund (USF) equal to or greater than their respective corrected USF obligations, but did not pay the erroneously reported and invoiced amounts in full for the quarter at issue.²¹ Because petitioners did not pay the invoiced quarterly amounts in full and the reporting errors were so large, and given the length of time to true up, they were assessed significant interest and penalties when compared to the amount they would have owed had they reported their revenue correctly. Likewise, ABS-CBN made a clerical error in reporting revenue on its Form 499-Q, resulting in an invoiced contribution obligation more than thirty times its historically representative obligation.²² ABS-CBN paid the invoices in full but made the payments late. The interest and penalties associated with the late payments exceeded the company's typical quarterly contribution. By waiving the revision deadline, and directing USAC to process the form as if timely filed, we will be assessing ABS-CBN interest and penalties based on the revised form, in an amount more proportionate to ABS-CBN's revised contribution obligation.

8. We find in this limited circumstance that the public interest mitigates in favor of waiving the 2003 fourth quarter Form 499-Q revision deadline.²³ We therefore grant a waiver and direct USAC to process the revised 2003 fourth quarter revised Form 499-Q as if timely filed. Because we waive the revision deadline, interest and penalties, if any, will accrue to the date of payment only on the contributions amounts based on the revised Form 499-Q.²⁴

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to sections 0.91, 0.291, and 1.3, of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the requests for waiver filed by ABS-CBN Telecom North America, Inc. ARE GRANTED to the extent described herein.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

²¹ *Ascent Media*, 28 FCC Rcd at 6154; *American Broadband*, 28 FCC Rcd at 10363; *Peak Communications*, 29 FCC Rcd at 9668.

²² Request for Review of Decision by Universal Service Administrator by ABS-CBN North America Inc., CC Docket No. 96-45, at 3 (filed Nov. 12, 2004).

²³ 47 C.F.R. § 1.3.

²⁴ *See American Broadband*.