

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 of a Decision of the)	
Universal Service Administrator by Critical Alert)	
Systems, LLC f/k/a/ NEP, LLC)	

ORDER

Adopted: April 3, 2017

Released: April 3, 2017

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request for review filed by Critical Alert Systems, LLC (CAS), formerly known as NEP, LLC,¹ seeking review of a 2010 contributor audit decision of the Universal Service Administrative Company (USAC) that finds that CAS did not accurately report certain revenues on its 2009 FCC Form 499-A (Form 499-A).² USAC determined that CAS did not provide sufficient documentation or any other information to support the allocation of its interstate paging revenues for universal service contribution purposes.³ For the reasons stated below, we deny CAS’s request.

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.⁴ Pursuant to the Commission’s rules, telecommunications carriers and certain other providers of interstate telecommunications are required to file Form 499-A with USAC on April 1 each year.⁵ Providers whose contribution to the universal service fund (USF) would be *de minimis* – less than \$10,000 – however, are exempt from directly contributing.⁶ *De minimis* providers for USF purposes are therefore not required to file the FCC Form 499-A, unless required to do so by Commission rules governing contributions to other federal regulatory programs.⁷

¹ *Request for Review by Critical Alert Systems, LLC f/k/a NEP, LLC of Decision of Universal Service Administrator*, WC Docket 06-122 (filed Jun. 27, 2012) (CAS Request for Review) (portions confidential).

² *Id.* at 1 and Exh. 1: Investigative Audit Report, Internal Audit Division, Universal Service Administrative Company at 9-10 (dated Feb. 9, 2012) (Audit Report) (confidential).

³ Audit Report at 9, 11.

⁴ 47 U.S.C. § 254(d).

⁵ See 47 CFR §§ 54.706, 54.711, 54.713; Universal Service Administrative Company, Schedule of Filings, <http://www.usac.org/cont/about/when-to-file.aspx> (last visited Mar. 13, 2017).

⁶ 47 CFR § 54.708.

⁷ *Id.*; 47 CFR § 52.17(b) (numbering administration); 47 CFR § 52.32(b) (local number portability); 47 CFR § 64.604(c)(5)(iii)(B) (telecommunications relay service).

3. The Commission also established rules governing the methods contributors may use to report revenue, including exemptions intended to reduce administrative burdens. In the *Interim Safe Harbor Order*, for example, the Commission established safe harbors for certain wireless interstate revenue allocations, above which contributors' allocations will not be reviewed.⁸ Contributors that choose to report an allocation below the interstate safe harbor threshold, however, are required to document the method by which they calculate their allocation, and make that information available to USAC or the Commission upon request.⁹ The safe harbor for paging services is 12 percent or greater of revenue allocated to interstate services.¹⁰

4. *CAS Request for Review.* CAS provides a paging service in six New England states.¹¹ On its 2010 Form 499-A (reporting 2009 revenues), CAS reported interstate telecommunications revenues significantly below the safe harbor percentage for paging providers.¹² As a result, CAS purportedly qualified for the *de minimis* exemption and was not required to make direct contributions to the Fund.¹³ In 2012, USAC concluded an audit of CAS's 2010 Form 499-A.¹⁴ During the audit, CAS sought to support its small interstate revenue allocation by providing a report claiming its customers in 2009 were primarily healthcare providers and first and second responders.¹⁵ CAS also provided the results of a survey of its then current customers in 2011 concerning the jurisdictional nature of their paging usage.¹⁶ CAS representatives also met with USAC officials and offered testimony regarding typical paging usage.¹⁷ Ultimately USAC concluded that CAS failed to adequately support its interstate revenue allocation, and revised CAS's revenues to the 12 percent safe harbor threshold for paging services, at which point CAS no longer qualified for the *de minimis* exemption.¹⁸

5. On June 27, 2012, CAS appealed USAC's decision to the Commission.¹⁹ In its appeal, CAS requests that the Commission reverse USAC's audit finding that CAS's interstate allocation was insufficiently supported for calendar year 2009.²⁰ CAS argues in its appeal that (1) USAC incorrectly limited CAS to providing traffic study data to support CAS's interstate allocation; (2) USAC's rejection of CAS's customer survey was based on immaterial grounds and the survey was sufficiently accurate to establish that CAS qualified for the *de minimis* exemption; and (3) USAC failed to consider the testimony of CAS employees regarding the nature and usage of CAS's paging services.²¹ Finally, CAS also argues that the 12 percent safe harbor level is no longer representative of norms in the critical messaging

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258, 21260, paras. 11, 15 (1998) (*Interim Safe Harbor Order*).

⁹ *Id.* at 21258, para. 11.

¹⁰ *Id.* at 21260, para. 15; *Federal-State Joint Board on Universal Service, Business Service Center, Inc., Mobile Phone of Texas, Inc., and 3 Rivers PCS, Inc.*, CC Docket No. 96-45, Order, 19 FCC Rcd 22305 (2004).

¹¹ CAS Request for Review at 2-3.

¹² *Id.* at 3 and n.6.

¹³ *Id.* at 5.

¹⁴ *See* Audit Report.

¹⁵ CAS Request for Review at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *See generally id.*

²⁰ *Id.* at 10.

²¹ *Id.* at 7-9.

industry, thus violating federal law requiring the Commission to have a rational basis for its decisions, and that therefore the Commission may not apply the current safe harbor for paging services to CAS's 2010 filing.²²

III. DISCUSSION

6. We first find that USAC correctly determined that CAS did not provide sufficient support for its interstate telecommunications revenue allocation. Commission rules require a contributor that allocates its interstate paging revenues below the 12 percent safe harbor to document its allocation method, and to make that information available to USAC or the Commission upon request.²³ The Commission allows filers to base their allocation on actual data usage or on a good faith estimate.

7. CAS states that it “provides...emergency messaging services in six different New England states” and that its percentage of interstate service is nominal given its customer base of primarily healthcare providers and first and second responders, all of whom require a “rapid response...in order for the service to have any meaningful utility.”²⁴ In response to USAC's request for documentation to support its allocation, CAS conducted a customer survey in an attempt to document the jurisdictional nature of its customers' use of the messaging service. CAS's customer survey consisted of a sampling of its current customers in 2011, two years after the relevant filing period. Commission rules require that data submitted must be current for the relevant filing period,²⁵ because the survey collected customer information two years after the relevant period, the information from the customer survey did not meet this basic requirement. Additionally, although CAS described in general terms the sampling method it used, it failed to explain how the methodology resulted in an unbiased and accurate estimate of its traffic allocation in 2009.²⁶ CAS further states that the survey was conducted to show “details of customer usage” but admits that “the survey reflected customers' characterization of their utilization, rather than actual measurement data.”²⁷

8. We find that the customer survey does not support the interstate allocation used by CAS because, *inter alia*, the survey sample was not statistically valid, CAS did not provide any independently verifiable documentation from its customers to support their claims of interstate usage, and the survey was conducted two years after the relevant time period. We also reject CAS' argument that its survey could be imprecise and still support its interstate allocation because the purpose of the survey was to demonstrate that CAS qualified for the *de minimis* exemption and that the results of the survey indicated that even if the results were inaccurate by a large margin, CAS “*still* would have qualified for the *de minimis* exemption.”²⁸ A statistically invalid survey cannot be cured because the results purport to show CAS met the requirements of the *de minimis* exemption by a wide margin of error.

9. CAS also attempted to justify its allocation by providing testimony purporting to show the jurisdictional nature of the traffic. USAC declined to consider this testimony and CAS complains in its request for review that “USAC erred by failing to hear or consider the testimony of CAS' officers and employees, or to accept testimony from CAS' customer representatives, on the character and usage of

²² *Id.* at 9.

²³ *Interim Safe Harbor Order*, 13 FCC Rcd at 21258, 21260, paras. 11, 15.

²⁴ CAS Request for Review. at 3 & n.6.

²⁵ See 47 CFR § 54.711 (requiring contributors to maintain documentation and records to justify the data reported in the Forms 499); 2010 FCC Form 499-A Instructions at 22 (requiring that good faith estimates be based on information that is current for the filing period and be made available to the FCC or USAC upon request).

²⁶ *Id.*, Ex. 5 at 3-4, 6-7, Ex. 6 at 4-5 (confidential).

²⁷ CAS Request for Review at 4-5.

²⁸ *Id.* at 9 (*emphasis in original*).

CAS[]'s service.”²⁹ Because the testimony was not made part of the record, we cannot evaluate whether it would be sufficient to support the interstate allocation. Based, however, on the brief description by CAS of the testimony in its request for review and on the description in USAC's Audit Report, to the extent the testimony contains only anecdotal information and broad general statements regarding typical paging usage by CAS customers, and does not address whether, or the extent to which, CAS's customers in fact used the paging service to send or receive interstate pages during the relevant filing period, it would not be sufficient to support the interstate allocation.³⁰

10. In further support of USAC's determination that CAS failed to adequately justify its allocation, the CAS documents produced during the audit suggest that CAS did not attempt to determine the accurate allocation of revenues when reporting to USAC. For example, CAS's procedures for completing the Form 499-A require the use of an interstate allocation significantly less than the safe harbor for paging providers but do not include an evaluation of whether the prescribed interstate allocation is reasonable for the applicable filing period.³¹ This evidence by itself calls into question the accuracy of CAS's allocation but, combined with CAS's failure to provide sufficient information establishing the accuracy of its allocation, further supports USAC's determination that CAS did not accurately report revenues.

11. Based upon review of the record, we also find that USAC did not limit the documentation CAS could submit to support its interstate allocation.³² CAS claims that USAC refused to accept any evidence other than actual usage data to support its interstate paging allocation.³³ A valid traffic study is sufficient evidence to demonstrate actual usage but this is not the only way to substantiate an interstate allocation.³⁴ The Commission allows filers to base their allocation on actual data usage or on a good faith estimate.³⁵ The record reflects, however, that USAC properly instructed CAS that USAC would accept a traffic study or any other evidence to support either actual data usage or a good faith estimate.³⁶ When CAS failed to provide sufficient evidence, USAC properly rejected CAS's allocation claim.

12. Further, we find that CAS offers little support for its argument that the 12 percent paging safe harbor is no longer the norm in the critical messaging industry. Moreover, an appeal from a USAC audit decision is not the proper venue for challenging the current safe harbor. Though we refrain from addressing this issue here, CAS may raise these concerns in a more appropriate proceeding.

²⁹ *Id.* at 8.

³⁰ *Id.* at 2-4.

³¹ Audit Report at 6.

³² Audit Report at 11.

³³ CAS Request for Review at 7-8.

³⁴ *Universal Service Contribution Methodology et al.*, WC Docket Nos. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7535-36, para. 32 and n.115 (2006) (*2006 Contribution Methodology Reform Order*), vacated in part on other grounds, 489 F.3d 1232 (D.C. Cir. 2007) (requiring traffic studies that use statistical sampling methods to produce a margin of error of 1 percent or less, with a confidence level of 95 percent, and include an explanation of what sampling method was used, if any, and how it results in an accurate, unbiased estimate); *Interim Safe Harbor Order*, 13 FCC Rcd at 21253, 21258, paras. 1, 11; 2010 FCC Form 499-A Instructions at 22.

³⁵ See 2010 FCC Form 499-A Instructions at 22 (“If interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures. . . . Good-faith estimates must be based on information that is current for the filing period. Information supporting good-faith estimates must be made available to either the FCC or to the administrators upon request.”).

³⁶ See, e.g., *id.*, Exh. 4 at 5, Exh. 5 at 1, 10-11 (confidential).

IV. ORDERING CLAUSES

13. 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, 254, and pursuant to sections 0.91, 0.291, and 54.722 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 54.722, the request for review filed by Critical Alert Systems, LLC IS DENIED.

14. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 CFR § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Wireline Competition Bureau