

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

In the Matter of
Federal-State Joint Board on Universal Service
Request for Review by
i-Tel Long Distance a/k/a Impact
Telecommunications, 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 deny the request for review filed by i-Tel Long Distance a/k/a Impact Telecommunications, Inc. (i-Tel) of two Administrator's Decisions on Contributor Appeal. In its request, i-Tel alleges that it qualifies for de minimis status and, thus, is not subject to universal service contributions. Based on the record, we find that i-Tel was not de minimis for the billing periods at issue. For the reasons set forth below, we affirm the Administrator's Decisions.

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 2001 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' 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.

1 See Letter from David C. Holtz, Kajan Mather and Barish, attorneys for i-Tel Communications, Inc., to Office of the Secretary, Federal Communications Commission (filed February 11, 2004) (i-Tel Request).

2 Administrator's Decision on Contributor Appeal, December 30, 2003 (addressing July 2001 - June 2002 billing period) (2001 Administrator's Decision); and Administrator's Decision on Contributor Appeal, December 30, 2003 (addressing 2002 First and Second Quarters billing periods) (2002 Administrator's Decision).

3 See 47 C.F.R. § 54.708.

4 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).

5 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).

3. With respect to the July 2001 through June 2002 billing period, i-Tel timely filed a 2001 FCC Form 499-A, reporting 2000 revenue, on March 26, 2001.⁶ i-Tel did not file subsequent FCC Forms 499-Q reporting quarterly 2001 revenue until January 23, 2003.⁷ The FCC Forms 499-Q had due dates of May 11, 2001, August 1, 2001, November 1, 2001, and February 1, 2002.⁸ The revision of the FCC Forms 499-Q were submitted on January 23, 2003, after the respective revision deadlines.⁹ Thus, USAC denied the forms.¹⁰ i-Tel claims that it was *de minimis* for the 2001 billing period and did not need to contribute to USF.¹¹

4. With respect to the 2002 first and second quarters' billing periods, i-Tel submitted two FCC Forms 499-Q reporting revenue for the periods October through December 2002 and April through June 2002 because, although i-Tel believed its previously filed 2001 FCC Form 499-A demonstrated that it qualified for *de minimis* status, USAC continued to send invoices to i-Tel. i-Tel filed the FCC Forms 499-Q to demonstrate its *de minimis* status. The FCC Forms 499-Q were due on May 1, 2002, and August 1, 2002, respectively. Any revisions to the FCC Forms 499-Q were due by August 1, 2002, and November 1, 2002. USAC received i-Tel's FCC Forms 499-Q on January 23, 2003, after the deadlines. Because i-Tel's FCC Forms 499-Q were untimely filed, USAC denied their appeal.¹² i-Tel claims that it was *de minimis* for the 2002 billing periods at issue and did not need to contribute to USF.¹³

II. DISCUSSION

5. The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider petitions for review of decisions by the Administrator.¹⁴ Section 54.723 of the Commission's rules specifies that the Bureau shall conduct a *de novo* review.¹⁵

6. We deny i-Tel's request for review for the billing periods at issue and find that, based on the information that i-Tel provided to USAC, i-Tel did not qualify for the Commission's *de minimis* exemption. i-Tel asserts that for the billing periods at issue, i-Tel's annual USF obligation did not exceed \$10,000.¹⁶ However, based on the revenue reported by i-Tel to USAC, we determine that it did not qualify for *de minimis* status for the billing periods at issue.¹⁷ Thus, we deny its request for review for the billing periods. We conclude that i-Tel had in excess of \$10,000 in USF obligations for calendar years 2001 and 2002.

⁶ 2001 Administrator's Decision at 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 1-2.

¹¹ i-Tel Request at 2.

¹² 2002 Administrator's Decision at 1-2.

¹³ i-Tel Request at 2.

¹⁴ 47 C.F.R. § 54.722(a).

¹⁵ *Id.* § 54.723.

¹⁶ i-Tel Request at 2. i-Tel provides "amended" FCC Forms 499-A for 2001 and 2002 dated February 6, 2004 which purport to calculate annual contribution amounts for the company for 2001 - 2002.

¹⁷ See Letter from USAC to Belinda Nixon, Federal Communications Commission (March 9, 2007), attached hereto at App. A.

7. In its request for review, i-Tel is essentially asking the Commission for a waiver of its 45-day revision deadline for FCC Form 499-Q filings.¹⁸ As noted in the *Interim Contribution Methodology Order*, the Commission established a 45-day period within which carriers may revise their FCC Forms 499-Q.¹⁹ 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.²⁰ Where i-Tel failed to meet these deadlines, USAC's rejection of the form and use of an estimate for billing purposes was thus appropriate.²¹

8. i-Tel has also failed to show good cause why the Bureau should waive the Commission's 45-day revision deadline. USAC informed i-Tel on numerous occasions prior to April 1, 2003, that it did not qualify for *de minimis* status,²² and, yet, i-Tel continued to miss the deadlines for properly filing FCC Forms 499-Q. Additionally, all of the forms that i-Tel did file demonstrate that it did not qualify for *de minimis* status for the billing periods at issue. We find that i-Tel has failed to show good cause why we should waive the Commission's 45-day revision deadline.

9. Further, i-Tel's request for review is procedurally defective. Specifically, i-Tel failed to support its factual assertions with an affidavit signed by an officer of the company or other knowledgeable individual.²³ In addition, it did not indicate that it had served USAC with a copy of its appeal, as required by Commission's rules.²⁴ Although we deny i-Tel's request on its merits, we could also deny it on procedural grounds. Contributors are on notice that we may deny future appeals for procedural defects.

III. ORDERING CLAUSE

10. 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 i-Tel Long Distance, Inc. a/k/a Impact Telecommunications, Inc. IS DENIED.

¹⁸ 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.

¹⁹ *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*).

²⁰ *Interim Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36

²¹ 47 C.F.R. § 54.709(d).

²² 2001 Administrator's Decision at 2.

²³ See 47 C.F.R. § 54.721(c). By letter, we advised i-Tel that its request was procedurally defective and requested that it file an amended appeal. See letter from Cathy Carpino, Federal Communications Commission, to Todd Borth, President, i-Tel (July 13, 2005). The letter also advised that the request for review was not formatted properly. *Id.*; see 47 C.F.R. § 54.721(a). i-Tel did not respond to our request.

²⁴ See 47 C.F.R. §§ 1.49, 54.721(b)(2).

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

March 9, 2007

VIA Electronic Mail

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

Re: Status of 2002 Annual Revenue Reconciliation for i-Tel Long Distance a/k/a Impact Telecommunications, Inc. (Filer ID 815630)

Dear Ms. Nixon:

This letter is in response to your request for confirmation of whether USAC has performed the annual reconciliation process, as referenced in the two *Administrator's Decision on Contributor Appeals* (Appeal Decisions), issued to i-Tel Long Distance a/k/a Impact Telecommunications, Inc. (i-Tel) on December 30, 2004. USAC has completed this process. Following is a summary of the events related to both matters.

July 2001 – June 2002 Billings and Corresponding Reconciliation Process

Universal service charges for the period July 2001 – June 2002 were required to be based on revenue as reported on FCC Form 499s (Worksheets). The forms had dues dates of May 11, 2001, August 1, 2001, November 1, 2001 and February 1, 2002, and revision deadlines of August, 1, 2001, November 1, 2001, February 1, 2002, and May 1, 2002, respectively.

i-Tel timely filed a 2001 Form 499-A, reporting 2000 revenue, on March 26, 2001 but did not file the subsequent Worksheets until January 23, 2003. Because USAC had not received timely Worksheets, pursuant to FCC rules,¹ USAC used information previously reported by i-Tel on its 2001 FCC Form 499-A to estimate revenue for the Worksheets i-Tel did not timely file, and USAC estimated i-Tel's universal service charges for July 2001 – June 2002 using this information.

i-Tel filed its 2002 Form 499-A, reporting 2001 revenue, on April 2, 2002. The annual reconciliation process compares and reconciles annual revenue reported on Form 499-A with revenue reported on previously filed forms. The 2002 Form 499-A reporting annual 2001 revenue reconciled the quarterly revenue reported on the Worksheets and the

¹ 47 C.F.R. § 54.709(d).

Belinda Nixon, Esq.
Federal Communications Commission
March 9, 2007
Page 2

corresponding charges, which had posted July 2001 – June 2002. Credits resulting from the annual reconciliation posted to i-Tel's account in July, August, and September 2002. USAC has completed the 2001 annual revenue reconciliation for the Filer ID listed above.

First Quarter and Second Quarter 2002 Billings and Corresponding Reconciliation Process

On January 23, 2003, i-Tel filed its May and August 2002 FCC Form 499Qs reporting historical first quarter and second quarter 2002 revenue. These Worksheets had due dates of May 1, 2002 and August 1, 2002, respectively, and revision deadlines of August 1, 2002 and November 1, 2002, respectively. On February 20, 2003, USAC rejected the Worksheets as untimely because the May and August Worksheets were received on January 23, 2003, after the due dates and the revision deadlines. On March 31, 2003, i-Tel appealed the rejection of the Worksheets, and, on December 30, 2003, USAC issued an *Administrator's Decision on Contributor Appeal* denying i-Tel's appeal.

USAC estimated i-Tel's first and second quarter 2002 historical revenues and based billing calculations for the months of July, August, September, October, November and December 2002 on those estimates because USAC had not received i-Tel's May and August Worksheets by the due dates of May 1, 2002 and August 1, 2002. No charges were applied because the estimated revenue was found to be de minimis.

The annual reconciliation process compares and reconciles annual revenue reported on Form 499-A, with quarterly revenue reported on previously filed Form 499Qs. The 2003 Form 499-A reporting annual 2002 revenue reconciled the billings based on quarterly revenue reported on Form 499Qs, including the first and second quarter 2002 revenue as reported on the May and August Worksheets.

i-Tel filed a 2003 Form 499-A reporting 2002 annual revenue on April 1, 2003. The annual reconciliation process resulted in a non-de minimis status for the carrier. The reconciliation resulted in additional billings of \$26,434.91 because i-Tel had not been billed during any of the quarters associated with this annual filing. During our review of this account, USAC determined that adjustments applied in July, August, and September 2003 were not accurate. Currently, the account reflects credits of \$9,563.27, which will be reversed so that the accurate adjustment amount can be applied.

Sincerely,

USAC