

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

In the matter of
Federal-State Joint Board on Universal Service
Request for Review by
WorldxChange Corp. of
Action by Universal Service Administrator
CC Docket No. 96-45

ORDER

Adopted: March 16, 2007

Released: March 16, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we deny the request for review of a decision taken by the Universal Service Administrative Company (USAC or the Administrator) filed by WorldxChange Corp. (WorldxChange). WorldxChange requests that the Commission waive the 45-day filing deadline for the revised August 2003 FCC Form 499-Q and waive all late payments fees associated with its contribution obligation stemming from the incorrect original August 2003 FCC Form 499-Q.

2. WorldxChange states that it filed annual, instead of quarterly, revenues on its August 2003 FCC Form 499-Q. WorldxChange attempted to file a revised FCC Form 499-Q but missed the 45-day revision window. USAC rejected the late-filed revised form, determined WorldxChange's contribution obligation based on the original filing, and issued invoices in October, November, and December 2003. On January 23, 2004, WorldxChange filed a Letter of Appeal with USAC requesting that USAC waive the 45-day filing deadline for revisions and accept its revised form, or in the alternative, reject the original filed form and recalculate its contribution obligation by estimating the contributor's revenues. WorldxChange also requested that USAC waive all late payment fees associated with its

1 WorldxChange's Request for Review of Decision of Universal Service Administrator, CC Docket No. 96-45 (filed Nov. 18, 2004) (Request for Review). Later, WorldxChange filed an affidavit supporting its Request for Review, as required by our rules. Letter from John B. Mirsky, Counsel for WorldxChange, to Marlene H. Dortch, Federal Communications Commission (filed Feb. 7, 2006) (Ex Parte Letter); 47 C.F.R. 54.721(b)(2). After filing its Request for Review, WorldxChange sold its telecommunications business to Acceris Management and Acquisition LLC. See Ex Parte Letter.

2 Request for Review at 2.

3 Id. WorldxChange states that the revision was dated September 30, 2003; USAC reports that the form was filed on October 9, 2003. Id. at 3 and Exhibit D at 2 (Administrator's Decision on Contributor Appeal).

4 Request for Review at 2-3.

5 Id. at Exhibit C at 1 (Letter of Appeal to USAC).

contribution obligation for this period.<sup>6</sup> USAC denied the appeal because the revision was late-filed, confirmed that WorldxChange's contribution obligation had subsequently been trued-up through the annual reconciliation process, and denied WorldxChange's request to waive late fees.<sup>7</sup> On January 25, 2005, WorldxChange appealed the Administrator's decision to the Commission.<sup>8</sup> Because the contributor's obligations have since been trued-up, the only remaining issue is WorldxChange's request to waive the late fees assessed. The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider such requests for review of decisions by the Administrator.<sup>9</sup>

3. Contributors to the Commission's universal service mechanisms must submit to USAC quarterly Telecommunications Reporting Worksheets (FCC Form 499-Q), reporting their projected interstate and international telecommunications revenue information.<sup>10</sup> Beginning in 2003, filers have had the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.<sup>11</sup> USAC uses this revenue information to bill the filer for the subsequent quarter.<sup>12</sup> USAC assesses a late payment fee on contributions not paid in full by their due date.<sup>13</sup> In addition, all filers must submit an annual Telecommunications Reporting Worksheet (FCC Form 499-A), which contains the filer's actual revenues from the previous calendar year. If filers under- or overestimated their revenue information on the FCC Form 499-Q and have paid too little or too much, the FCC Form 499-A is used to true-up universal service billings and payments.<sup>14</sup>

## II. DISCUSSION

4. We deny WorldxChange's request to waive late payment fees. We note that WorldxChange's request to waive the 45-day window for filing revisions to the FCC Form 499-Q is a request, in the alternative, to waive late payment fees.<sup>15</sup> WorldxChange argues that good cause exists to waive the late payment fees.<sup>16</sup>

5. We find, however, that WorldxChange failed to show good cause why the Bureau should waive the late payment fees. WorldxChange merely states that it erred when it filed annual revenues

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<sup>6</sup> Request for Review at 1.

<sup>7</sup> Administrator's Decision on Contributor Appeal at 3.

<sup>8</sup> Request for Review.

<sup>9</sup> 47 C.F.R. § 54.722(a).

<sup>10</sup> 47 C.F.R. § 54.709.

<sup>11</sup> *Interim Contribution Methodology Order*, 17 FCC Rcd. at 24972, para. 36.

<sup>12</sup> *Interim Contribution Methodology Order*, 17 FCC Rcd at 24969, para. 29.

<sup>13</sup> See 47 C.F.R. § 54.713. Late payment fees are calculated based on the number of days late, the amount of the outstanding balance, and an annual rate of 8%. See <http://www.universalservice.org/fund-administration/contributors/paying-your-invoice/late-payment-fees.aspx>.

<sup>14</sup> *Interim Contribution Methodology Order*, 17 FCC Rcd. at 24972, para. 36.

<sup>15</sup> See Request for Review at 4. Additionally, WorldxChange states that the annual true-up process eliminated all liability except late fees associated with the October, November, and December 2003 invoices. *Id.* at 6.

<sup>16</sup> Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown." 47 C.F.R. § 1.3. Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*). The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio*, 418 F.2d at 1159.

instead of quarterly, on the FCC Form 499-Q.<sup>17</sup> We note that this form, like the FCC Form 499-A, requires an officer of the reporting entity to certify that the information contained therein is accurate and that the revenue projections represent a good-faith estimate.<sup>18</sup> WorldxChange offers no explanation why its officer was unable to notice on this one-page form that the company overstated its quarterly projected interstate revenues by \$66 million.<sup>19</sup>

6. Despite WorldxChange's position that the late payment fees at issue are inequitable, present a financial hardship, divert its resources, and are inconsistent with the policy behind allowing a 45-day revision window,<sup>20</sup> we find the fees appropriate. First, a contributor's timely payment of its contribution obligation is an essential administrative requirement that serves the public interest.<sup>21</sup> Late payment fees, appropriately set, encourage contributors to pay on a timely basis.<sup>22</sup> Additionally, USAC determines the amount of the late payment fee based on a formula, regardless of contributor. USAC calculates late payment fees based on the number of days late, the amount of the outstanding balance, and an annual rate of 8%.<sup>23</sup> Thus, we find the late payment fees themselves are not inequitable. Further, we find the payment of these fees is not a diversion of resources. Nor are we convinced that the late payment fees present a financial hardship to the contributor.<sup>24</sup>

7. WorldxChange also argues that waiving the 45-day revision deadline would not frustrate the purpose of the revision window.<sup>25</sup> Like timely payment, however, a contributor's timely filing of FCC Forms 499-Q, including any revision, is an essential administrative requirement that serves the public interest.<sup>26</sup> Using the filed data, USAC determines the projected collected interstate and international revenues for the industry. The Commission then calculates the contribution factor each quarter based on the projected collected revenue. Moreover, it is essential that the FCC Forms 499-Q and 499-A be filed in a timely manner so that USAC can meet its filing deadline with the Commission.<sup>27</sup>

### III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, 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 pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that WorldxChange Corp.'s Request for Review IS DENIED.

9. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91,

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<sup>17</sup> Request for Review at 5.

<sup>18</sup> See 47 C.F.R. § 54.711(a).

<sup>19</sup> According to WorldxChange, it reported quarterly projected interstate revenues of almost \$86.5 million, when in fact its quarterly interstate revenue was approximately \$20 million at the time. Request for Review at 2, 5.

<sup>20</sup> Request for Review at 4.

<sup>21</sup> See 47 C.F.R. §§ 54.709(b) and (c), 54.713.

<sup>22</sup> See 47 C.F.R. § 54.713.

<sup>23</sup> See n.13 *supra*.

<sup>24</sup> WorldxChange states it had interstate and international telecommunications net revenues of \$91.8 million in 2003 and \$62.3 million in 2004. Request for Review at 6. See letter from USAC to Carol Pomponio, Federal Communications Commission (Mar. 9, 2007) (attached as App. A).

<sup>25</sup> Request for Review at 6.

<sup>26</sup> See 47 C.F.R. § 54.709(a)(3).

<sup>27</sup> See *id.*

0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon  
Acting Deputy Chief  
Wireline Competition Bureau

APPENDIX A



March 9, 2007

Via Electronic Mail

Carol Pomponio, Esq.  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Explanation of Late Payment Fee Calculation for WorldxChange Corp.  
(Filer ID 821378)

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Dear Ms. Pomponio:

This letter is in response to your questions regarding WorldxChange Corp's (WorldxChange) filing of its Telecommunications Revenue Reporting Worksheet (Worksheet) due August 1, 2003, and USAC's assessment of late payment fees for failure to pay in full their invoiced USF contribution obligations. Following is a summary of the events related to the matter.

On July 21, 2003, WorldxChange filed its August 2003 Form 499Q and estimated its projected collected revenue for the fourth quarter of 2003. On September 30, 2003, WorldxChange submitted a revised 499Q, which was not timely filed and, therefore, was rejected. USAC used the 499Q filed on July 21, 2003 to determine WorldxChange's USF contribution obligations for the October, November and December 2003 invoices. WorldxChange failed to timely pay these invoices in full, and, as a result USAC then assessed late payment fees.

On, January 23, 2004, WorldxChange appealed USAC's decision to reject its revised 499Q. USAC denied the appeal on December 21, 2004.

In April of 2004, WorldxChange filed its Form 499-A, and, as a result of the annual reconciliation process, credits were issued to WorldxChange's account in the third quarter of 2004. However, WorldxChange had not paid the late payment fees that accrued while awaiting USAC's decision regarding its appeal, and when WorldxChange's appeal was denied, the company still did not pay the USF contribution obligation in full. As a result, WorldxChange maintained an outstanding balance consisting of the unpaid late payment fees, which continued to accrue late payment fees after the credits had been applied.

USAC maintains a "pay and dispute" policy for contributors who submit appeals. Per USAC's website contributors are instructed that if they maintain an account balance and are awaiting a decision from a pending appeal, they are still responsible for keeping their

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account current.<sup>1</sup> In addition, contributors are informed that if their invoice is not paid in full, late payment fees<sup>2</sup> may be assessed, which will not be waived unless the disputed charges are later found to be the result of an error by USAC.

WorldxChange failed to pay its USF contributions in full and was correctly assessed late payment fees during the period in question, which have not been paid. USAC has completed its review of the late payment fees assessed to the Filer ID listed above.

Sincerely,

*USAC*

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<sup>1</sup> Please see USAC's website at the following location for information on the "pay and dispute" policy: <http://www.universalservice.org/fund-administration/contributors/file-appeal/>

<sup>2</sup> See 47 C.F.R. § 54.713. The Administrator may bill a contributor a separate assessment for the reasonable costs incurred because of a contributors late payment of contributions.