

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

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

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we consider a petition for reconsideration filed by Maritime Communications/Land Mobile, LLC (Maritime).¹ Maritime seeks reconsideration of the *Watercom/Mobex Order*, in which the Wireline Competition Bureau (Bureau) denied a request for review Maritime had filed on behalf of Waterway Communication System, LLC (Watercom) and Mobex Network Services, LLC (Mobex).² For the reasons set forth below, we deny Maritime's petition for reconsideration.

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (Act), requires "[e]very telecommunications carrier that provides interstate telecommunications services" to contribute to the federal universal service fund and authorizes the Commission to impose contribution obligations on "[a]ny other provider of interstate telecommunications."³ Accordingly, the Commission's *Universal Service First Report and Order* imposed contribution obligations on both entities that provide interstate telecommunications for a fee to the public (or to such classes of users as to be effectively available to the public) and entities that provide interstate telecommunications for a fee on a non-common carrier basis.⁴

3. Section 332(d) of the Act defines a commercial mobile radio service (CMRS) as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public,

¹ Maritime Communications/Land Mobile, LLC Petition for Reconsideration, WC Docket No. 06-122 (filed Sept. 25, 2008) (Maritime Petition for Reconsideration).

² *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, 23 FCC Rcd 12836 (Wireline Comp. Bur. 2008) (*Watercom/Mobex Order*); 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) (*Watercom/Mobex Request for Review*).

³ 47 U.S.C. § 254(d).

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9171-86, paras. 772-800 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *see also* 47 C.F.R. § 54.706(a).

as specified by regulation of the Commission.”⁵ The Act requires that CMRS providers generally be treated as common carriers (i.e., telecommunications carriers), and in the *Universal Service First Report and Order*, the Commission rejected the argument that CMRS providers should not be required to contribute to the universal service fund.⁶

4. Between 2001 and 2006, Watercom and Mobex made universal service contributions based on, among other things, revenues from their provision of Automated Maritime Telecommunications Service (AMTS). AMTS is a commercial mobile radio service usually interconnected to the public switched telephone network that offers telecommunications to tugs, barges, and other commercial vessels on inland waterways.⁷ On May 8, 2006, Maritime, as the successor in interest of Watercom and Mobex, filed a demand for refund with the Universal Service Administrative Company (USAC) regarding the contributions Watercom and Mobex had made based on their AMTS revenues.⁸ USAC denied Maritime’s demand on November 15, 2006.⁹ On January 9, 2007, Maritime filed on behalf of Watercom and Mobex a request for review of USAC’s decision.¹⁰ The Bureau denied Maritime’s request for review on August 26, 2008, in the *Watercom/Mobex Order*.¹¹

5. On September 25, 2008, Maritime filed the instant petition for reconsideration.¹² In its petition, Maritime reiterates its argument that it could not offer AMTS to a substantial portion of the public and thus should have been exempt from contribution obligations.¹³ Maritime also argues that the *Universal Service First Report and Order* excluded AMTS providers from universal service contribution obligations, relying on language in the Commission’s *CMRS Second Report and Order* to support its position that Watercom and Mobex could not have been classified as CMRS operators under the Act.¹⁴

III. DISCUSSION

6. We deny Maritime’s petition for reconsideration. Maritime argues that it should not contribute because the Commission’s siting rules, limitations on direct communications between customer mobile units, and limitations on quality-of-service guarantees for land-based users may have

⁵ 47 U.S.C. § 332(d)(1).

⁶ 47 U.S.C. § 332(c)(1); *Universal Service First Report and Order*, 12 FCC Rcd at 9188–89, para. 805 & n.2065.

⁷ 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 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, 901, para. 95 (1981) (subsequent history omitted) (allocating spectrum for AMTS because of the apparent need for an “automated, integrated, interconnected inland waterways communications system”); *see also* 47 C.F.R. § 20.9(a)(5); *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, 1435, para. 56 (1994) (*CMRS Second Report and Order*).

⁸ Watercom/Mobex Request for Review at 1–2.

⁹ *Id.*, Attach. (Letter from WB Erwin, Vice President of Finance, USAC, to Dennis C. Brown, Counsel for Watercom and Mobex (dated Nov. 15, 2006)).

¹⁰ Watercom/Mobex Request for Review.

¹¹ *Watercom/Mobex Order*, 23 FCC Rcd at 12840, para. 12.

¹² Maritime Petition for Reconsideration.

¹³ *Id.* at 4.

¹⁴ *See* Maritime Petition for Reconsideration at 3 (comparing *CMRS Second Report and Order*, 9 FCC Rcd at 1440–41, para. 67, with 9 FCC Rcd at 1448, para. 83).

limited the appeal of AMTS to the general public.¹⁵ The question of whether an offering is a telecommunications service that is subject to universal service assessments under the Act,¹⁶ however, does not turn upon whether a substantial portion of the public desires to use a particular service; rather, the question is whether the provider offers its service indiscriminately to all users that might seek to purchase it.¹⁷ Accordingly, because Maritime offered its service indiscriminately, the Bureau correctly held in the *Watercom/Mobex Order* that Watercom and Mobex were telecommunications carriers required to contribute to the universal service fund.¹⁸ Moreover, Watercom and Mobex would be required to contribute even if they had offered AMTS on a private-carriage basis.¹⁹

7. We also find that Maritime is incorrect in stating that the *Universal Service First Report and Order* resolved a “contradiction” within the *CMRS Second Report and Order*.²⁰ Maritime cites language in the *CMRS Second Report and Order* to support its position that the order is internally inconsistent in that it suggests that “Maritime Service Stations” are not “effectively available to a substantial portion of the public,” while classifying “Public Coast Station service” as CMRS.²¹ In the *CMRS Second Report and Order* the Commission adopted section 20.9(a)(5) of its rules, which classifies all public coast station services as commercial mobile radio services.²² Maritime itself acknowledges that AMTS is a public coast station service.²³ Accordingly, AMTS operators (like Watercom and Mobex) have been classified as CMRS providers since the *CMRS Second Report and Order*.²⁴ Moreover, in the *Universal Service First Report and Order* the Commission did not purport to modify the rules adopted in

¹⁵ See *id.* at 4; Maritime Comments at 2.

¹⁶ See 47 U.S.C. § 254(d) (“Every telecommunications carrier that provides interstate telecommunications services shall contribute” (emphasis added)).

¹⁷ See *USTA v. FCC*, 295 F.3d 1326, 1330 (D.C. Cir. 2002); *Sw. Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1480 (D.C. Cir. 1994) (citing *NARUC v. FCC*, 533 F.2d 601, 608–09 (D.C. Cir. 1976)); *NARUC v. FCC*, 525 F.2d 630, 640–641 (D.C. Cir. 1976).

¹⁸ Maritime is incorrect in asserting that the Bureau should have proffered evidence that Watercom and Mobex offered their AMTS indiscriminately. Maritime Petition for Reconsideration at 4. As the applicant requesting a refund, Maritime bore the burden of proffering evidence that its predecessors in interest were the exception to the rule that CMRS providers are treated as common carriers. See 47 C.F.R. § 1.41; 47 U.S.C. § 332(c)(1).

¹⁹ See *Universal Service First Report and Order*, 12 FCC Rcd at 9171–86, paras. 772–800. Although the Commission has carved out a few discrete exceptions to this rule, see, e.g., 47 C.F.R. § 54.706(d), Maritime has not argued that any of those exceptions apply here.

²⁰ See Maritime Petition for Reconsideration at 3 (citing *Universal Service First Report and Order*, 12 FCC Rcd at 9178 n.2013 (citing *CMRS Second Report and Order*, 9 FCC Rcd at 1440, para. 67)).

²¹ Maritime Petition for Reconsideration at 3 (comparing *CMRS Second Report and Order*, 9 FCC Rcd at 1440–41, para. 67, with 9 FCC Rcd at 1448, para. 83).

²² 9 FCC Rcd at 1518–19 (adopting 47 C.F.R. § 20.9(a)(5)).

²³ See Maritime Petition for Reconsideration at 2; 47 C.F.R. § 80.475 (delimiting the scope of AMTS and contained within Part 80, Subpart J (entitled “Public Coast Stations”)).

²⁴ All CMRS providers are telecommunications carriers given the parallel statutory definitions. Compare 47 U.S.C. § 332(d)(1) (CMRS is “any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public”), with 47 U.S.C. § 153(46) (Telecommunications service is an “offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public”); see also *Watercom/Mobex Order*, 23 FCC Rcd at 12838, para. 4 (citing *Universal Service First Report and Order*, 12 FCC Rcd at 9179, 9259, paras. 787, 981).

the *CMRS Second Report and Order*; the language cited by Maritime merely provides examples of the types of services that would be available to “significantly restricted classes” of customers.²⁵

8. For these reasons, we affirm the Bureau’s prior conclusion that Maritime’s predecessors were providing telecommunications services from 2001 through 2006 when they offered AMTS and that revenue from these services are subject to universal service contribution assessments.²⁶

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that the petition for reconsideration filed by Maritime Communications/Land Mobile, LLC IS DENIED.

10. 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

Sharon E. Gillett
Chief
Wireline Competition Bureau

²⁵ See *Universal Service First Report and Order*, 12 FCC Rcd at 9178 n.2013 (citing *CMRS Second Report and Order*, 9 FCC Rcd at 1440, para. 67).

²⁶ Maritime is incorrect in asserting that the *Maritel/Mobex Order* was essential to the Bureau’s decision. See Maritime Petition for Reconsideration at 4–5; *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/Mobex Order*). The Bureau cited that order only for the proposition that the Commission recognized the competition existing between AMTS providers and other CMRS providers in 2007, nothing more. See *Watercom/Mobex Order*, 23 FCC Rcd at 12840 n.33.