

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

In the Matter of
Universal Service Contribution Methodology
Federal-State Joint Board on Universal Service
Request for Review of Decision of the Universal
Service Administrator by Morris Communications,
Inc.
WC Docket No. 06-122

ORDER

Adopted: May 23, 2017

Released: May 23, 2017

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny in part and grant in part a request for review filed by Morris Communications, Inc. (Morris). In its request, Morris seeks reversal of a decision by the Universal Service Administrative Company (USAC) that denied Morris's request to reverse principal and late payment fees attributable to unpaid Universal Service Fund (USF or Fund) contributions, including those associated with a revised 2000 FCC Form 499-A. Morris argues that USAC's decision is unlawful and procedurally defective. Morris also argues that its outstanding contribution debt should be reversed because Morris is unable to pay due to changed financial circumstances.

2. We find no basis to reverse USAC's decision and conclude that Morris has failed to demonstrate good cause that would warrant waiver of our rules. We determine, however, that the late payment fees based on Morris's revised contribution obligation for the period in question were excessive. Accordingly, we direct USAC to adjust those fees to reflect the updated contribution obligation for that period.

II. BACKGROUND

A. The Act and the Commission's Rules

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. Prior to

1 Request for Review by Morris Communications, Inc. of a Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Oct. 28, 2013) (Request for Review). See also USAC Administrator's Decision on Contributor Appeal (dated Aug. 30, 2013) (USAC Decision).

2 See generally Request for Review.

3 Request for Review at 1, 7.

4 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) (USF Second Order on Reconsideration).

2002, contributors like Morris were required to report revenue data twice a year.⁵ As required by the Commission's rules at that time, USAC used the Form 499-A to determine the filer's quarterly contribution obligation for that year.⁶

4. Pursuant to section 54.713 of the Commission's rules, contributors must pay the amount billed by the due date provided in invoices to avoid the assessment of the requisite interest and penalties.⁷ If a contributor does not pay a disputed assessment, USAC cannot waive the interest or penalties unless the disputed charges are later found to be a result of a USAC error, or USAC is directed to do so by the Commission.⁸

B. Procedural History

1. Morris's Inaccurate 2000 Form 499-A Filing and Subsequent Debt

5. Though Morris timely filed its 2000 FCC Form 499-A for calendar year 1999 revenues, it incorrectly reported its intrastate revenue as international revenue, an error that would result in a higher contribution assessment because international revenues, but not intrastate revenues, are subject to USF contribution obligations.⁹ After receiving Morris's Form 499-A, USAC attempted to contact Morris to confirm that the reported international revenues were correct, but received no response to its inquiry. USAC thus relied on the reported revenues to calculate Morris's monthly federal USF contribution obligation for the third and fourth quarters of calendar year 2000 in the amount of \$374,835.42 and invoiced Morris accordingly.¹⁰ Morris failed to pay the invoiced amount, and beginning August 15, 2000, the delinquent debt was assessed late payment fees totaling \$70,960.17.

6. In February 2001, Morris sent a letter to USAC stating that it had made a mistake on its 2000 FCC Form 499-A by reporting its intrastate revenues as international, and indicated that it would re-file its 2000 FCC Form 499-A.¹¹ Morris did not, however, submit its revised Form 499-A until March 29, 2002—almost two years after the original 2000 Form 499-A deadline.¹² USAC rejected the revised Form because it was filed outside the one-year revision deadline.¹³ On July 12, 2002, Morris sought Commission review of USAC's decision.¹⁴

7. In July 2003, consistent with the debt collection requirements of the Debt Collection Improvement Act (DCIA) and the Commission's implementation of those requirements, USAC

⁵ 47 CFR § 54.711(a) (1999); *USF Second Order on Reconsideration*, 12 FCC Rcd, App. A at 18513.

⁶ 47 CFR § 54.709(a) (1999); *USF Second Order on Reconsideration*, 12 FCC Rcd at 18427, paras. 48-49.

⁷ 47 CFR § 54.713(a). Prior to 2007, section 54.713 allowed USAC to bill contributors for reasonable administrative costs incurred due to a contributor's failure to timely pay its contributions. In the 2007 *Comprehensive Review Order*, the Commission directed USAC to replace these administrative late-payment fees with a single rate of interest and penalties to be assessed on all unpaid balances. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, et al.*, WC Docket No. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16379, para. 14 (2007).

⁸ 47 CFR § 54.702(c) (prohibiting the Administrator from making policy or interpreting Commission rules).

⁹ USAC Decision at 2.

¹⁰ *Id.* at 2. In 2000, the Commission's rules did not require contributors to file quarterly. Thus, USAC used Morris's Form 499-A to determine the amount of contributions owed to the Fund.

¹¹ *See id.* at 2 and n.7 (citing letter from H.A. Morris, President & CEO, Morris Communications, Inc. to USAC (dated Feb. 6, 2001)).

¹² USAC Decision Letter at 2.

¹³ *Id.* at 3.

¹⁴ Letter from Frederick M. Joyce, Morris Communications, Inc., to Eric Einhorn, Federal Communications Commission, WCB Docket No. 97-21 (filed July 12, 2002).

transferred Morris's unpaid USF contribution charges and related late payment fees that were more than 90 days delinquent to the Commission for further collection.¹⁵ The majority of the unpaid debt transferred to the Commission related to Morris's disputed 2000 FCC Form 499-A filing, but a portion of the debt transferred was related to other unpaid universal service contribution charges billed to Morris between January 2001 and December 2002.¹⁶ Morris was notified of this transfer on its July 15, 2003 invoice.¹⁷ Between September 2003 and May 2004, USAC transferred additional unpaid debt to the Commission, bringing the total outstanding debt transferred to \$531,977.97.

2. One-Year Revision Deadline Order

8. In 2004, the Wireline Competition Bureau (Bureau) released the *One-Year Revision Deadline Order*.¹⁸ In that order, the Bureau adopted a one-year deadline for downward revisions to the FCC Form 499-A and remanded to USAC a number of requests for review of USAC decisions that had rejected Form 499-A revisions as untimely.¹⁹ Specifically, the order directed USAC to accept any Form 499-A revisions filed with USAC prior to the release date of the order if the petitioner was able to demonstrate good cause for submitting its revised Form 499-A beyond the one-year revision deadline and provide complete documentation showing how the revisions derived from corporate financial records.²⁰ Morris's request for review was one of the petitions remanded to USAC for consideration as provided in the order.²¹

9. USAC reviewed Morris's revised 2000 FCC Form 499-A filing and supporting documentation and found that Morris had demonstrated good cause for its proposed 2000 FCC Form 499-A revision.²² USAC thus accepted Morris's revised 2000 Form 499-A for processing, recalculated the company's monthly federal USF contribution obligations for the third and fourth quarters of calendar year 2000, and reduced the total amount owed by Morris by \$356,683.65.²³ USAC's recalculation resulted in a pending balance of \$194,387.05 in outstanding debt, as well as a \$3,816.17 balance on Morris's October 2005 USAC invoice.²⁴ USAC did not, at that time, reverse any of the \$70,960.17 in late payment fees assessed on the original amount invoiced for the third and fourth quarters of calendar year 2000.²⁵

¹⁵ USAC Decision at 3-4.

¹⁶ *Id.* at 4. Of the \$531,049.09 (contribution charges, and fees) USAC transferred to the FCC in July 2003, \$85,253.50 was related to undisputed USF contribution charges billed to Morris between January 2001 and December 2002. *Id.* USAC later transferred an additional \$10,577.80 in unpaid undisputed contribution charges from later periods, bringing the total to \$95,831.30.

¹⁷ Although not included with the Request for Review, Commission staff has received a copy of this invoice from USAC.

¹⁸ *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, et al.*, CC Docket Nos. 96-45 and 98-171, et al., Order, 20 FCC Rcd 1012 (WCB 2004).

¹⁹ *Id.* at 1012, 1015, 1018, paras. 1, 7, 14.

²⁰ *Id.* at 1018, para. 14.

²¹ *Id.* at 1020, App. A.

²² USAC Decision at 4-5.

²³ *Id.* at 5.

²⁴ *Id.*

²⁵ *Id.*

3. Morris's Request for Review

10. In 2012, at the direction of the Commission, USAC recalled all of the outstanding USF contribution obligation amounts it had previously transferred to the Commission for collection.²⁶ In September 2012, USAC invoiced Morris for \$184,943.24, which consisted of \$70,960.17 in late payment fees calculated based on Morris's original contribution obligation for the third and fourth quarters of calendar year 2000, a revised contribution amount of \$18,151.77 associated with the third and fourth quarter of calendar year 2000, and an additional \$95,831.30 of other unpaid debt unrelated to the revised 2000 FCC Form 499-A.²⁷

11. In November 2012, Morris appealed to USAC, requesting relief from late payment fees associated with the incorrectly assessed original third and fourth quarter 2000 contribution amounts that were later reversed.²⁸ Morris also requested relief from the corrected contribution principal and payment fees, stating that due to its changed financial situation, the company was unable to pay.²⁹ USAC granted Morris's request in part, reversing \$31,192.72 of the \$70,960.17 late payment fees associated with the original third and fourth quarter 2000 debt, decreasing Morris's outstanding debt total to \$153,750.52.³⁰ Specifically, the amount reversed by USAC represented the late payment fees that had accrued from April 15, 2002—the date of the first invoice following the date Morris filed its revised 2000 Form 499-A—until July 15, 2003, the date that USAC transferred Morris's unpaid third and fourth quarter contributions to the Commission.³¹ USAC did not reverse the balance of late payment fees in the amount of \$39,767.45 that had accrued on the debt prior to Morris's submission of the revised Form 499-A. In addition, USAC denied Morris's request for relief from the corrected contribution principal and related late payment fees.³²

12. On October 28, 2013, Morris filed the instant request for review of USAC's decision. Morris asks the Commission to reverse USAC's decision to bill it for late payment and interest arising from its 2000 USF contribution calculations, as well as to reverse USAC's denial of Morris's requested relief from its outstanding debt.³³ Specifically, Morris argues that: 1) USAC's decision is barred by the statute of limitations under the Communications Act; 2) USAC's billing procedures and policies are unenforceable, making USAC's decision *ultra vires* and unenforceable as a matter of law; 3) USAC's imposition of penalties and interest was arbitrary and violates the requirements of the Administrative Procedures Act (APA); and 4) USAC's decision ignored relevant facts concerning Morris' inability to pay the assessed USF fees.³⁴

²⁶ *Id.*

²⁷ USAC Decision at 5. In 2009, Morris paid \$41,868.38 in contributions, an excess of \$9,443.82 of what it had presently owed to USAC. This excess was applied to its pending balance with the Commission, decreasing its outstanding debt from \$194,387.05 to \$184,943.24.

²⁸ Letter from Morris Communications, Inc. to USAC, CC Docket No. 96-45 (Nov. 16, 2012) at 3 (Attached to Request for Review) (Morris Letter of Appeal).

²⁹ *See Id.* at 3 (requesting that USAC “reverse the penalties and interest that were imposed on the amount that was actually due based on the corrected filing”); *id.* (arguing that complying with the pay and dispute policy would have placed the company in “serious financial jeopardy, and that it would be “unduly punitive” to impose late payment penalties and interest on the company given that its current revenues were “a small fraction of their 2000 levels”).

³⁰ USAC Decision at 6.

³¹ *Id.* at 5.

³² *Id.* at 1, 6.

³³ Request for Review at 1.

³⁴ *Id.*

III. DISCUSSION

13. We deny Morris's request in part. As a preliminary matter, we note that Morris's request is based on the incorrect premise that the "roughly \$153,000 delinquent debt owed by Morris is all attributable to disputed USAC penalty and interest fees."³⁵ Morris's premise is incorrect. The majority of the delinquent debt from which Morris seeks relief consists of over \$95,000 in unpaid monthly charges, true-up amounts, or late payment fees *unrelated* to the disputed amounts originally invoiced for the third and fourth quarter of 2000.³⁶ Indeed, in its previous appeal to USAC, Morris acknowledged that it had an unpaid contribution obligation and asked USAC to reduce the principal owed based on Morris's changed financial situation.³⁷

14. Notwithstanding, in the instant Request for Review, Morris not only seeks relief based on financial hardship and inability to pay, but also now argues that USAC's decision should be reversed because it was illegal and procedurally defective.³⁸ We reject Morris's arguments that USAC's August 30, 2013 decision denying Morris relief from its remaining contribution balance and associated late payment fees should be reversed because it was illegal and procedurally defective.³⁹ Morris's primary argument that collection of its outstanding contribution obligation is barred by the statute of limitations is without merit. Specifically, the statutory provision cited by Morris—section 503(b)(6) of the Act—applies to forfeitures that are imposed in enforcement proceedings where there is evidence of willful or repeated violations of the Commission's rules.⁴⁰ The amount owed by Morris is not a forfeiture, but rather an outstanding debt that has accrued because of Morris's failure to fulfill its contributions obligation in a timely manner, as required by section 54.713 of the Commission's rules.⁴¹

15. We also reject Morris's argument that USAC's decision is unenforceable because it was procedurally defective.⁴² USAC transferred Morris's debt to the Commission, and later recalled it, as directed by the Commission and consistent with the DCIA requirements.⁴³ During the time that the debt remained with USAC, USAC correctly applied late payment fees as allowed by the Commission's rules.⁴⁴ The transfers and recalls to and from the Commission, as well as any late penalties, were reflected on Morris's invoices beginning with the invoice dated July 22, 2003.

16. We find that Morris's challenge to USAC's "pay-and-dispute" policy is likewise without merit.⁴⁵ Under the pay-and-dispute policy, contributors are required to pay the invoiced amount even if they disagree with USAC's assessment of its universal service contributions obligation and have filed an appeal with USAC or the Commission to dispute those charges.⁴⁶ USAC imposes late payment fees on

³⁵ *Id.*

³⁶ USAC Decision at 5.

³⁷ Morris Letter of Appeal at 3.

³⁸ Request for Review at 2, 7.

³⁹ *Id.* at 2.

⁴⁰ 47 U.S.C. § 503.

⁴¹ 47 CFR § 54.713.

⁴² See Request for Review at 1 (stating that "USAC's imposition of a payment penalty against Morris is based upon unpublished USAC policies, making its actions *ultra vires* and unenforceable as a matter of law").

⁴³ See *supra* paras. 6-8.

⁴⁴ USAC Decision at 3; 47 CFR § 54.713(b).

⁴⁵ See Request for Review at 5-6 (challenging the enforceability of the "pay-and-dispute" policy).

⁴⁶ See USAC Website, Fund Administration, Contributors, File and Appeal, <http://www.usac.org/fund-administration/contributors/file-appeal/> (last visited Feb. 17, 2017); see also *Federal State Joint Board on Universal Service: Aventure Communications Technology, LLC, Form 499 Filer ID; 825749 Request for Review of USAC*

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invoices that are not paid in full, and these fees are not waived unless the disputed charges are later found to be a result of an error by USAC.⁴⁷ The Commission has consistently upheld USAC's pay-and-dispute policy, observing that the policy increases the stability and predictability of the Fund by preventing contributors from engaging in nonpayment or underpayment of invoices with which they disagree.⁴⁸ Thus, Morris could have avoided incurring late fees by paying the full invoice amount in compliance with the longstanding pay-and-dispute policy. Moreover, had Morris filed its revised Form 499-A on February 6, 2001, when it first discovered its error, it would have avoided more than a year's worth of late payment fees that accrued until it finally submitted its revised Form on March 29, 2002.⁴⁹ We continue to uphold USAC's pay-and-dispute policy and find no error in USAC's application of it in this instance. This policy is consistent with the Commission's rules requiring contributors to pay their required contributions by the requisite due date and furthers the Commission's policy goals of ensuring stability and predictability of the Fund.⁵⁰ We also note that the majority of Morris's outstanding unpaid contribution debt is *unrelated* to the disputed amounts originally invoiced for the third and fourth quarter of 2000.

17. We find that USAC acted within its authority and assessed late payment fees in accordance with the Commission's rules. In the limited circumstances presented here, however, we find the late payment fees associated with the disputed amounts originally invoiced for the third and fourth quarter of 2000 to be excessive. The Commission remanded Morris's appeal to USAC for further review, effectively waiving the filing deadline if USAC determined that Morris was able to demonstrate good cause for submitting its revised Form 499-A beyond the one-year revision deadline and provide complete documentation showing how the revisions derived from corporate financial records.⁵¹ USAC accepted Morris's late filed 2000 Form 499-A, and recalculated Morris's contribution obligations for the third and fourth quarter of 2000.⁵² Though Morris's contribution obligation for those quarters subsequently decreased by approximately \$360,000, USAC did not reverse the late fees originally assessed on the reversed amount, and Morris remained responsible for the almost \$71,000 in late payment fees assessed on the originally calculated contribution amount. In 2012, at Morris's request, USAC reversed over \$31,000 of these late payment fees; however, in light of the circumstances here, we find it inconsistent with the public interest to require Morris to pay the remaining balance—almost \$40,000—when its ultimate contribution obligation for the period in question was just over \$18,000.⁵³ We therefore direct

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Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096-99 (WCB 2008).

⁴⁷ *Id.*

⁴⁸ See, e.g., *Universal Service Contribution Methodology, Requests for Waiver of Decisions of the Universal Service Administrator by ComScape Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC*, WC Docket No. 06-122, Order, 25 FCC Rcd 7399, 7401, para. 7 (WCB 2010); *Universal Service Contribution Methodology; Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 1115, 1120, para. 9 (WCB 2010); *Universal Service Contribution Methodology, Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, WC Docket No. 06-122, Order, 23 FCC Rcd 17903, 17906, para. 9 (WCB 2008).

⁴⁹ See *supra* para. 5.

⁵⁰ See *supra* para. 15. See also 47 CFR § 54.713(b).

⁵¹ See *supra* para. 7.

⁵² See *supra* para. 8.

⁵³ See, e.g., *Federal State Contribution Methodology Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) (*Outfitter Satellite Order*) (finding that although the claim of financial hardship was insufficient to demonstrate special circumstances to warrant a waiver of the filing deadline, in the limited circumstances, strict enforcement of our rules regarding

(continued....)

USAC to recalculate the late payment fees associated with the disputed amounts originally invoiced for the third and fourth quarter of 2000 to reflect Morris's updated contribution obligation for that period.

18. Morris also requests that the Commission reverse USAC's decision because Morris is unable to pay its debt due to its changed financial circumstances.⁵⁴ The Commission may waive any provision of its rules for good cause shown.⁵⁵ The circumstances presented by Morris, however—its current financial status and inability to pay—do not constitute special circumstances sufficient to warrant waiver of the contribution obligations.⁵⁶ We have consistently held that “[u]niversal service contributions, once assessed, are a financial obligation and this obligation shall not be waived because of potential financial problems that may be created by the financial obligation.”⁵⁷ Unlike statutory forfeitures under section 503 of the Act, under which the Commission is required to consider ability to pay,⁵⁸ USF contribution obligations are based on the statutory obligation in section 254(d) that “[e]very telecommunications carrier . . . 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.”⁵⁹ Morris can cite no precedent for reducing such contribution obligations based on alleged inability to pay. To the extent Morris's financial situation makes it difficult to pay the invoice in full, it may set up a payment plan with USAC to satisfy the obligation.⁶⁰

IV. CONCLUSION

19. For these reasons, we deny Morris's request to reverse USAC's decision to bill Morris for the over \$95,000 in monthly charges, true-up amounts, and late payment fees unrelated to the disputed amounts originally invoiced for the third and fourth quarter of 2000. We find that USAC acted fully within its authority to invoice Morris for these contribution amounts, as well as to assess late payment fees for Morris's failure to pay these amounts, and find that Morris has not presented special circumstances that would warrant waiver of our rules.

20. We also reject Morris's request to reverse USAC's decision to invoice it for the revised contribution amount of \$18,151.77 associated with the third and fourth quarter of 2000. We do, however, find the remaining late payment fees of almost \$40,000 associated with the amounts originally invoiced for the third and fourth quarter of 2000 to be excessive. Thus, we grant Morris's request as to this amount and direct USAC to adjust the late payment fees for which Morris is responsible to reflect the revised contribution amount associated with the third and fourth quarter of 2000.

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assessment of interest and penalties would not be consistent with the public interest in effective and efficient administration of Fund contributions).

⁵⁴ Request for Review at 7.

⁵⁵ 47 CFR § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 875 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁵⁶ See *Federal-State Joint Board on Universal Service et al., Request for Review by MobileMedia*, CC Docket No. 96-45 et al., Order, 12 FCC Rcd 15235 (CCB 1997) (*MobileMedia Order*); see also, *Outfitter Satellite, Inc.*, WC Docket 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) (denying a request for waiver of filing deadline based on a claim of financial hardship).

⁵⁷ *Mobile Media Order*, 12 FCC Rcd at 15235, para. 2; *Outfitter Satellite Order*, 28 FCC Rcd at 13363, para. 16.

⁵⁸ 47 U.S.C. § 503(b)(2)(E); see *SBC Communications Inc. v. FCC*, 373 F.3d 140, 152 (D.C. Cir. 2004).

⁵⁹ 47 U.S.C. § 254(d).

⁶⁰ See <http://www.usac.org/cont/making-payments/payment-plans.aspx>.

V. ORDERING CLAUSES

21. 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 the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 54.722(a), that the Request for Review filed on October 23, 2013 by Morris Communications, Inc. IS GRANTED IN PART AND DENIED IN PART to the extent described herein.

22. IT IS FURTHER ORDERED that Morris’s October 23, 2013 Request for Review is REMANDED to the Universal Service Administrative Company for further action in accordance with the terms of this Order.

23. 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
Chief
Wireline Competition Bureau