

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

In the Matter of
Federal-State Joint Board on Universal Service
Request for Review by
National Network Communications, Inc.
CC Docket No. 96-45

ORDER

Adopted: April 10, 2007

Released: April 10, 2007

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we dismiss, in part, and deny, in part, the request for review filed by National Network Communications Inc. (National Network). In its request, National Network alleges that it qualifies for de minimis status and, thus, is not subject to universal service contributions. Based on the record, we find that National Network was eligible for the de minimis exemption for the billing period January – December 2002. However, pursuant to the true-up process, the relief sought by National Network for this time period has already been received. We also find that National Network was not eligible for the de minimis exemption for the billing periods January – December 2000 and January – December 2001.

2. Pursuant to the Commission’s rules, if a contributor’s universal service contribution in any given year is less than \$10,000, that contributor is not required to contribute directly to the federal Universal Service Fund (USF or Fund). For the period of time at issue (calendar years 2000 through 2002), the Commission required contributors to file revenue information semi-annually (until May 2001) and then quarterly with an annual filing to true-up the quarterly filings. During this time, contributors’

1 See Letter from Dennis C. Brown, attorney for National Network Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission CC Docket No. 96-45 (filed November 18, 2003) (National Network Request).

2 Letter from Universal Service Administrative Company (USAC) to Belinda Nixon, Attorney, Federal Communications Commission (March 8, 2007) (USAC Letter) (attached as App. A).

3 In its request for review, National Network claims de minimis status for 1999 – 2002. USAC reports that National Network did not report revenue which would have resulted in billings during 1999. See USAC Letter at 1. Thus, we will only address National Network’s claims for the billing periods of 2000-2002.

4 See 47 C.F.R. § 54.708.

5 See, e.g., Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5750, 5752-53, paras. 6 & 12 (2001).

assessments were based on historical gross-billed revenues. The Commission modified its contribution methodology to assess contributors based on their projected collected revenues in 2003.<sup>6</sup>

3. National Network states that it received a demand for payment to the USF in the amount of \$16,994.54 in a letter from the Commission dated September 12, 2003.<sup>7</sup> National Networks further claims that for the years 1999 – 2002, its employees misunderstood the instructions of FCC Forms 499-Q and 499-A, and filed reports with USAC which incorrectly indicated that National Network “had some liability to contribute to the USF.”<sup>8</sup> National Network claims that it is *de minimis* and, thus, not subject to universal service contributions.<sup>9</sup> National Network requests that “the Commission and USAC allow National Network to withdraw its Forms 499 for the period 1999 – 2002 and cancel USAC’s demand for payment to” the Fund.<sup>10</sup> USAC states that based on the revenue reported by National Network during 2000, 2001, and 2002, it did not qualify as *de minimis* for the billing periods January – December 2000 or January – December 2001, however, it did qualify as *de minimis* for the billing period January – December 2002.<sup>11</sup> Further, USAC reports that as a result of the true-up process, in March 2003 credits were posted to National Network’s account reflecting its *de minimis* status for 2002.<sup>12</sup>

## II. DISCUSSION

4. The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider petitions for review of USAC decisions.<sup>13</sup> Section 54.723 of the Commission’s rules specifies that the Bureau shall conduct a *de novo* review.<sup>14</sup>

5. We agree with National Network and USAC, and find that National Network was *de minimis* for the billing period of January 2002 to December 2002. However, because the true-up process has already provided the relief sought,<sup>15</sup> we dismiss National Network’s challenge as moot as to this calendar year. We deny, however, National Network’s request as it pertains to the billing periods of January – December 2000 and January – December 2001 and find that, based on the information that National Network provided to USAC, National Network did not qualify for the Commission’s *de minimis* exemption.

6. National Network asserts that for the years 1999 – 2002, National Network’s annual USF obligation did not exceed \$10,000. National Network provides a chart which purports to calculate the quarterly and annual contribution amounts for the company for 1999 - 2002.<sup>16</sup> However, based on the

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<sup>6</sup> See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24970, para. 29 (2002).

<sup>7</sup> In a prior letter, National Network states, through its attorney, that USAC requested USF payments as early as January 14, 2002. Letter from Dennis C. Brown, attorney for National Network Communications, Inc., to Collections Department, Universal Service Administrative Company CC Docket No. 96-45 (filed March 4, 2002).

<sup>8</sup> National Network Request at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> USAC Letter at 1.

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. §§ 54.719(c) and 54.722(a).

<sup>14</sup> 47 C.F.R. § 54.723.

<sup>15</sup> USAC Letter at 1.

<sup>16</sup> National Network Request at 2.

revenue reported by National Network to USAC, we determine that it qualified for *de minimis* status only for the billing period January – December 2002. Thus, we deny its request for review for the other billing periods. We conclude that National Network had in excess of \$10,000 in USF obligations for calendar years 2000 and 2001.

7. In its request for review, National Network also requests that the Commission permit National Network “to withdraw the Forms 499 which it filed for the period 1999 – 2002.”<sup>17</sup> We interpret that request as National Network essentially asking the Commission for a waiver of its 45-day revision deadline for FCC Form 499-Q filings.<sup>18</sup> In its *Interim Contribution Methodology Order*, the Commission established a 45-day period within which carriers may revise their FCC Forms 499-Q.<sup>19</sup> This deadline is essential in order to eliminate incentives for carriers to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter.<sup>20</sup>

8. National Network fails to show good cause why the Bureau should waive the Commission’s 45-day revision deadline. National Network states that it was not able to “hire and retain the skilled personnel necessary to interpret and correctly apply” the FCC Form 499 instructions. However, National Network makes inconsistent statements with respect to its ability to hire “personnel necessary to interpret” FCC Form 499 instructions. It claims that in March 2002 it hired an attorney to dispute the USF contributions,<sup>21</sup> and yet, in the same document, National Network states that even after that date it “filed at least two subsequent, [ ] Form 499 reports” which it claims it should not have filed. It appears that even after National Network had the ability to “hire and retain” an attorney, it still failed to correctly apply the Form 499 instructions. We find that National Network has failed to show good cause why we should waive the Commission’s 45-day revision deadline.

### III. ORDERING CLAUSE

9. 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, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review as filed by National Network Communications, Inc. IS DISMISSED, IN PART.

10. IT IS FURTHER 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, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91,

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<sup>17</sup> National Network Request at 3.

<sup>18</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.

<sup>19</sup> *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

<sup>20</sup> *Id.* at 24972, para. 36.

<sup>21</sup> National Network Request at 1-2.

0.291, and 54.722(a), that the Request for Review as filed by National Network Communications, Inc. IS DENIED, IN PART.

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

Jeremy D. Marcus  
Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

APPENDIX A



Universal Service Administrative Company

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March 13, 2007

Via Electronic Mail

Belinda Nixon, Esquire  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: *De Minimis* Determination for National Network  
Communications, Inc. (Filer ID 820470)

Dear Ms. Nixon:

This letter is in response to your question regarding whether National Network Communications, Inc. (National Network) met the de minimis standard during 1999 – 2002. Following is a summary of National Network's de minimis status during 2000, 2001 and 2002. National Network did not report revenue which would have resulted in billings during 1999.

Based on revenue reported by National Network it did not qualify as de minimis for the billing periods January through December 2000 or January through December 2001, however it did qualify as de minimis for the billing period January – December 2002. In March 2003, credits were posted reflecting National Network's de minimis status for the January – December 2002 billing period.

USAC has completed its review and determined National Network was de minimis for some but not all of the period 1999 -2002.

Sincerely,

*USAC*