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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Petition for Waiver by MetOcean Telematics, Ltd.	)	
	)	

ORDER

Adopted: July 17, 2023 **Released: July 17, 2023**

By the Chief, Wireline Competition Bureau and the Managing Director, Office of the Managing Director:

I. INTRODUCTION

1. In this Order, we grant a petition for waiver of the 45-day deadline to revise the August 2022 FCC Form 499-Q filed by MetOcean Telematics, Ltd. (MetOcean).[1] MetOcean requests that the Commission waive the 45-day deadline for revising the FCC Form 499-Q, and reverse a decision of the Universal Service Administrative Company (USAC) that rejected as untimely MetOcean's revised August 2022 FCC Form 499-Q. We grant MetOcean's request for waiver and direct USAC to accept MetOcean's revised August 2022 FCC Form 499-Q as if timely filed, and to process it accordingly.[2] Additionally, we waive the Commission's red light rule for the limited purposes of granting the above relief and permitting USAC to process MetOcean's revised FCC Form 499-Q.[3]

II. BACKGROUND

A. The Act and the Commission's Rules

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."[4] Section 254(d) further provides that "[a]ny other provider of interstate telecommunications may be required to contribute to the

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[1] *Emergency Request for Review of a Universal Service Administrator Decision and Petition for Waiver of 45-Day Revision Deadline by MetOcean Telematics Limited*, WC Docket No. 06-122 (filed Jan. 27, 2023) (Petition) (portions confidential).

[2] MetOcean also seeks a waiver of all interest and penalties assessed on the universal service fund contributions amounts resulting from its August 2022 FCC Form 499-Q. This request is moot insofar as it relates to the original filed August 2022 FCC Form 499-Q because we waive the FCC Form 499-Q revision deadline and direct USAC to process MetOcean's revised FCC Form 499-Q as if timely filed in August 2022, however, interest and penalties associated with MetOcean's delay in payment for these months will be recalculated and assessed based on the revised filing.

[3] 47 CFR § 1.1910. Because MetOcean did not request a waiver of the Commission's red light rule, we take this action *sua sponte* for the limited purposes of granting MetOcean's request to waive the 45-day deadline and permitting USAC to process MetOcean's revised FCC Form 499-Q.

[4] 47 U.S.C. § 254(d).

preservation and advancement of universal service if the public interest so requires."[5] 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 Universal Service Fund (USF or Fund) based on their interstate and international end-user telecommunications revenues.[6]

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.[7] 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.[8] Under Commission rules, contributors are required to file an 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.[9] 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.[10] Contributors have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.[11] In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.[12] 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.[13]

[5] *Id.*

[6] *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 CFR § 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.,* CC Docket No. 96-45 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7544, para. 52 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the Fund).

[7] *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) (*Universal Service Second Order on Reconsideration*).

[8] *Id*. at 18423–24, para. 42; 47 CFR § 54.702(b).

[9] *See* 47 CFR §§ 54.706 (a)-(b), 54.711; *see also* 2022 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 11-18.

[10] 47 CFR §§ 54.709, 54.711(a).

[11] *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*); 2022 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 8.

[12] *2002 Contribution Methodology Order,* 17 FCC Rcd at 24973, para. 37.

[13] *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;*

(continued….)

4. In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996 (DCIA), which directs government agencies to "try to collect a claim of the [U.S.] Government for money or property arising out of the activities of, or referred to, the agency."[14] The Commission's DCIA rules generally require that entities or individuals doing business with the Commission pay their debts on time.[15] In 2007, the Commission adopted rules to strengthen oversight of the USF contributions process and align it with the DCIA.[16] First, the Commission restructured the rate of interest assessed against USF contributions debt that is more than 30 days delinquent, setting the interest rate for delinquent debt at U.S. prime rate plus 3.5 percent.[17] The Commission designed this interest rate to be consistent with commercial practices, and to address shortcomings under the previous structure.[18] Also, consistent with the Commission's DCIA rules, the Commission established that USF debt that is more than 90 days delinquent will incur an additional penalty of six percent per year.[19] 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 interest and penalties provided under the DCIA requirements.[20] 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.[21]

5. The Commission's red light rule, adopted in its *2004 DCIA Order*, requires that action be withheld on any application or other request for benefits made by an entity that is delinquent in debts owed to the Commission and dismissal of such applications or requests if the delinquent debt is not resolved.[22] A delinquent debt is a claim or debt that has not been paid by the date specified in an initial written demand for payment unless other satisfactory payment arrangements have been made, or the

(Continued from previous page)
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).

[14] *See Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*2004 DCIA Order*); 47 CFR Part 1, Subpart O; 31 U.S.C. § 3711(a). Congress enacted the DCIA to strengthen federal debt collection procedures. Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

[15] *2004 DCIA Order*, 19 FCC Rcd at 6542, para. 5.

[16] *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16379, paras. 1, 14 (2007) (*2007 Comprehensive Review Order*).

[17] *Id*. at 16379, para. 14. Prior to the *2007 Comprehensive Review Order*, USAC had varied measures to reduce contributor delinquency and pursue debtors with outstanding contribution obligations. In the *2007 Comprehensive Review Order*, the Commission adopted a single standard to be used in assessing late fees. *Id.* at 16378, para. 12.

[18] *Id.* at 16376, para. 9.

[19] *Id.* at 16381, para. 17.

[20] 47 CFR § 54.713(a) ("A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed"), (b) ("If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, the payment is delinquent. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest . . . as well as administrative charges of collection and/or penalties . . . .").

[21] 47 C.F.R. § 54.702(c) (prohibiting the Administrator from making policy or interpreting Commission rules); *see Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5482, para. 362 (2012).

[22] 47 CFR § 1.1910.

debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule.[23]

B. Petition

6. MetOcean provides integrated satellite-based Internet of Things systems and machine-to-machine services for commercial and government customers.[24] MetOcean began filing the FCC Forms 499 in April 2020 as a satellite voice reseller.[25] Prior to 2020, MetOcean contributed indirectly to the Fund via pass-through charges billed by its underlying carrier.[26] Between April 2020 and August 2022, MetOcean reported zero revenues on the company's FCC Forms 499-Q, incorrectly believing that its indirect contributions meant that the underlying carrier had the sole revenue reporting obligation.[27] After MetOcean filed its 2022 FCC Form 499-A, the company was informed by USAC that it had a revenue reporting obligation.[28] Following this notification, MetOcean reported historic and projected telecommunications revenues on its August 2022 FCC Form 499-Q.[29]

7. On October 21, 2022, MetOcean received an invoice from USAC with a monthly USF contribution significantly higher than it expected.[30] MetOcean reports that it realized that, among other things, the company mistakenly reported its total telecommunications revenue, not its total U.S. telecommunications revenue, on Line 116 of its August 2022 FCC Form 499-Q.[31] On November 22, 2022, MetOcean filed a revised August 2022 FCC Form 499-Q. USAC rejected the revised form as untimely because it was filed beyond the 45-day deadline for revisions.[32] MetOcean did not pay its outstanding invoices while it investigated the increased monthly contribution obligation, and was subsequently placed on red light status.

8. On January 27, 2023, MetOcean filed the Petition seeking a waiver of the 45-day deadline to revise the FCC Form 499-Q.[33] Additionally, MetOcean seeks a reversal of all interest charges and penalties connected with the contributions charges on its October, November, and December 2022 invoices.[34] In its Petition, MetOcean argues that good cause for granting a waiver of the 45-day rule exists because: (1) the reporting error MetOcean made in its August 2022 FCC Form 499-Q was an unintentional clerical error; (2) the clerical error is of such magnitude as to cause disproportionate harm; (3) the company was unaware of the revision deadline until after the 45-day revision deadline passed; and (4) strict adherence to the revision deadline in this case does not serve the public interest.[35]

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[23] 47 CFR § 1.1901(i).

[24] Petition at 2.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id*. at 3.

[29] *Id.*

[30] *Id*.

[31] *Id.* at 3–4.

[32] *Id.* at 4. *See* 2022 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 8.

[33] *Id*. at 1.

[34] *Id*. at 5.

[35] *Id*. at 4–7.

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.[36] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[37] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[38] 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.[39]

10. In the *2002 Contribution Methodology Order*, the Commission established a 45-day period for carriers to review their FCC Form 499-Q filings.[40] This deadline is necessary to eliminate incentives for contributors to review their revenue projections after the contribution factor is announced for the upcoming quarter (thereby reducing their contribution obligations), and to reduce the likelihood of a Fund shortfall in a given calendar quarter.[41] In light of these regulatory policies, we do not routinely grant waivers of the 45-day revision deadline.[42]

11. In the limited circumstances presented here, however, we find that equity and hardship considerations weigh in favor of granting MetOcean's request for waiver of the FCC Form 499-Q revision deadline. MetOcean states that the revenue reporting error it made on the August 2022 Form 499-Q, to wit, reporting its total telecommunications revenue (including from calls that originate and terminate outside of the U.S.), rather than reporting its total U.S. telecommunications revenue, was an unintentional ministerial error that resulted in invoices for the relevant quarter that were many magnitudes higher than they should have been.[43] MetOcean states that requiring it to pay the invoices would create a "crushing financial burden" and would leave MetOcean in "a precarious financial position."[44]

12. MetOcean states that it did not learn of its error until after USAC sent an invoice, which occurred after the 45-day revision deadline had passed.[45] Generally, simple negligence by a filer is "insufficiently unique" to warrant waiver of a filing deadline.[46] However, the circumstances presented here are sufficiently unique to warrant a waiver of the filing deadline despite the professed negligence on the part of MetOcean. While MetOcean states that it was not aware of the deadline to revise its Form

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[36] 47 CFR § 1.3.

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

[38] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

[39] *Northeast Cellular*, 897 F.2d at 1166.

[40] *2002 Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36.

[41] *Id.*

[42] *See Universal Service Contribution Methodology; Aventure Communications Technology, LLC Request for Review of USAC 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, 10098, para. 7 (WCB 2008).

[43] Specifically, MetOcean states that its clerical error would result in a quarterly contribution more than 130 times the contribution it would owe based on revenues it reports on its corrected FCC Form 499-Q. *Id.* at 6.

[44] *Id*. at 6–7.

[45] *Id*. at 6.

[46] *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, 10864, para. 7 (WCB 2010) ("It is the responsibility of contributors to familiarize themselves with any applicable regulations and to ensure that filings are received by the deadline. As such, and in accordance with federal law, simple negligence on the part of a filer is insufficiently unique to justify waiver of the deadlines for revising FCC Forms 499.").

499-Q until after it received an invoice, the large amount owed due to the error on the original form outweighs the requirement that contributors be aware of filing deadlines. As such, we find that it is in the public interest to waive the revision deadline for the Form 499-Q.

13. We also find good cause to waive the Commission's red light rule to grant MetOcean's request for a waiver of the 45-day filing deadline in these limited circumstances. MetOcean's error would require it to pay a contribution amount 130 times greater than the contribution assessment based on correctly reported revenues, resulting in extreme financial hardship for MetOcean. Under these unique circumstances – the ministerial nature of MetOcean's mistake, the extreme disparity between the amount MetOcean would owe based on its August 2022 FCC Form 499-Q and the amount it would owe based on its revised FCC Form 499-Q, and the significant financial hardship MetOcean would experience if required to pay the original contribution amounts – we find that waiving the red light rule in this limited circumstance is consistent with the policy considerations underlying the red light rule.[47] Based on these facts, we conclude that strict enforcement of the red light rule and the 45-day revision filing deadline would disproportionately penalize MetOcean and moreover, would not promote the overall policies of the USF program or serve the public interest.

14. In summary, given the magnitude of the consequences of the error, we find that good cause exists to waive the red light rule and the filing deadline for the revised August 2022 FCC Form 499-Q. MetOcean's request to waive all accrued interest and penalties associated with its original Form 499-Q filing is moot because we waive the revision deadline and allow USAC to process MetOcean's revised Form 499-Q. We direct USAC to accept the revised filing as if timely filed in August 2022 and to process it accordingly, and to assess interest and penalties on the revised contribution amount owed as appropriate due to MetOcean's delay in payment.

IV. ORDERING CLAUSES

15. 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 and 254, and sections 0.11, 0.91, 0.231, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.11, 0.91, 0.231, 0.291, 1.3 and 54.722(a), the Petition for Waiver filed by MetOcean Telematics, Ltd. is GRANTED.

16. IT IS FURTHER 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 and 254, and sections 0.11, 0.91, 0.231, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.11, 0.91, 0.231, 0.291, 1.3, 54.722(a), section 1.1910 of the Commission's rules, 47 CFR § 1.1910, is WAIVED to the limited extent provided herein.

[47] *See Metropolitan Nashville Public Schools Nashville, TN,* Order, DA 18-1283, 2018 WL 6722648 (WCB and OMD, Dec. 20, 2018) (*Metropolitan Nashville*). In *Metropolitan Nashville*, USAC dismissed an applicant's funding application for over $3,600,000 in E-Rate support because the applicant was on red light for a $1,500 debt. The Commission granted a limited waiver of the red light rule to permit the dismissed funding application to be reinstated and processed, finding good cause to waive the red light rule because, among other factors, there was a "grossly disproportionate disparity between the amount owed and the amount of funding dismissed as a result of the delinquent debt." The Commission cautioned however that it was unlikely the waiver would have been granted in less extreme circumstances and we reiterate that caution here. *Id*. at *5.

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

FEDERAL COMMUNICATIONS COMMISSION

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