

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

In the Matter of)
)
Request for Review by Atlantic Digital, Inc., of)
Decision of Universal Service Administrator) CC Docket No. 96-45

ORDER

Adopted: March 1, 2005

Released: March 1, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order we deny Atlantic Digital, Inc.’s (Atlantic Digital) appeal of an Administrator’s Decision issued by the Universal Service Administration Company (USAC or Administrator) assessing late fees on two of its filings.¹

2. On December 20, 2002, Atlantic Digital filed a letter with USAC requesting waiver of two late filing fees and associated payments, totaling \$220.03.² Atlantic Digital requested that USAC waive the late filing fees and late payment fees because it has historically filed its FCC Form 499s on a timely basis.³ On March 7, 2003, USAC denied Atlantic Digital’s waiver request.⁴ USAC explained that filing fees in the amount of \$100 were assessed due to the late filing of two revenue reporting forms for a total of \$200.⁵ Specifically, FCC Form 499-Q, due on February 1, 2002, was not received by USAC until February 12, 2002.⁶ In addition, FCC Form 499-A, due on April 1, 2002, was not received by USAC until April 12, 2002.⁷ Atlantic Digital was also required to pay late payment fees in the amount of \$20.03.⁸ On May 6, 2003, Atlantic Digital filed an appeal of the Administrator’s Decision with the

¹ See Letter from Indira Rabindranatham, Controller, Atlantic Digital, Inc., to Federal Communications Commission (filed May 6, 2003) (*Atlantic Digital Appeal*).

² See *id.* (attaching letter from Universal Service Administrative Company, to Indira Rabindranatham, Atlantic Digital, Inc. (dated March 7, 2003) (*Administrator’s Decision*)).

³ *Id.*

⁴ See *Administrator’s Decision* at 3.

⁵ *Id.* at 1

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 1. According to recent USAC records, Atlantic Digital paid its late filing fees and all associated late payment fees in March 2003, after USAC denied its appeal.

Federal Communications Commission (Commission).⁹

II. DISCUSSION

3. We deny Atlantic Digital's appeal. As an initial matter, we note that a carrier's timely filing of FCC Forms 499-Q and 499-A is an essential administrative requirement that serves the public interest.¹⁰ The Commission uses this information to calculate the contribution factor each quarter. If all carriers routinely filed these forms late, USAC could not include those carriers' projected collected revenues in its filing. As a result, USAC's total carrier projected revenues would be artificially low, which would result in a higher than necessary contribution factor. Ultimately, consumers would be charged more than necessary in universal service charges. This is an unacceptable result. One way to ensure that carriers file these important forms on a timely basis is for USAC to impose late filing fees. In addition, these fees must be sufficiently high to deter this harmful conduct.

4. In its appeal, Atlantic Digital contends that the documents accompanying the FCC Form 499s did not indicate that there would be a late penalty of \$100.00 per month. Thus, Atlantic Digital contends that it did not have proper notice of the penalty.¹¹ We disagree. The Commission's rules state that the Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's failure to file the Telecommunications Reporting Worksheet or late payment of contributions.¹² We therefore find that contributors had adequate notice of the possibility of late fees connected to the tardy filing of forms 499 and related worksheets.

5. Atlantic Digital also contends that because the filing instructions stated that "the form must be submitted to the Data Collection Agency by the due date" its forms were properly filed because its forms were sent, although not received, by the due date.¹³ Atlantic Digital also notes that after the April 2002 filing deadline, the instructions were changed to state that "the form must be received by the agent by the due date."¹⁴ Atlantic Digital has failed to demonstrate that "submitted to" is synonymous with "postmarked by." Moreover, we note that the Commission's rules clearly provide that, unless otherwise provided, documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.¹⁵ That rule was in effect in April 2002. We reiterate that the applicable filing instructions indicated when and where to file.¹⁶ Specifically, the table of filing schedules explains

⁹ See *Atlantic Digital Appeal* at 1. On July 29, 2004, the Telecommunications Access Policy Division (Division) informed Atlantic Digital that its appeal did not comply with the Commission's rules. See Letter from Cathy Carpino, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, to Indira Rabindranatham, Controller, Atlantic Digital, Inc. (dated July 29, 2004) (*July 29, 2004 Letter*). Specifically, Atlantic Digital failed to file an affidavit supporting its appeal. See 47 C.F.R. § 54.721(b)(2). In addition, there is no indication that Atlantic Digital served a copy of the request for review upon the Administrator. See 47 C.F.R. § 54.721(c). See also 47 C.F.R. § 1.47. Thus, the Division requested that Atlantic Digital file an amended appeal that fully conforms to the Commission's rules by August 12, 2004. See *July 29, 2004 Letter* at 1. An amended appeal would relate back to the date of the original filing. The Commission has not received an amended appeal from Atlantic Digital.

¹⁰ See 47 C.F.R. § 54.709(a)(3).

¹¹ *Atlantic Digital Appeal* at 1.

¹² See 47 C.F.R. § 54.713. Thus, the Commission has given USAC the authority to assess late filing fees.

¹³ *Atlantic Digital Appeal* at 1.

¹⁴ *Id.*

¹⁵ See 47 C.F.R. § 1.7.

¹⁶ See Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-Q, at 7 (dated March 2001).

that the February 1 FCC Form 499-Q filing should be filed February 1 at the office of the Data Collection Agent.¹⁷ Similarly, the schedule states that the completed FCC Form 499-A should be filed April 1 at the office of the Data Collection Agent.¹⁸ Furthermore, the timely filing of FCC Forms 499-Q and 499-A is essential so that USAC can, in turn, meet its deadline for making filings with the Commission.

6. We also note that Atlantic Digital's appeal is procedurally defective on several counts. Specifically, Atlantic Digital failed to support its factual assertions with an affidavit signed by an officer of the appellant or other knowledgeable individual.¹⁹ In addition, there is no indication that Atlantic Digital served the Administrator with a copy of its appeal, as required by the Commission's rules.²⁰ Although we deny Atlantic Digital's request on its merits, denial on procedural grounds would also be justified, and contributors should be on notice that we may deny future appeals based on procedural defects in their pleadings before the Commission.

III. PROCEDURAL ISSUES

7. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

8. *Congressional Review Act.* The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151, 154(i), 154(j) and 254, and authority delegated by section 0.91 and 0.291 of the Commission's Rules. 47 C.F.R. §§ 0.91, 0.291, the appeal filed by Atlantic Digital, Inc., is hereby DENIED.

By Order of the Bureau,

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See* 47 C.F.R. § 54.721(c); *July 29, 2004 Letter* at 1.

²⁰ *See* 47 C.F.R. §§ 1.49, 54.721(b)(2). The Division also noted that the appeal failed to comply with section 54.721(a) of the Commission's rules, requiring a particular format for captions for requests for review. *See* 47 C.F.R. § 54.721(a); *July 29, 2004 Letter* at 1.