

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
Requests for Waiver of Decisions of the Universal)	
Service Administrator by)	
Achieve Telecom Network of Massachusetts,)	
LLC, <i>et al.</i>)	

ORDER

Adopted: December 15, 2008

Released: December 15, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we dismiss as moot ten requests for waiver of actions taken by the Universal Service Administrative Company (USAC).¹ Specifically, Petitioners request that the Commission waive certain filing deadlines associated with the filing of their FCC Form 499-Qs and allow them to late-file corrected forms. Because the annual true-up process for the FCC Forms 499-Q at issue in these requests has already provided the relief sought by Petitioners, we dismiss as moot Petitioners' requests. We also deny separate requests, filed by Achieve Telecom Network of Massachusetts, LLC (Achieve), Ascent Media Group (Ascent), and New Edge Network, Inc. (New Edge) for a refund of late fees, penalties and interest charges assessed, resulting from these petitioners' late filed FCC Forms 499-Q.²

¹ Letter from Joy Jackson, Chief Executive Officer, Achieve Telecom Network of Massachusetts, LLC, to Federal Communications Commission, CC Docket No. 96-45 (dated May 5, 2008) (Achieve Letter); Letter from Donna Cote, Ascent Media Group, to the Federal Communications Commission, CC Docket No. 96-45 (dated Feb. 6, 2008) (Ascent Letter); Letter from Denise Davidson, Davidson Cable, to Federal Communications Commission, WC Docket No. 06-122 (dated Oct. 26, 2007) (Davidson Letter); Letter from Jason S. Hunt, Hunt Telecom, to Federal Communications Commission, WC Docket No. 06-122 (filed Nov. 23, 2007) (Hunt Letter); Letter from James E. Holstine, Jr., Innovative Processing Solutions, LLC, to Federal Communications Commission, CC Docket No. 96-45 (dated July 25, 2005) (Innovative Letter); Maskina Communications, Inc. Appeal of Decision of the Universal Service Administrative Company and Request for Waiver, CC Docket no. 96-45 (dated July 2, 2008) (Maskina Request for Review) (We note Maskina filed an earlier appeal seeking relief from the same filing, raising the same arguments; Maskina Communications, Inc. Appeal of Decision of the Universal Service Administrative Company and Request for Waiver, CC Docket No. 96-45 (filed Nov. 2, 2007)); Letter from USAC, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 96-45 (dated Jan. 29, 2007) (transmitting NetOne's letter of appeal) (NetOne Request for Review); Letter from Penny H. Bewick, New Edge Network, Inc., to Federal Communications Commission, WC Docket No. 06-122 (dated Nov. 9, 2007) (New Edge Letter); Letter from Suzanne Bowen, Super Technologies, Inc., to Federal Communications Commission, WC Docket No. 06-122 (filed Oct. 2, 2007) (Super Letter); Letter from Jerry A. Hill, WestPANet, Inc., to Federal Communications Commission, WC Docket No. 06-122 (filed Sept. 21, 2007) (WestPANet Letter) (collectively Petitioners). A list of these Petitioners is contained in Appendix A, attached hereto.

² See Achieve Letter at 1; Letter from Steven A. Augustino, Ascent Media Group, to the Federal Communications Commission, WC Docket No. 06-122, at 1, 4 (dated May 20, 2008) (Ascent Reply Comments); New Edge Letter at 1.

II. BACKGROUND

2. USAC performs billing and collection functions for the Commission as part of its administration of the universal service fund (USF) support mechanisms.³ The Commission requires carriers and certain other providers of telecommunications, such as interconnected voice over Internet protocol providers, to file the FCC Form 499-Q each quarter projecting their interstate and international revenue for the upcoming quarter and providing their interstate and international revenues from the previous quarter.⁴ The projected revenue information provided on the FCC Form 499-Q determines each contributor's contribution obligation to the universal service fund on a quarterly basis and USAC bills carriers each month based on this obligation.⁵ Filers have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.⁶

3. In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.⁷ USAC uses the FCC Form 499-A data to conduct a true-up process whereby USAC determines the actual amount owed by each contributor from the previous year and issues either an invoice for underpayment or a credit for the overpayment.⁸ A contributor that fails to file worksheets or that knowingly submits inaccurate or untruthful information may be subject to "the enforcement provisions of the Act and any other applicable law."⁹ Additionally, contributors are required to ensure that their registration information, including contact information such as mailing and e-mail addresses, are current so that USAC can contact entities.¹⁰

4. Petitioners timely submitted their FCC Forms 499-Q, but overstated the amount of revenues that were subject to USF contributions.¹¹ Petitioners then requested to refile the FCC Forms 499-Q, but the requests were made after the 45-day window to file corrected forms had passed. Accordingly, USAC determined Petitioners' contribution obligations based on their reported quarterly information and invoiced Petitioners monthly based on this determination.¹² Petitioners then filed the pending requests to

³ See 47 C.F.R. § 54.702(b).

⁴ See 47 C.F.R. § 54.706 (a)-(b); *see also*, FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (Nov. 2007) (Quarterly Worksheet).

⁵ 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made").

⁶ *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, 24972, para. 36 (2002) (*Second Wireless Safe Harbor Order*).

⁷ *Id.*

⁸ *Id.* USAC will refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual FCC Form 499-A, then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499-A, then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. *See id.*

⁹ 47 C.F.R. § 54.713.

¹⁰ See Telecommunications Reporting Worksheet, FCC Form 499-A at 10, 17. 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> (retrieved December 15, 2008).

¹¹ See e.g., Maskina Request for Review at 2; Super Letter at 1-2; NetOne Request for Review at 1.

¹² See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36.

waive the 45-day revision window with the Commission, arguing, among other things, that the contribution obligation based on reported quarterly revenue creates undue hardship.¹³ The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider requests for review of decisions by USAC.¹⁴

III. DISCUSSION

5. We dismiss Petitioners' waiver requests as moot. USAC's annual true-up, based on Petitioners' FCC Forms 499-A, which were filed in April 2006, 2007, and 2008, has already reconciled the contribution obligation for Petitioners.¹⁵ This process provides contributors with an accurate reconciliation of their revenue information as well as their universal service contribution obligations. USAC has also confirmed that the reconciliation process was completed and that any adjustments resulting from this process were posted to petitioners' accounts. We therefore dismiss Petitioners' requests as moot.

6. We remind contributors that we are committed to guarding against waste, fraud, and abuse, and to ensuring that revenues are accurately reported by contributors. Although we dismiss as moot 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 the reporting of revenues for universal service contributions and to determine on a case-by-case basis that waste, fraud, or abuse 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.

7. *Petitions for Waiver of Filing Deadline and Late Fees.* We also deny Achieve, Ascent, and New Edge's requests for a refund of late fees, penalties, and interest charges assessed on their respective accounts.¹⁶ Achieve asserts that it based its projected revenues on the good faith assumption that the Schools and Libraries Division of USAC would issue funding commitment decision letters (FCDLs) prior to the date they were ultimately issued.¹⁷ Ascent asserts that strict adherence to the 45-day revision deadline is not warranted because Ascent, while having caused the error, has not missed a filing deadline in the last five years and Ascent has acted in good faith in trying to address this issue.¹⁸ New Edge states that a filing error and USAC's lack of review resulted in an overcharge to New Edge of \$1,325,146.95,

¹³ See e.g., NetOne Request for Review at 1 (NetOne argues that USAC's estimate is disproportionately higher than the amount paid during the previous calendar year and that the requirement to pay the invoiced amount places an undue hardship on the company); WestPANet Letter at 1 (WestPANet argues that it is not prepared to pay these unexpected fees).

¹⁴ 47 C.F.R. § 54.722(a).

¹⁵ As reflected in the appendix to this order, Innovative's true-up process occurred in April 2006, NetOne's true-up process occurred in April 2007, and the true-up process for the other petitioners occurred with the filing of their April 2008 FCC Forms 499-A. See *infra* at Appendix.

¹⁶ Ascent Reply Comments at 3-4. Ascent states that it inadvertently reported total projected revenue instead of projected telecommunications revenue on its August 2007 FCC Form 499-Q. *Id.*

¹⁷ See Achieve Letter at Attach. B. Achieve had not received the FCDLs by the time it was invoiced by USAC. *Id.*

¹⁸ *Id.* at 3.

that New Edge attempted to correct upon receipt of the January 2007 invoice from USAC.¹⁹

8. We find that these three petitioners have not demonstrated that good cause exists to waive these charges.²⁰ Contributors have an ongoing obligation to maintain accurate registration information, including e-mail addresses. USAC, in advance of the 45-day revision window deadline, sends each contributor a courtesy e-mail to the billing contact person listed in Box 206 of the FCC Form 499-A notifying the billing contact person of the percent increase or decrease in the contribution base revenues as compared to the prior quarter, and informing the billing contact person that any concerns should be brought to USAC's attention. For example, we have confirmed with USAC that an e-mail was sent 35 days in advance of the revision deadline, August 13, 2007, informing Ascent's billing contact person that its August 2007 FCC Form 499-Q filing would result in an estimated increase in Ascent's contribution base of 945 percent. Therefore, Ascent received notice well before the 45-day deadline of the increase in its contribution obligation.

9. Moreover, we find that Ascent could have avoided incurring the late fees, penalties, and interest charges from which it seeks relief by complying with USAC's "pay and dispute" policy.²¹ Achieve notes in its appeal that it is subject to late fees and interest as a result of its failure to make the payments associated with the 2007 filing.²² Similarly, as Ascent states in its filings, it paid only its October 2007 invoice, leaving unpaid its November 2007 and December 2007 invoices.²³ New Edge only made partial payments that reflected the monies owed on its amended November 2006 FCC Form 499-Q.²⁴ In granting a waiver of the 45-day revision deadline filed by Adventure Communications Technology, LLC (Adventure), the Bureau based its decision in part on Adventure's compliance with USAC's pay and dispute policy.²⁵ By timely paying its invoices, Adventure did not incur late fees, penalties, or interest charges.²⁶ Rather than paying its invoices as USAC's policy requires, these petitioners chose to fashion a

¹⁹ See New Edge Letter at 1-2. New Edge stated that its ministerial error should have been corrected by USAC immediately. See New Edge Letter at 2. It is the responsibility of the contributor to file and correct any forms filed with USAC. See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36. 47 C.F.R. § 54.702(c). We note that an executive officer of the contributor must certify "that any projections in the Telecommunications Reporting Worksheet represents a good faith estimate based on the contributors policies and procedures." 47 C.F.R. § 54.711(a).

²⁰ 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.

²¹ USAC's "pay and dispute" policy requires contributors to pay disputed invoices. In addition, USAC imposes late payment fees on invoices that are not paid in full, and these fees will not be waived unless the disputed charges are later found to be a result of an error by USAC. See USAC Website, Fund Administration, Contributors, File and Appeal, <http://www.usac.org/fund-administration/contributors/file-appeal/> (retrieved December 15, 2008). See also *Federal State Joint Board on Universal Service: Adventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, CC Docket No. 96-45, WC Docket No. 06-122, Order, DA 08-1514 (Wireline Comp. Bur. June 26, 2008) (*Adventure Order*).

²² See Achieve Letter at 1.

²³ See Ascent Letter at 1; Ascent Reply Comments at 2.

²⁴ See New Edge Letter at 3.

²⁵ See *Adventure Order* at para. 5.

²⁶ *Id.*

remedy of their own, choosing-nonpayment. Achieve's and Ascent's nonpayment, as well as New Edge's partial payment, resulted in the application of late fees, penalties and interest charges being applied to their accounts. We, therefore, deny their requests for reversal of those fees. Absent enforcement of USAC's pay and dispute policy, other contributors may choose to engage in similar self-help nonpayment of invoices with which they disagree, thereby harming the predictability of the fund. Because Ascent had ample notification to correct its error within the 45-day revision window, and because Ascent, Achieve, and New Edge could have avoided incurring late fees, penalties, and interest charges by complying with USAC's pay and dispute policy, we find that these petitioners have not demonstrated good cause warranting a waiver of the late fees, penalties, and interest charges resulting from nonpayment of outstanding invoices.

10. We take this opportunity to remind all filers of the importance of timely filing their FCC Forms 499-Q.²⁷ We remind filers that filings can be made electronically through USAC's website, and that FCC Forms 499-Q may be submitted in advance of the filing deadline.²⁸ We caution filers that the submission of the form is considered timely based upon USAC's receipt of the form and not the postmark date.²⁹ Finally, we stress the need for USAC to impose penalties when these important filing deadlines are not met, as a means to ensure that FCC Forms 499-Q are timely filed.³⁰

IV. ORDERING CLAUSES

11. 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 requests for waiver of the FCC Form 499-Q revision deadline for filers listed in the Appendix ARE DISMISSED as moot.

12. 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, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), the requests for waiver of late fees, penalties, and interest charges by Achieve Telecom Network of Massachusetts, LLC, Ascent Media Group, and New Edge Network, Inc. ARE DENIED.

13. IT IS FURTHER ORDERED that, pursuant to the authority delegated in 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

²⁷ See e.g., Telecommunications Reporting Worksheet, FCC Form 499-A (2007) at <http://www.usac.org/fund-administration/forms/> (retrieved December 15, 2008). The 499-A announces the specific filing dates.

²⁸ See <http://www.usac.org/fund-administration/forms/> (retrieved December 15, 2008).

²⁹ *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 (Wireline Comp. Bur. 2005).

³⁰ See 47 C.F.R. § 54.713.

APPENDIX

Company Name	Filer ID	Date Request Filed	Late filed FCC Form 499-Q	FCC Form 499-A
Achieve Telecom Network of Massachusetts, LLC	823002	May 5, 2008	Aug. 2007	2008
Ascent Media Group	823142	February 8, 2008	Aug. 2007	2008
Davidson Cable	826297	October 31, 2007	Feb. 2007	2008
Hunt Telecom	824600	November 23, 2007	May 2007	2008
Innovative Processing Solutions, LLC	813030	July 26, 2005	Feb. 2005	2006
Maskina Communications, Inc.	822852	November 2, 2007	May 2007	2008
NetOne International, Inc.	818644	January 29, 2007	May 2006	2007
New Edge Network, Inc.	820304	November 13, 2007	Nov. 2006	2008
Super Technologies, Inc.	825634	October 2, 2007	May 2007, Aug. 2007, Feb. 2008	2008
WestPAnet, Inc.	825634	September 21, 2007	Nov. 2006	2008