

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

In the Matter of
Gtek Computers & Wireless L.L.C.
Request for Review and Contingent Request for
Waiver and Renewed Request for Review and
Contingent Request for Waiver
NextMetro, LLC d/b/a BroadAspect Form 499
Filer ID No. 831123 Request for Review and
Request for Waiver of USAC Decision
WC Docket No. 06-122

ORDER

Adopted: April 13, 2022

Released: April 13, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This Order addresses: (1) a Request for Review and Contingent Request for Waiver and a Renewed Request for Review and Contingent Request for Waiver filed by Gtek Computers and Wireless L.L.C. (Gtek); and (2) a Request for Review and Waiver filed by NextMetro, LLC d/b/a BroadAspect (NextMetro), each of which challenge Universal Service Administrative Company (USAC) actions. Gtek and NextMetro each assert that it is a systems integrator and qualifies for the systems integrator de minimis exception and, therefore, is not required to file FCC Form 499-A. Each further asserts it has no universal service contribution obligations for the various years in question, notwithstanding the fact that each provides limited interconnected voice over internet protocol ("VoIP") services, and that USAC inappropriately denied its request to cancel late fees and penalties associated with late-filed Forms 499-A. We remand both requests for review to USAC to make a factual determination as to whether Gtek, and separately NextMetro, qualify for the systems integrator exception under the Commission's universal service contribution requirements. If USAC determines that either Gtek or NextMetro or both qualify for such exception, we waive the Form 499-A filing deadline and associated late fees and penalties for the years at issue and direct USAC to adjust Gtek's and/or NextMetro's accounts accordingly. If USAC determines that either or both companies do not qualify for the systems integrator exception, we deny the requests for review and waiver.

II. BACKGROUND

2. Providers of interstate and international telecommunications and telecommunications services, with some exceptions, are required to file the Telecommunications Reporting Worksheet, FCC

1 Gtek Computers & Wireless L.L.C. Request for Review and Contingent Request for Waiver, WC Docket No. 06-122 (filed Sept. 16, 2016) (Gtek Request for Review); Gtek Computers & Wireless L.L.C. Renewed Request for Review and Contingent Request for Waiver, WC Docket No. 06-122 (filed Feb. 22, 2019) (Gtek Renewed Request for Review).

2 NextMetro, LLC d/b/a BroadAspect Request for Review and Request for Waiver, WC Docket No. 06-122 (filed Jan. 13, 2016) (NextMetro Request for Review).

Form 499-A, each year and contribute to the Universal Service Fund (USF or Fund) on certain end-user telecommunications revenues.³ USAC also uses Form 499-A reported revenue information to transmit to the administrators of the Telecommunications Relay Service (TRS), North American Numbering Plan (NANP), and Local Number Portability (LNP) cost recovery mechanisms when providers are required to contribute to those funds.⁴ Many providers with no USF contribution obligations must nevertheless file Forms 499-A and contribute to these other funds.⁵ Entities required to file Form 499-A must do so by April 1 of each filing year.⁶ USAC is required to assess a late fee of the greater of \$100 or 3.5% of the filer's assessed USF contribution on "universal service fund contributors" that are delinquent in filing Form 499-A.⁷

A. Gtek's Request for Review and Renewed Request for Review

3. Gtek states that it is a systems integrator that provides fixed wireless Internet service for residential and commercial users in Texas.⁸ Since 2010, Gtek has offered interconnected VoIP as an "ancillary service" for its customers.⁹ Gtek, however, did not file Forms 499-A with USAC until 2016.¹⁰ In May and again in August of 2016, USAC billed Gtek \$100 per month for Gtek's late-filed 2010-2015 Forms 499-A.¹¹ Gtek appealed the May 2016 Invoice with USAC, stating that it was unaware that as a systems integrator it needed to file the Form 499-A and requested that USAC waive the late fees.¹²

³ 47 CFR § 54.711(a).

⁴ 47 CFR § 54.711(b).

⁵ 47 CFR §§ 52.5(i), 52.17, 52.32, 54.706(a), 64.601(b), 64.604(c)(5)(iii)(A). *See also, 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-71, Report and Order, 14 FCC Rcd 16602, 16614-16, paras. 23-26 (1999) (*Telecommunications Reporting Worksheet Consolidation Order*).

⁶ 2022 Form 499-A Instructions at 14.

⁷ 47 CFR § 54.713(c). *See also Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, 16379, para. 14 & n.43 (2007) (USAC similarly assesses late fees when *de minimis* filers fail to timely file Forms 499-A).

⁸ Gtek Request for Review at 2.

⁹ *Id.*

¹⁰ *See* Gtek Request for Review at 1. We note that Gtek appears confused about its own filings, insofar as it links its decision to file a 2010 Form 499-A to revenues it earned in 2010 and its 2015 form to 2015 revenues. It appears it made the same mistake for revenues reported on its 2011-2014 forms. To be clear, filers are required to report the prior year's revenues on each year's Form 499-A—i.e., calendar year 2009 revenues are reported on the 2010 Form 499-A, 2010 revenues on the 2011 form, etc. This inconsistency does not affect our ability to process its instant request. Nevertheless, consistent with Gtek's ongoing obligation to revise Form 499-A whenever it discovers reporting errors, Gtek may need to make appropriate revisions to its reported revenue with respect to the six filings at issue in this case.

¹¹ Gtek Request for Review at 1. *See* USAC Invoice UBDI0000846007 at 3 (dated May 20, 2016), attached to Request for Review as Exh. B (May USAC Invoice); USAC Invoice UBDI0000863123 at 3 (dated August 22, 2016), attached to Request for Review as Exh. B (August USAC Invoice). The August USAC Invoice also included interest on the unpaid balance of the May USAC Invoice.

¹² Email from USAC to Rainer Gleinig, Gtek Computers & Wireless L.L.C., dated August 17, 2016, attached to Request for Review as Exh. A (citing Gtek's June 13, 2016 appeal letter to USAC) (USAC Response to Gtek). This dismissal letter addressed Gtek's appeal of the May 20, 2016 invoice for its late-filed 2014 and 2015 Forms 499-A. *Id.*

USAC dismissed the appeal, explaining that USAC cannot waive Commission rules and that Gtek must instead seek relief directly from the Commission.¹³

4. In its request for review and waiver, Gtek claims that because it is a systems integrator whose interconnected VoIP service accounts for only a small portion of its income (ranging from 0.09% of its total revenue in 2010 to 0.49% in 2015), it is not required to file Form 499-A or contribute to USF because it qualifies for the systems integrator exception.¹⁴ Alternatively, Gtek argues that if it was required to file the Forms 499-A, a waiver of the filing requirements of section 54.711 of the Commission's rules and the late filing fees assessed pursuant to section 54.713 of the Commission's rules is justified because the company relied on the Form 499-A Instructions.¹⁵ Gtek argues that the Instructions categorically exempt systems integrators from filing if they "derive less than five percent of their systems integration revenues from the resale of telecommunications."¹⁶ In addition, Gtek argues that a waiver is justified because the company would be exempt from contributing to universal service under either the systems integrator exception or the *de minimis* exemption and the Fund therefore was not harmed by its failure to file.¹⁷ Gtek further argues that the late filing fees and the accruing interest are punitive because the late fees alone exceed the total revenue Gtek received from its provision of interconnected VoIP from 2010-2015.¹⁸

B. NextMetro's Request for Review and Request for Waiver

5. NextMetro is a cloud and fiber optic network service provider of custom-designed and cloud infrastructure computer networking, and systems integration services, and "also provides Interconnected VoIP ('I-VoIP') services in conjunction with its cloud infrastructure computer networking and integration services."¹⁹ NextMetro states that beginning in 2008, it believed it qualified for the systems integrator exception because it derived less than 5% of its total revenue from its VoIP communications service offerings.²⁰ According to NextMetro, in October 2015, the company determined that its revenues "would potentially exceed" the systems integrator exception's 5% threshold and therefore filed a Form 499 registration and its 2015 Form 499-A.²¹ Subsequently, NextMetro filed its

¹³ USAC Response to Gtek; Gtek Request for Review at 1. Gtek did not appeal the August 22, 2016 invoice pursuant to USAC's direction to file an appeal of payment fees and waiver of Form 499-A deadlines directly with the Commission. Gtek Request for Review at 1, n.1. Gtek's Renewed Request for Review states that the interest and penalties have increased since Gtek filed the 2016 Appeal. Gtek Renewed Request for Review at 1.

¹⁴ Gtek Request for Review at 4-5. Gtek also filed a Renewed Request for Review and Contingent Request for Waiver that presents the same arguments as the initial Gtek Request for Review.

¹⁵ Gtek Request for Review at 1-2, 6-7.

¹⁶ Gtek Request for Review at 3 (quoting 2016 Form 499-A Instructions at 7); Gtek Renewed Request for Review at 2 (quoting 2016 Form 499-A Instructions at 7); *see also* 47 CFR § 54.706(d) (systems integrator exemption); Gtek Request for Review at 6; Gtek Renewed Request for Review at 4.

¹⁷ Gtek Request for Review at 6; Gtek Renewed Request for Review at 4.

¹⁸ *Id.*; *see also* Gtek Renewed Request for Review at 6 (stating that the amount of late fees and interest "exceeds the entirety of Gtek's annual VoIP revenue" during the time period).

¹⁹ NextMetro Request for Review at 1-2.

²⁰ *Id.* at 2.

²¹ *Id.* NextMetro states that in October 2015, it determined that its revenues would potentially exceed the 5% threshold for the systems integrator exemption, and therefore filed its "2015 Form 499-A." *Id.* We note, however, that NextMetro would have filed its 2015 revenue on its 2016 Form 499-A.

2009-2014 Forms 499-A.²² USAC assessed NextMetro late fees and penalties associated with these late filings.²³

6. NextMetro submitted a letter to USAC requesting to withdraw its 2009-2015 Forms 499-A and asking USAC to cancel any late fees.²⁴ NextMetro asserted that it qualified as a systems integrator in 2008-2014 and had inadvertently filed the forms.²⁵ USAC denied NextMetro's request to withdraw its Forms 499-A, stating that qualifying for the systems integrator exception for contributing to the universal service support mechanism does not negate the requirement of all providers of interconnected VoIP to timely file Form 499-A.²⁶ USAC advised NextMetro that if it wanted relief from the late filing fees, it would need to file a request for waiver of the late filing fees with the Commission.²⁷

7. Like Gtek, NextMetro argues there is a conflict between the Form 499-A Instructions for the systems integrator exception, which does not require systems integrators to file or contribute directly to universal service, and the requirement that all interconnected VoIP providers file Form 499-A.²⁸ NextMetro asserts that given the lack of clarity in the rules and in the Form 499-A Instructions regarding the reporting obligation of system integrators, it was not "on notice" of its obligation to file the Form 499-A and that enforcement of late fees and penalties would be inequitable.²⁹ NextMetro requests that the Commission waive the late fees and penalties assessed on its late-filed 2009-2015 FCC Forms 499-A, arguing that the fees impose undue hardship on the company.³⁰

III. DISCUSSION

8. We find that in the limited circumstances presented here, if Gtek and/or NextMetro qualify for the systems integrator exception, good cause exists to grant Gtek's and NextMetro's request for waiver of the Form 499-A deadlines for the years at issue and to reverse the late fees, penalties, and interest associated with those filings. Because there is insufficient evidence in the record before us to conclude whether the companies meet the criteria necessary to qualify for that exception, we remand the requests for review to USAC to make that factual determination. Our waivers therefore are conditioned on USAC's determination that Gtek and/or NextMetro qualify for the systems integrator exception set forth in the Commission's rules and the Form 499-A Instructions.³¹

9. Generally, the Commission's rules may be waived for good cause shown.³² The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance

²² *Id.*

²³ *Id.*

²⁴ NextMetro Request for Review, Exh. B.

²⁵ *Id.*

²⁶ NextMetro Request for Review, Exh. C (Email from USAC to Joanna G. Wallace, NextMetro, (dated Dec. 17, 2017)(USAC Response to NextMetro).

²⁷ *Id.*

²⁸ NextMetro Request for Review at 5-8.

²⁹ *Id.* at 5, 7-8.

³⁰ *Id.* at 1, 4-5.

³¹ See *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45 *et al.*, Fourth Order on Reconsideration & Report and Order, 13 FCC Rcd 5318, 5472-75, paras. 278-282 (1997)(*Universal Service Fourth Order on Reconsideration*); 2022 Form 499-A Instructions at 8-9.

³² 47 CFR § 1.3.

inconsistent with the public interest.³³ Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.³⁴

10. We rarely grant waivers for late fees and penalties associated with untimely filed Forms 499. We have determined that waiver of the rules requiring timely filing of the Forms is not warranted due to negligence, error, or other circumstances squarely within the petitioner's control.³⁵ However, we have granted a waiver for untimely filed Forms 499-A when a late filing is attributable to USAC or Commission error.³⁶ As discussed below, we find that the Form 499-A filing instructions for systems integrators in section III.A.2(c) of the Instructions for the relevant years lacked clarity that systems integrators offering VoIP service in conjunction with their systems integrator offerings may nonetheless have contribution obligations to the other support mechanisms and consequently an obligation to file the Form 499-A. Accordingly, Gtek and NextMetro could have reasonably concluded that as providers qualifying for the systems integrator exception, they were categorically exempt from filing the Forms 499-A. Thus, we find that waiver of sections 54.711 and 54.713 of the Commission's rules is warranted, provided that Gtek and NextMetro meet the qualifications of a systems integrator subject to an exemption as set forth by the Commission.

11. Section III.A.2(c) of the Form 499-A Instructions entitled "Exception for systems integrators and self-providers," states that "[s]ystems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications *are not required to file or contribute*

³³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁴ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁵ See, e.g., *Universal Service Contribution Methodology; BelWave Communications Request for Waiver*, Order, 27 FCC Rcd 11176 (WCB 2012) (denying waiver request of provider that asserted it did not know its filing obligations); *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 (WCB 2010) (denying deadline waivers where claims of good cause amount to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control); *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 (WCB 2010) (denying waiver requests when negligence caused late filing fee); *Universal Service Contribution Methodology; Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646, 4648-49, paras. 5, 8 (WCB 2010) (denying reversal of late fees when petitioners failed to show good cause exists in claiming that they were unaware of their obligation to file the forms, ignorant of the process for electronically filing the forms, or had otherwise failed to file the forms); *Federal-State Joint Board on Universal Service; Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (WCB 2007) (good cause not shown when filer claimed it did not have skilled personnel to interpret and correctly apply FCC Form 499 Instructions).

³⁶ See *Universal Service Contribution Methodology Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) (finding good cause exists for waiver of interest and penalties associated with a true-up adjustment where USAC failed to bill the company for the true-up for over six years); *Requests for Review of Decisions of the Universal Service Administrator by Berkmont Communications Corporation et al.*, *Federal Joint Board on Universal Service*, CC Docket 96-45, Order, 22 FCC Rcd 21505 (2007) (finding good cause existed to waive the filing deadline and for late-filed Forms 499-A and associated late fees when delayed OMB approval of the Form 499-A left filers only fourteen days to submit their Forms by the deadline).

directly to universal service.”³⁷ This language reflects the Commission’s decision, when the rule was adopted in 1997, that systems integrators deriving a *de minimis* amount of their revenues from the resale of telecommunications are not required to contribute to universal service because they do not significantly compete with common carriers that are required to contribute to universal service.³⁸ The language was included in the original universal service reporting requirements of the 1998 Universal Service Worksheet FCC Form 457.³⁹ In 1999 the Commission consolidated the universal service reporting requirements of Form 457 with the reporting requirements of three other Congressionally-mandated programs (Telecommunications Relay Service, North American Numbering Plan, and Local Number Portability) by creating the Telecommunications Reporting Worksheet, FCC Form 499.⁴⁰ At that time, the Commission also adopted a rule governing *de minimis* providers and clarified that these entities are not required to submit a Telecommunications Reporting Worksheet (Form 499-A) unless they are “required to do so by the Commission’s rules governing TRS, NANP, or LNP.”⁴¹

12. In 2006, when the Commission extended the USF contribution obligation to interconnected VoIP providers, the Commission stated that although interconnected VoIP providers that meet the *de minimis* threshold for USF contributions need not directly contribute to the Fund, they are nonetheless required to register with the Commission and file the FCC Form 499-A.⁴² The following year, the Commission adopted rules requiring interconnected VoIP service providers to contribute to the TRS Fund on the basis of their interconnected VoIP revenues,⁴³ and in 2011, the Commission extended that requirement to providers of certain non-interconnected VoIP services.⁴⁴ Accordingly, systems integrators that provide interconnected VoIP service must file the Form 499-A regardless of whether they qualify for the systems integrator exception or are *de minimis* for universal service contribution requirements because they have an independent obligation to contribute to the TRS fund at a minimum.⁴⁵

³⁷ See, e.g., 2020 Form 499-A Instructions at 7 (emphasis added). This same language appeared in Form 499-A Instructions for the years at issue in the requests at issue here. The Bureau has since revised these instructions to clarify that systems integrators may have contribution obligations to other support mechanisms (TRS, NANPA, and LNPA) that require that they file the Form 499-A. See 2022 Form 499-A Instructions at 8-9.

³⁸ *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd 5318, 5472-5475 at paras. 278-282.

³⁹ See, e.g., 1998 Universal Service Worksheet, FCC Form 457 at 6.

⁴⁰ *In the Matter of 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999).

⁴¹ *Id.* at Appx. B, Part 54-Universal Service, 47 CFR § 54.708. The 2000 Form 499-A Instructions were updated to reflect this clarification. See 2000 Form 499-A Instructions at 4-5.

⁴² 47 CFR § 54.708 (“[A]ll interconnected VoIP providers including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet.”); see also e.g., *Universal Service Contribution Methodology, Federal State Joint Board on Universal Service et al.*, WC Docket No. 06-122, CC Docket No. 96-45 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (“Providers of interconnected VoIP services will follow the same basic USF reporting procedures as other providers of interstate and international telecommunications, using the same forms and filing instructions.”); 2007 Form 499-A Instructions at 6.

⁴³ 47 CFR § 64.60(c)(5)(iii)(A) and (B); 47 CFR § 64.601(b); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities*, Report and Order, 22 FCC Rcd 11275 (2007).

⁴⁴ *In the Matter of Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532 (2011) (*2011 TRS Contributions Order*).

⁴⁵ 47 CFR § 52.5(i), 52.17, 52.32, 54.706(a), 64.601(b), 64.604(c)(5)(iii)(A); see, e.g., 2020 Form 499-A Instructions at 8.

Stated differently, although systems integrators may be exempt from filing and contributing directly to the USF, they must nonetheless report their revenue annually on the Form 499-A if they provide interconnected VoIP services.⁴⁶

13. The systems integrators section of the Form 499-A Instructions prior to the most recent revisions, however, did not indicate or even suggest that systems integrators may nonetheless have an obligation to file Form 499-A because they also provided interconnected VoIP service or may have an independent obligation to contribute to the other support mechanisms.⁴⁷ We conclude that Gtek and NextMetro could reasonably have read the “not required to file” language in the Form 499-A Instructions as categorically exempting systems integrators from the Form 499-A filing requirements, notwithstanding the filing obligations set forth in Commission rules and other sections of the Instructions for *de minimis* and VoIP providers. Accordingly, we find that waiver of the late filing fees and penalties associated with Gtek and NextMetro’s failure to file Form 499-As for the years at issue is warranted, provided that they otherwise qualify for the systems integrator exception.

14. Although the Commission’s rules do not explicitly define the term “systems integrator,” the Commission previously has described some common traits of systems integrators that qualify for the systems integrator exception. For example, systems integrators “provide integrated packages of services and products that may include, for example, the provision of computer capabilities, data processing, and telecommunications,” however “the provision of telecommunications is incidental to their core business.”⁴⁸ These entities “are in the business of integrating customers’ computer and other informational systems, not providing telecommunications.”⁴⁹ Further, systems integrators do not provide services over their own facilities and are non-common carriers. . . .⁵⁰ In addition, to qualify for exemption from contributing to universal service, the systems integrator must “derive less than five percent of their systems integration revenues from the resale of telecommunications.”⁵¹ Thus, the exception applies only to systems integrators that derive less than five percent of their telecommunications revenue from their *systems integration revenues* – not total revenues.⁵²

15. Gtek and NextMetro each assert that they are systems integrators.⁵³ There is insufficient evidence in the record for us to determine if that is factually the case for each provider although USAC appears to have accepted NextMetro’s assertion that it is a systems integrator.⁵⁴ USAC dismissed Gtek’s appeal without making any statement or determination about the company’s status as a systems integrator.⁵⁵ In addition, neither Gtek’s nor NextMetro’s petitions provide sufficient information for us to determine, independently, whether each meets the qualifications of a systems integrator eligible for the

⁴⁶ We note that certain non-interconnected VoIP providers also have an obligation to contribute to the TRS Fund and accordingly must file the Form 499-A. *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-41, paras. 15-17; 2022 Form 499-A Instructions at 34-35.

⁴⁷ The 2022 Form 499-A Instructions were updated to clarify that systems integrators may have an obligation to file the Form 499-A even if they do not have a USF contribution obligation if they have an obligation to contribute to other support mechanisms (TRS, NANPA, or LNPA). *See 2022 Form 499-A Instructions* at 8-9.

⁴⁸ *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd 5472, paras. 278-79.

⁴⁹ *Id.* at 5472, para. 279.

⁵⁰ *Id.* at 5472 para. 278.

⁵¹ 47 CFR § 54.706(d).

⁵² *Id.*; *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5472-73, para. 280.

⁵³ Gtek Request for Review at 1-2 and Exh. A; NextMetro Request for Review at 1-2 and Exh. C.

⁵⁴ *See* USAC Response to NextMetro. USAC did not, however, provide any facts to support a finding that NextMetro meets the qualifying characteristics of systems integrators as set forth by the Commission. *Id.*

⁵⁵ *See* USAC Response to Gtek.

systems integrator exception. For example, Gtek states that it “provides fixed wireless Internet access service to approximately 5,500 residences and businesses” in Texas, along with “onsite support” for those services and has offered interconnected VoIP service to its fixed wireless broadband customers since 2010.⁵⁶ Gtek does not describe providing any of the enterprise-wide IT integration solutions systems integrators ordinarily provide, but instead appears to be providing internet access service bundled with interconnected VoIP service. In addition, Gtek and NextMetro each assert that their telecommunications revenues account for less than 5% of their revenues but do not distinguish between systems integration revenues and other revenues (or do not do so consistently).⁵⁷ To be clear, the systems integrator exception applies only if less than 5% of their *systems integration revenues* come from the resale of telecommunications.⁵⁸

16. Because we cannot determine from the limited record whether Gtek or NextMetro qualify for the systems integrator exception, we remand their requests for review to USAC to make this factual determination. If USAC determines that Gtek and/or NextMetro have the characteristics of systems integrators and indeed qualify for the systems integrator exception, we direct USAC to reverse the late-fees and penalties in accordance with the waiver granted herein. If either Gtek or NextMetro fail to qualify for the exception, we deny its request to waive late fees and penalties. In that case, in addition to late fees and penalties, Gtek and/or NextMetro would have an obligation to pay contributions owed to the universal service fund for the years at issue, as well as any unpaid contribution obligations owed to TRS, NANPA, and LNPA for the years at issue.⁵⁹

IV. ORDERING CLAUSES

17. 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 CFR §§ 0.91, 0.291, and 1.3, the request for review and contingent request for a waiver, and renewed request for review and contingent request for waiver filed by Gtek Computers & Wireless, L.L.C., are GRANTED to the extent indicated herein and REMANDED to USAC for further review or otherwise DENIED.

18. IT IS FURTHER 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 CFR §§ 0.91, 0.291, and 1.3, the request for review and request for waiver filed by NextMetro, LLC d/b/a BroadAspect, is GRANTED to the extent indicated herein and REMANDED to USAC for further review or otherwise DENIED.

⁵⁶ Gtek Request for Review at 2.

⁵⁷ Gtek Request for Review at 2 (“Gtek derives significantly less than five percent of its revenue from the provision of telecommunications. For example, in calendar year 2015, telecommunications revenue accounted for only 0.49% of Gtek’s total revenue.”); Gtek Renewed Request for Review at 3 (“Gtek is a systems integrator that derives less than five percent of its revenues from the resale of telecommunications.”); NextMetro Request for Review at 2 (asserting that NextMetro “derived less than five percent (5%) of its total revenue from its voice communications service offerings” and also that “it derived less than five percent of its systems integration revenue from the resale of telecommunications”).

⁵⁸ *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd 5472, paras. 278-79.

⁵⁹ To the extent the assessed amounts create a financial hardship, the companies may enter into a payment plan with USAC. See NextMetro Request for Review at 4-5 (asserting that upholding the penalties will impose undue hardship on the company); Gtek Request for Review at 6 (asserting that the imposed sanctions exceeds the company’s VoIP revenue for the years in question).

19. IT IS FURTHER ORDERED that this Order SHALL BE transmitted to the Universal Service Administrative Company.

20. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau