

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

In the Matter of)	
)	
Requests for Review of Decisions of the Universal Service Administrator by)	
)	
Berkmont Communications Corporation <i>et al.</i>)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45

ORDER

Adopted: December 12, 2007

Released: December 12, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant 10 requests for reversal of late fees associated with the filing of the FCC Form 499-A for 2007.¹ We find that good cause exists to grant the requests, as more fully discussed below. We further direct the Universal Service Administrative Company (USAC) and the other plan administrators to reverse any late payment fees that have been assessed on the applicants listed in the attached Appendix.

II. BACKGROUND

2. In 1999, the Commission established one consolidated data collection worksheet to be used to provide data necessary to determine carrier contribution amounts to finance the Telecommunications Relay Services Fund (TRS), the North American Numbering Plan (NANP), the universal service fund (USF), and local number portability (LNP).² Contributors to these programs

¹ Letter from Raymond Kadings, Berkmont Communications Corporation, to Federal Communications Commission, dated Oct. 18, 2007 (*Berkmont Letter*); Letter from C. Richard Bruning, Bruning Enterprises, Inc. (QuickShop), to Universal Service Administrative Company, dated Nov. 19, 2007 (*QuickShop Letter*); Letter from Cherie Chen, China Unicom USA Corporation, Federal Communications Commission, dated Aug. 10, 2007 (*China Unicom Letter*); Letter from Shirley Sabol, Eagle Communications, to Universal Service Administrative Company, dated Aug. 21, 2007 (*Eagle Communications Letter*); Letter from Marty Essen, Essen Communications Corporation, to Federal Communications Commission, dated June 26, 2007 (*Essen Letter*); Letter from Barbara Dease, Metro Telecommunications of America, Inc., to Federal Communications Commission, dated August 23, 2007 (*Metro Telecommunications Letter*); Letter from Robert E. Newhall, NR Recording and Communications, Inc., to Federal Communications Commission, dated August 10, 2007 (*NR Recording Letter*); Letter from Robert S. Edgerton, to Federal Communications Commission, dated July 23, 2007 (*Edgerton Letter*); Letter from Charles Swetland, Jr., Swetland Internet, Inc., to Federal Communications Commission, dated Sep. 20, 2007 (*Swetland Letter*); Letter from Jack Dunn, The Phone Company, to Federal Communications Commission, dated Oct. 26, 2007 (*The Phone Company Letter*) (collectively Petitioners). A full list of Petitioners is contained in Appendix A, attached hereto.

² *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, 14 FCC Rcd 16602 (1999). Prior to the adoption of the consolidated worksheet, telecommunications carriers and certain telecommunications service providers complied with separate reporting requirements for their contributions to TRS, USF, NANP, and LNP.

submit an annual Telecommunications Reporting Worksheet (FCC Form 499-A), which contains the filer's actual revenues from the previous calendar year.³ The FCC Form 499-A is due each year generally on the first business day of April. The Commission and USAC provide electronic copies of the FCC Form 499-A on their respective websites, and, as a courtesy, USAC annually mails each registered filer a hard copy of the Form prior to the filing deadline.⁴ Once filed, USAC then provides the administrators of TRS, NANP, and LNP with revenue data so those administrators can determine the contribution obligation of each filer for the various programs.

3. Over the years the Commission has made various revisions to the FCC Form 499-A, which required Office of Management and Budget (OMB) approval.⁵ In 2006, the Commission revised the rules for the universal service fund to require, among other things, interconnected Voice over Internet Protocol (VoIP) providers to contribute.⁶ In seeking approval for the extension of the FCC Form 499 information collection, OMB provided a six-month emergency authorization to the Commission so that the changes made in the *2006 Interim Contribution Methodology Order* could take effect in the timeframe the Commission sought.⁷ Upon expiration of the emergency approval, the Commission sought continued OMB approval for this information collection, which it received on March 19, 2007.⁸ USAC and the Commission posted the FCC Form 499-A on their respective websites that day and the Commission released a public notice announcing the approval.⁹ On March 30, 2007, USAC e-mailed, where possible, and otherwise sent by registered mail its courtesy FCC Form 499-A mailing to registered filers. The deadline for filing the 2007 FCC Form 499-A was April 2, 2007.¹⁰

4. Petitioners allege that late receipt of the FCC Form 499-A from USAC resulted in their late filing and that, therefore, we should waive the filing deadline for purposes of the assessment of late filing fees. For example, Swetland Internet states that it received the FCC Form 499-A from USAC on the day it was due.¹¹ Based on Petitioners' receipt of the FCC Form 499-A in close proximity to the filing deadline, their assertions of past compliance with filing deadlines, and the fact that they each filed their forms shortly after the deadline, Petitioners seek reversal of the late filing fees.¹²

³ *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, 24969, para. 29 (2002).

⁴ The FCC Form 499-A is available at either the Commission's website, <http://www.fcc.gov/formpage.html>, or at USAC's website, <http://www.usac.org/fund-administration/contributors/revenue-reporting/default.aspx>.

⁵ Paperwork Reduction Act of 1995, PL 104-13, 109 Stat 163.

⁶ See *Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

⁷ See *Wireline Competition Bureau Streamlines reporting requirements for Interconnected VoIP Providers and Announces OMB Approval of New FCC Forms 499-A and 499-Q*, Public Notice, 21 FCC Rcd 8623 (2006). Adoption of this order resulted in USF contribution obligations being extended to interconnected VoIP providers. These entities contribute to the fund based on the use of a 64.9% safe harbor, traffic studies, or actual interstate and international end-user revenues. See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd 7518.

⁸ See *Wireline Competition Bureau Announces OMB Approval of the 2007 FCC Form 499-A*, Public Notice, 22 FCC Rcd 5356 (rel. Mar. 19, 2007).

⁹ *Id.*

¹⁰ See Telecommunications Reporting Worksheet, FCC Form 499-A (2007).

¹¹ See *Swetland Letter* at 1.

¹² See e.g., *China Unicom Letter* at 1; *Edgerton Letter* at 1.

III. DISCUSSION

5. We find that good cause exists to waive the April 2, 2007, filing deadline for Petitioners.¹³ As noted above, the Commission received OMB approval on March 19, 2007, which left filers less than 14 days to submit their FCC Form 499-A to USAC. We recognize that this small window of time may have caused hardship to Petitioners by providing them with a short timeframe to review the revised instructions and complete the revised form. In addition, USAC did not mail its courtesy notification until March 30, which Petitioners assert created confusion for them. Finally, all of the Petitioners filed their FCC Form 499-A within two weeks of the filing deadline.¹⁴ We therefore find that strict enforcement of the filing deadline would unfairly penalize Petitioners and further find that it is in the public interest to waive the filing deadline for the 2007 FCC Form 499-A for the 10 filers listed in the Appendix. We direct the TRS, LNP, USF, and NANP plan administrators to reverse any late fees associated with these entities' late filing of the FCC Form 499-A.

6. We also take this opportunity to remind all filers of the FCC Form 499-A that the filing deadline is the generally the first business day of April. The Commission's form announces the specific date.¹⁵ We also remind filers that filing can be made electronically through USAC's website and that FCC Form 499-A can be submitted in advance of the filing deadline.¹⁶ We caution filers that the submission of the form is considered timely based upon USAC's receipt of the form and not the postmark.¹⁷

7. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that revenues are accurately reported by contributors.¹⁸ Although we grant the requests addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the universal service contribution requirements. Because audits and investigations may provide information showing that a contributor failed to comply with the statute or Commission rules, such proceedings can reveal instances in which interstate and international end-user revenues were improperly reported or reported in a manner inconsistent with the Commission's requirements. To the extent we find that revenues were not properly reported, we will require USAC to recover such revenues through its normal process. We emphasize that we retain the discretion to evaluate

¹³ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. Although certain Petitioners have requested the Bureau review the decision of the Administrator under section 54.723 of the Commission's rules, we find the appropriate procedural relief is to waive the filing deadline. 47 C.F.R. §§1.3, 54.722(a); see also *Federal-State Joint Board on Universal Service, Sagebrush Cellular, Inc., Petition for Waiver of Filing Deadline in 47 C.F.R. Sections 54.307(d), 54.314(a) and 54.904(d)*, Order, 22 FCC Rcd 15139 (Aug. 13, 2007) (Action in which the Bureau waived a filing deadline).

¹⁴ See Appendix A.

¹⁵ See e.g., Telecommunications Reporting Worksheet, FCC Form 499-A (2007) at <http://www.usac.org/fund-administration/forms/>

¹⁶ See <http://www.usac.org/fund-administration/forms/>.

¹⁷ *Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 20 FCC Rcd 4224, 4225-26, paras. 3, 5 (2005).

¹⁸ See *AT&T Corp. Petition for Declaratory Ruling regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services*, WC Docket No. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 2846 (2005).

the reporting of revenues for universal service contribution and to determine on a case-by-case basis that waste, fraud, or abuse of occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

IV. 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 the 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), the request for refund of late filing fees for filers listed in the Appendix ARE GRANTED.

9. 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 the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the TRS, LNP, USF, and NANP PLAN ADMINISTRATORS SHALL REVERSE the late fees charged to the filers listed in the Appendix.

10. IT IS FURTHER ORDERED that, pursuant to the authority delegated in sections 0.91, 0.291, and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief
Wireline Competition Bureau

APPENDIX A

Company Name	Filer ID	Actual Filing Date of 2007 499-A	Date Request Filed
Berkmont Communications Corporation	808832	April 9, 2007	Sept. 11, 2007
Bruning Enterprises, Inc (QuickShop)	809802	April 5, 2007	Nov. 19, 2007
China Unicom USA Corporation	824402	April 5, 2007	Aug. 10, 2007
Eagle Communications, Inc.	820050	April 16, 2007	Aug. 21, 2007
Essen Communications	819516	April 16, 2007	June 26, 2007
Metro TeleCommunications of America, Inc.	811634	April 4, 2007	Aug. 23, 2007
NR Recording & Communications, Inc.	812555	April 16, 2007	July 31, 2007
Robert Edgerton	812954	April 6, 2007	July 23, 2007
Swetland Internet, Inc.	824776	April 6, 2007	Sept. 20, 2007
The Phone Company	811873	April 12, 2007	Oct. 26, 2007