

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Request for Review by Cook Telecom, Inc. of a	)	
Decision of the Universal Service Administrator	)	
	)	

**ORDER**

**Adopted: June 3, 2009**

**Released: June 3, 2009**

By the Acting Chief, Telecommunications Access Policy Division:

**I. INTRODUCTION AND BACKGROUND**

1. In this order, we grant a request for review of the Universal Service Administrative Company's (USAC) decision to reject a revision to Cook Telecom, Inc.'s (Cook) initial FCC Form 457 filing.<sup>1</sup> We find that, based on the rules in place at the time of the dispute, USAC should have accepted Cook's revised filing. We therefore grant Cook's request for review and direct USAC to accept Cook's revised FCC Form 457 filing dated December 2, 1997.<sup>2</sup>

2. In the 1997 *Universal Service First Report and Order*, the Commission required interstate carriers to contribute a percentage of their end user telecommunications revenues to the universal service fund.<sup>3</sup> In the *Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use to compute their universal service contributions.<sup>4</sup> The Commission designated USAC as the entity responsible for administering the universal service support mechanisms by billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.<sup>5</sup> The Commission required contributors to report their end-user

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<sup>1</sup> See Request for Review by Cook Telecom, Inc. of Decision of Universal Service Administrator, CC Docket No. 96-45 (filed Feb. 6, 2006) (Cook Request for Review). Any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See Cook Request for Review, Appendix B at 9-10.

<sup>3</sup> See 47 U.S.C. § 254; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797, 9173, paras. 39-40, 779 (1997), (*Universal Service First Report and Order*); *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 (5<sup>th</sup> Cir. 1999) (*Texas PUC v. FCC*), 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

<sup>4</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

<sup>5</sup> *Id.* at 18423-24, para. 41; see also 47 C.F.R. § 54.701.

telecommunications revenues to USAC on a Universal Service Worksheet, FCC Form 457.<sup>6</sup>

3. Since the inception of the universal service fund, the Commission has implemented various rules and guidelines intended to reduce administrative burdens for certain categories of contributors. For example, the Commission's rules provide that contributors whose annual universal service contribution is expected to be less than \$10,000 are not required to directly contribute to the universal service mechanisms, pursuant to the *de minimis* exemption.<sup>7</sup>

4. Cook acknowledges that it is a provider of common carrier paging service and, as such, meets the definition of a telecommunications carrier as set out in section 54.5 of the Commission's rules.<sup>8</sup> Cook filed an FCC Form 457 on August 29, 1997, in advance of the September 1, 1997 deadline for filing initial worksheets.<sup>9</sup> USAC sent an invoice to Cook based on that filing.<sup>10</sup> Cook states that it mistakenly reported revenues from all sources of its business as its contribution base, rather than reporting only the interstate portion of its end user telecommunications revenue.<sup>11</sup> Cook asserts that absent this mistake, it would have qualified for the *de minimis* exemption based on the amount of its interstate telecommunications services revenues.<sup>12</sup> Cook submitted to USAC a handwritten correction to its initial FCC Form 457 and a letter detailing the error, and made all of its subsequent filings pursuant to the *de minimis* exemption.<sup>13</sup> In 2005, USAC confirmed receipt of the handwritten correction, but USAC did not accept the correction because it was not an "official revision."<sup>14</sup>

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<sup>6</sup> *Second Order on Reconsideration*, 12 FCC Rcd at 18475, Appendix C. In 1999 the Commission combined the universal service reporting requirements of the FCC Form 457 with the reporting requirements of several other regulatory programs into a consolidated Telecommunications Reporting Worksheet, FCC Form 499. *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999). Contributors currently are required to file this information quarterly and annually. 47 C.F.R. § 54.711(a).

<sup>7</sup> See 47 C.F.R. § 54.708. Section 254(d) of the Communications Act of 1934, as amended (the Act) states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms if the "carrier's contribution to the preservation and advancement of universal service would be de minimis." 47 U.S.C. § 254(d). Section 254 of the Act was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

<sup>8</sup> See Cook Request for Review at 1; see also 47 C.F.R. § 54.5.

<sup>9</sup> See *Second Order on Reconsideration*, 12 FCC Rcd at 18501, Appendix C (requiring contributors to file their initial worksheets by September 1, 1997).

<sup>10</sup> See Cook Request for Review, Appendix B at 11-12.

<sup>11</sup> See *id.* at 2-3 (listing paging (both interstate and intrastate), equipment sales, equipment leasing, radio repair, parts sales, site leasing, telephone answering service and voicemail services as sources of business on which Cook based its revenue in its initial FCC Form 457 filing). At the time of Cook's initial filing, 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. 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 (2002).

<sup>12</sup> See Cook Request for Review at 3.

<sup>13</sup> See *id.* Appendix B at 1-2.

<sup>14</sup> See *id.* Appendix A (Email from Rich Seetoo, USAC Billing, Collections and Disbursements, to Tom L. Cook, Cook Telecom, Inc. (Dec. 8, 2005)).

## II. DISCUSSION

5. We conclude that Cook should be allowed to revise its 1997 Form 457 to accurately reflect the revenues on which Cook's universal service contributions should have been assessed. We agree with Cook that it took appropriate and sufficient steps in a timely manner to correct its FCC Form 457 submitted to USAC on August 29, 1997.<sup>15</sup> The rules in effect at the time of Cook's initial filing permitted filers to revise their filings at any time.<sup>16</sup> On December 2, 1997, less than four months from the date of its original filing, Cook requested that changes be made to its FCC Form 457 and submitted a revised FCC Form 457 with handwritten corrections.<sup>17</sup> Thus, Cook complied with the existing FCC Form 457 filing requirements, and USAC should have processed the revised filing.<sup>18</sup> We direct USAC to accept Cook's revised FCC Form 457 as corrected in Appendix B of Cook's request for review.<sup>19</sup> Should USAC find, based on the revised filing, that Cook would have qualified for the *de minimis* exception to contribution obligations, USAC is directed to cancel all associated debt attributed to Cook due to its original 1997 FCC Form 457 filing, including late fees, penalties, and interest.

## III. ORDERING CLAUSE

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under 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 filed by Cook Telecom, Inc. on February 6, 2006, IS GRANTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>15</sup> See *id.* Appendix A.

<sup>16</sup> Subsequently a 12-month deadline for such corrections was implemented. See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 97-121, Order, 20 FCC Red 1012, 1016, para. 10 (Wireline Comp. Bur. 2004) (adopting a 12-month deadline for carriers to file revisions to their contribution forms that would result in decreased contribution amounts).

<sup>17</sup> See Cook Request for Review, Appendix B at 9-10.

<sup>18</sup> See FCC Form 457 Instructions. The filing at issue was the first such filing Cook was required to submit under the universal service rules newly adopted pursuant to the 1996 Act. See *Second Order on Reconsideration*, 12 FCC Red at 18501, Appendix C (requiring contributors to file their initial worksheets by September 1, 1997).

<sup>19</sup> See Cook Request for Review, Appendix B.