

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

In the Matter of
Universal Service Contribution Methodology
Request for Review by
Waterway Communication System, LLC and
Mobex Network Services, LLC of a
Decision of the Universal Service Administrator
WC Docket No. 06-122

ORDER

Adopted: August 26, 2008

Released: August 26, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request for review filed by Maritime Communications/Land Mobile, LLC (Maritime) on behalf of Waterway Communication System, LLC (Watercom) and Mobex Network Services, LLC (Mobex). Maritime seeks review of the Universal Service Administrative Company's (USAC) decision denying Watercom's and Mobex's request for refund of \$1,301,230 in universal service fund (USF) contributions. Maritime asserts that the Commission's rules do not require maritime radio service providers to contribute to the USF and that USAC should, therefore, refund the monies Watercom and Mobex previously paid into the USF. As discussed below, Maritime's interpretation of the Commission's requirements is incorrect and we deny its request for review.

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.

3. In the Universal Service First Report and Order, the Commission established the criteria for mandatory contributors to universal service. Specifically, the Commission determined that mandatory

1 Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of Decision of Universal Service Administrator, CC Docket No. 96-45 (filed Jan. 9, 2007) (Maritime Request for Review). Maritime is the successor in interest of Watercom and Mobex. Id. at 1.

2 Id. at 2.

3 Id.

4 47 U.S.C. § 254(d).

5 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797, para. 777 (1997) (Universal Service First Report and Order), as corrected by Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), aff'd in part, rev'd in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999), cert. denied,

contributors under section 254(d) of the Act would meet the following three criteria: (1) a telecommunications carrier must offer “interstate” “telecommunications;” (2) those interstate telecommunications must be offered “for a fee;” and (3) those interstate telecommunications must be offered “directly to the public, or to such classes of users as to be effectively available to the public.”⁶ The Commission determined that only telecommunications carriers should be considered mandatory contributors to the universal service support mechanism.⁷ The Commission also used its permissive authority to establish universal service contribution requirements for private network operators that lease excess capacity on a non-common carrier basis.⁸ The Commission explained that these private network operators, which are not common carriers, should be classified as “other providers of interstate telecommunications.”⁹ The Commission determined that the public interest requires private network operators, as providers of interstate telecommunications, to contribute to the universal service fund because these providers compete against telecommunications carriers in the provision of interstate telecommunications.¹⁰ The Commission also directed that contributions should be based on contributors’ interstate and international end-user telecommunications revenues.¹¹

4. Section 332(d) of the Act defines “commercial mobile radio service” (CMRS) as “any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available to (A) the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.”¹² In the *Universal Service First Report and Order*, the Commission stated that, consistent with the Act, CMRS providers are carriers and, as such, are required under section 254(d) of the Act to contribute to

(...continued from previous page)

530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000). The Act and the Commission’s rules exempt certain carriers from the contribution requirement. For example, carriers are not required to contribute directly to the universal service fund in a given year if their contribution for that year would be less than \$10,000. *See* 47 C.F.R. § 54.708. Likewise, carriers with purely intrastate or international revenues are not required to contribute. *See Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Sixteenth Order on Reconsideration, 15 FCC Rcd 1679, 1685, para. 15 (1999); *Federal-State Joint Board on Universal Service, Access Charge Reform, Universal Service Contribution Methodology, Petition for Reconsideration and Clarification of the Fifth Circuit Remand Order of BellSouth Corporation, Petition for Reconsideration of the Fifth Circuit Remand Order of Arya Communications International Corporation, Joint Request for Review of Decision of Universal Service Administrator of Cable Plus L.P., and MultiTechnology Services, L.P., Request for Review of Pan Am Wireless, Inc., and Request for Review of USA Global Link, Inc.*, WC Docket No. 06-122, CC Docket Nos. 96-45 and 96-262, Order on Reconsideration, 23 FCC Rcd 6221 (2008). Certain government entities, broadcasters, schools, libraries, system integrators, and self-providers are also exempt from the contribution requirement. 47 C.F.R. § 54.706(d). Unless a carrier meets one of the exemptions, however, it must contribute to the universal service fund.

⁶ *See Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 777; *see also* 47 U.S.C. §§ 153(22), 153(43), 153(44), 153(46).

⁷ *See Universal Service First Report and Order*, 12 FCC Rcd at 9178, para. 786.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*; *see also* 47 C.F.R. § 54.706. Contributors report their revenues by filing Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) with USAC. Contributors report historical revenue on the annual Telecommunications Reporting Worksheet (FCC Form 499-A), which is generally filed on the first business day of April each year. Contributors project future quarters’ revenue on the quarterly Telecommunications Reporting Worksheets (FCC Form 499-Q), which are generally filed on February 1, May 1, August 1, and November 1. *See Universal Service Administrative Company, Schedule of Filings*, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Apr. 21, 2008).

¹² 47 U.S.C. § 332(d).

the USF.¹³ The Automated Maritime Telecommunications Service (AMTS) was established in 1981 as an alternative to traditional VHF Public Coast station (VPC) services, primarily to meet the specialized needs of tugs, barges, and other commercial vessels on inland waterways.¹⁴ AMTS stations were intended primarily to provide public correspondence service¹⁵ to such vessels and have been required to be interconnected to the public switched telephone network.¹⁶ In the *CMRS Second Report and Order*, the Commission determined that Public Coast Station service providers, including AMTS providers, are classified as CMRS providers, and thus, treated as common carriers.¹⁷

A. Petition for Review

5. On May 8, 2006, Maritime, as the successor in interest of Watercom and Mobex, filed a demand for refund with USAC regarding USF contributions paid by Watercom and Mobex between 2001

¹³ See *Universal Service First Report and Order*, 12 FCC Rcd at 9179 and 9259, paras. 787 and 981.

¹⁴ Maritime radio services, which are comprised of VPC and AMTS, provide for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways. See *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, RM-7956, 8031, 8352, Second Report and Order and Second Further Notice of Proposed Rulemaking, 12 FCC Rcd 16949, 16953-54, paras. 4-6 (1997) (*Second Report and Order*). VPC and AMTS providers use public coast stations to provide their services to the maritime community, permitting ships to send and receive messages and to interconnect with the public switched telephone network. See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1448, para. 83 (1994) (*CMRS Second Report and Order*); see also 47 C.F.R. § 20.9(a)(5). AMTS stations were intended to provide integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for vessels transiting inland waterways. See *Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) Along the Mississippi River and Connecting Waterways*, GEN Docket No. 80-1, RM-3101, RN-3128, RM-3129, Report and Order, 84 FCC 2d 875, 876, para. 2, *on reconsideration*, Memorandum Opinion and Order, 88 FCC 2d 678 (1981), *aff'd sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

¹⁵ Public correspondence is defined under the Part 80 Maritime Service Rules as “[a]ny telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission.” See 47 C.F.R. § 80.5.

¹⁶ *Warren C. Havens Petition for Declaratory Ruling or Waiver Regarding Section 80.123 and other Commission Rules as Applied to Automated Maritime Telecommunications System Licenses*, Order, 18 FCC Rcd 7006, 7008, para. 5 (WTB PSPWD 2003); Letter from D’wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Warren C. Havens, 17 FCC Rcd 15903, 15904 (WTB PSPWD 2002) (citing *Amendment of Parts 2, 81, and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communication System (IWCS) Along the Mississippi River and Connecting Waterways*, GEN Docket No. 80-1, Report and Order, 84 FCC 2d 875, 881, para. 19 (1981)); see also *CMRS Second Report and Order*, 9 FCC Rcd at 1435, para. 56 (where the Commission explained that “in the CMRS context, we define ‘interconnected’ as a direct or indirect connection through automatic or manual means (either by wire, microwave, or other technologies) to permit the transmission of messages or signals between points in the public switched network and a commercial mobile radio service provider.”)

¹⁷ See *CMRS Second Report and Order*, 9 FCC Rcd at 1448, para. 83 (stating that Public Coast Station services under Part 80, Section J of the Commission’s rules will be classified as CMRS providers); see also 47 C.F.R. § 20.9(a)(5). On May 10, 2007, in the *Maritel and Mobex Order*, the Commission granted additional operational flexibility to AMTS and VPC carriers to provide private correspondence service to units on land. Private correspondence consists of communications serving the user’s business and operational needs. *Maritel, Inc. and Mobex Network Services, LLC, Petitions for Rule Making to Amend the Commission's Rules to Provide Additional Flexibility for AMTS and VHF Public Coast Station Licensees*, WT Docket No. 04-257, Report and Order, 22 FCC Rcd 8971 (2007) (*Maritel and Mobex Order*). The Commission explained that the additional flexibility would “enable VPC and AMTS licensees to compete more effectively against other CMRS providers.” *Maritel and Mobex Order*, 22 FCC Rcd at 8971, para. 1 (emphasis added).

and 2006 in the amount of \$1,301,230.00.¹⁸ Maritime argued that the AMTS services are excluded from the CMRS services required to contribute to the USF.¹⁹ USAC denied the request, stating that Maritime's claim is not supported by the Commission's precedent.²⁰ In particular, USAC determined that, pursuant to the Commission's permissive authority, maritime radio service providers are required to contribute to the USF.²¹

6. In its request for review, Maritime reaffirms its argument that maritime radio services are exempt from USF contribution obligations and requests that the Commission direct USAC to refund the USF contributions paid from 2001 through 2006.²² Specifically, Maritime argues that there are two broad categories of entities that are required to contribute to the USF; mandatory contributors and permissive contributors.²³ Maritime states that AMTS is a significantly restricted service with a restricted class of eligible end users that belongs to neither of the contributor categories because it does not provide service to the public or to such a class of eligible users as to be effectively available to a substantial portion of the public.²⁴ Maritime states that the Commission, in the *CMRS Second Report and Order*, identified maritime service as a service that is offered only to a significantly restricted class of eligible users, and, as such, falls under neither the mandatory nor the permissive contributor categories for USF purposes.²⁵

III. DISCUSSION

7. We deny Maritime's request and find that, in accordance with the Commission's instructions and rules, AMTS providers are subject to USF contribution obligations.²⁶ Accordingly, we direct USAC to continue to collect universal service contributions from Maritime and other providers of AMTS services.

8. The Commission has determined that CMRS providers are to be treated as telecommunications carriers for purposes of USF contributions because they provide interstate telecommunications for a fee to a class of users that is effectively available to the public²⁷ and, therefore, CMRS providers are mandatory contributors to the USF.²⁸ Because the Commission has also determined that AMTS providers are CMRS

¹⁸ Maritime Request for Review at 1-2.

¹⁹ *Id.* at 3-4

²⁰ *Id.* at Attach. (Letter from WB Erwin, Vice President of Finance, USAC, to Dennis C. Brown, 2-7 (dated Nov. 15, 2006) (USAC Decision)).

²¹ *Id.* at Attach., 5-6.

²² Maritime Communications did not make any additional contributions to the USF from 2004 through 2006. USAC billed Watercom through June 2003, at which point any further billings were applied to a consolidated Mobex filer identification number. In July 2003, Mobex's FCC Form 499-Q Worksheet resulted in *de minimis* status. USAC did not generate billings for Mobex through August 2006. Because Maritime Communications had not filed its August 2006 FCC Form 499-Q, USAC generated an estimate equal to one-fourth of the revenue reported on the company's 2006 FCC Form 499-A, which resulted in a non-*de minimis* status for the company. *See id.* at Attach., 2.

²³ *See id.* at 3-4.

²⁴ *See id.* at 5.

²⁵ *See id.* at 4.

²⁶ The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider requests for review of USAC decisions. 47 C.F.R. § 54.722(a). Section 54.723 of the Commission's rules specifies that the Bureau shall conduct a *de novo* review. 47 C.F.R. § 54.723.

²⁷ *See supra* para. 4.

²⁸ *Id.*

providers, they are also mandatory contributors to the USF.²⁹

9. Contrary to Maritime's assertions, AMTS providers have not been exempted from USF contributions. In the *Universal Service First Report and Order*, the Commission created an explicit exemption for several classes of telecommunications providers from USF contribution obligations.³⁰ The exempted entities include companies that self-provide telecommunications, government entities that purchase services in bulk for themselves, and, significantly, public safety and local government entities licensed under Part 90 of the Commission rules.³¹ The Commission did not include in this exemption services, such as AMTS, covered under Part 80 of the Commission's rules.³² Therefore, maritime radio service providers, as CMRS providers, are mandatory contributors to universal service.³³

10. We are also not persuaded by Maritime's argument that, because its services are provided to a restricted class of users, AMTS should be excluded from CMRS classification.³⁴ The Commission has previously determined that AMTS providers should be classified as CMRS providers.³⁵ The Commission also determined that a carrier that offers its services to a limited or restricted class of users "may still be a common carrier if it holds itself out indiscriminately to serve all within that class."³⁶ The United States Court of Appeals, District of Columbia Circuit, has upheld this finding, stating that "the key factor," when considering common carrier status, "is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use."³⁷

11. We find, therefore, that AMTS providers are not exempt from USF contribution obligations. For the foregoing reasons, we deny the request for review.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to 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 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, that the request for review filed by Maritime Communications/Land Mobile, LLC on behalf of Waterway Communication System, LLC and Mobex Network Services, LLC IS DENIED.

²⁹ *Id.* For these reasons, we also find that USAC improperly characterized the Commission's authority as permissive in determining AMTS providers' contribution obligations. See Maritime Request for Review at Attach., 1-2.

³⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 9183-9184, paras. 795-796.

³¹ *Id.* at 9185-9186, para. 800.

³² *Id.*

³³ The *Maritel and Mobex Order* eliminates several regulatory barriers for AMTS providers and demonstrates the Commission's efforts to improve AMTS providers' ability to compete against telecommunications carriers in the provision of interstate telecommunications. See *Maritel and Mobex Order*, 22 FCC Rcd at 8976, para. 8.

³⁴ Maritime Request for Review at 4.

³⁵ See *supra* para. 4.

³⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 16 FCC Rcd 571, 573, para. 7 (2000); see also *United States Telecom Association v. FCC*, 295 F.3d 1326, 1330 (D.C. Cir. 2002) (*USTA*) (citing the court's decision in *Iowa v. FCC*, 218 F.3d 756, 757-58 (D.C. Cir. 2000)).

³⁷ See *USTA*, 295 F.3d. at 1332 (citing the court's decision in *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 640-641 (D.C. Cir. 1976)).

13. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief
Wireline Competition Bureau