

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
Emergency Request for Review of Universal)	
Service Administrator Decision by Level 3)	
Communications, LLC, <i>et al.</i>)	
)	

ORDER

Adopted: January 29, 2010

Released: January 29, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request for review of a decision by the Universal Service Administrative Company (USAC) filed by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Wiltel Communications, LLC (collectively, Level 3).¹ We also find that Level 3 has not demonstrated good cause sufficient to warrant waiver of the interest that has accrued on the universal service contribution invoices issued by USAC based on Level 3's original 2008 FCC Form 499-A filings. Additionally, in light of the decision reached here, we deny as moot Level 3's requests seeking stay from USAC's issuance of invoices based on Level 3's original 2008 499-A filings and seeking waiver of the public notice requirement for Commission action.²

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 To this end, the Commission

¹ See Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Wiltel Communications, LLC, WC Docket No. 06-122 (filed Aug. 15, 2008) (Request for Review). The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider requests for review of decisions by USAC. 47 C.F.R. § 54.722(a).

² See Emergency Petition for Stay Pending Commission Review by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Wiltel Communications, LLC, WC Docket No. 06-122 (filed Aug. 15, 2008); see also Letter from Tamar E. Finn, Counsel, Level 3, to Marlene H. Dortch, Secretary, Federal Communication Commission, WC Docket No. 06-122 (filed Jan. 28, 2009) (Petition for Stay); Motion for Waiver of Public Notice by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Wiltel Communications, LLC, WC Docket No. 06-122 (filed Aug. 15, 2008).

³ 47 U.S.C. § 254(d).

has determined that any entity that provides interstate telecommunications services to the public for a fee must contribute to the universal service fund.⁴ The Commission further directed that contributions should be based on contributors' interstate and international end-user telecommunications revenues.⁵

3. In the *Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use in computing their universal service contributions.⁶ The Commission also designated USAC as the entity responsible for administering the universal service support mechanisms.⁷ Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) with USAC.⁸ USAC reviews these filings and verifies the information provided by the contributors.⁹ USAC also bills contributors for their universal service contributions.¹⁰ Contributors report historical revenue on the annual Telecommunications Reporting Worksheet (FCC Form 499-A), which is generally filed on April 1 each year.¹¹ Contributors project future quarters' revenue on the quarterly Telecommunications Reporting Worksheets (FCC Forms 499-Q), which are generally filed on February 1, May 1, August 1, and November 1.¹² The projected revenue information provided on the FCC Form 499-Q determines each contributor's obligation to the universal service fund on a quarterly basis and USAC bills carriers each month based on this obligation.¹³ After contributors file their annual FCC Forms 499-A in April, USAC conducts a true-up process by determining the actual amount owed by each contributor from the previous year and issuing either an invoice for underpayments or a credit for overpayments.¹⁴ A contributor that fails to file worksheets or that knowingly submits inaccurate or untruthful information

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund. See, e.g., *Universal Service Contribution Methodology*, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237,99-200, 95-116, and 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol (VoIP) providers to contribute to the universal service fund because they are providers of interstate telecommunications).

⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 787; see also 47 C.F.R. § 54.706.

⁶ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

⁷ *Id.* at 18415, para. 25.

⁸ 47 C.F.R. § 54.711(a) (setting forth reporting requirements in accordance with Commission announcements in the Federal Register).

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.702(b).

¹¹ See Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Jan. 29, 2010) (USAC Form 499 Filing Schedule).

¹² *Id.*

¹³ 47 C.F.R. § 54.711(a).

¹⁴ *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.*

may be subject to “the enforcement provisions of the Act and any other applicable law.”¹⁵

4. *Request for Review.* On August 15, 2008, Level 3 filed a request for review asking the Commission to reverse USAC’s computation of Level 3’s annual true-up based on Level 3’s original FCC Form 499-A filings, which were timely filed on or about April 1, 2008, and USAC’s subsequent refusal to expedite processing of Level 3’s revised FCC Form 499-A filings reporting revenue for the 2007 calendar year.¹⁶ Specifically, although Level 3 timely submitted its 2008 FCC Forms 499-A for its affiliated entities, Level 3 asserts that its submissions were inaccurate due to changes in its billing system and overstated the revenue on which its universal service contributions were based, resulting in an overassessment.¹⁷ Level 3 also states that it encountered difficulties in preparing revisions and ultimately submitted its revised 2008 FCC Forms 499-A to USAC on August 5, 2008.¹⁸ Level 3 requested that USAC expedite processing of the revised FCC Forms 499-A so that Level 3’s August, September and October 2008 invoices would be based on the revised and smaller revenue amounts.¹⁹ Level 3 then appealed to the Commission to direct USAC to provide the expedited relief.²⁰ Absent such relief, Level 3 stated its intention to make lower universal service contribution payments based on its revised calculations.²¹ Because Level 3 did not pay the full contribution amounts assessed on it in July, August, and September 2008, it accumulated substantial interest penalties.²²

III. DISCUSSION

5. We deny Level 3’s request for review. Pursuant to the Commission’s requirements, USAC uses revenue data provided by contributors in the FCC Form 499-A to perform annual true-ups to the quarterly revenue data submitted by carriers during the prior calendar year.²³ The true-up process ensures that contributions to the universal service support mechanisms operate in a competitively neutral manner.²⁴ Consistent with the process for true-up universal service assessments, USAC issued invoices to Level 3 based on the company’s original 2008 FCC Form 499-A filings in July through September 2008. Subsequently, USAC issued credits to Level 3 in October, November, and December of 2008

¹⁵ 47 C.F.R. § 54.713.

¹⁶ See Request for Review at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5. Level 3 asserts that USAC informed Level 3 that, in accordance with USAC’s processes, the revised FCC Forms 499-A would be processed in the quarter after they were filed, i.e., in the fourth quarter of 2008. *Id.*

²⁰ See *id.*

²¹ See *id.* at 6.

²² See *id.* Pursuant to USAC’s “pay and dispute” policy, contributors are required 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, Bill and Dispute Procedure, at <http://www.usac.org/fund-administration/contributors/understanding-your-invoice/billing-dispute-procedures.aspx> (last visited Jan. 29, 2010).

²³ See *Federal-State Joint Board on Universal Service, Petition for Reconsideration Filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001) (*True-Up Report and Order*); see also 2007 FCC Form 499-A Instructions at 11-12, at <http://www.usac.org/res/documents/fund-administration/pdf/499/form-499a-FY2007-instructions.pdf> (last visited Jan. 29, 2010). Contributors are also allowed to file a revised FCC Form 499-Q prior to the filing date of the next FCC Form 499-Q. See *True-Up Report and Order*, 16 FCC Rcd at 5753, para. 12, n.22; see also 2007 FCC Form 499-Q Instructions at 11, at <http://www.usac.org/res/documents/fund-administration/pdf/form-499Q-fy2007-instructions.pdf> (last visited Jan. 29, 2010).

²⁴ See *True-Up Report and Order*, 16 FCC Rcd at 5753, para. 13.

based on USAC's processing of Level 3's revised FCC Forms 499-A filed on August 5, 2008.²⁵

6. Level 3 has failed to demonstrate that good cause exists to grant its request seeking reversal of USAC's computation of Level 3's contributions based on Level 3's original 2008 FCC Form 499-A filings, and USAC's subsequent refusal to expedite processing of Level 3's revised 2008 FCC Form 499-A filings reporting revenue for the 2007 calendar year. By its own admission, Level 3 filed inaccurate data on its 2008 FCC Forms 499-A and failed to correct this data for more than four months.²⁶ A carrier's failure to file accurate revenue data has serious implications for the universal service fund.²⁷ Each year USAC processes thousands of FCC Form 499-A and FCC Form 499-Q Telecommunications Reporting Worksheets and revisions to those worksheets. USAC invoices contributors for their universal service obligation in the quarter following the contributors' FCC Form 499-Q filing.²⁸ USAC's annual true-up process provides contributors with an accurate reconciliation of their revenue information as well as their universal service contribution obligations.²⁹ The FCC Form 499-A, filed in April, results in invoice adjustments that are typically posted by July or August of that year.³⁰ During this time, USAC reviews the revenue information, requests any necessary additional information, reconciles accounts, and issues invoices.³¹ USAC must balance many activities in its role as the administrator of the universal service fund. For example, each August, USAC must process timely filed FCC Forms 499-Q to report projected revenue data so that the Commission can determine the quarterly universal service contribution factor for the fourth quarter. Level 3 cannot reasonably expect to move to the front of the queue ahead of similarly-situated contributors seeking to revise erroneous filings simply because Level 3 would prefer not to wait for the normal processing procedure for universal service true-ups. Thus, we do not find that good cause exists to grant such relief or that no party would be prejudiced by granting Level 3's request.

7. Level 3 alternatively requests waiver of "USAC's internal policy, pursuant to which revised 499-A filings are processed in the quarter after they are filed."³² Level 3 states that no justifiable

²⁵ In the Request for Review, Level 3 asserted that it would not "recoup through USAC credits [resulting from its revised FCC Form 499-A filings] until approximately September, 2009." See Request for Review at 2; see also Petition for Stay at 5. We note, however, that adjustments resulting from USAC's processing of Level 3's revised FCC Forms 499-A were posted to the company's accounts in full as of December 2008. See Letter from Tamar E. Finn, Counsel, Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Jan 28, 2009); see also Letter from Tamar E. Finn, Counsel, Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed July 29, 2009) (Level 3 July 29 *Ex Parte* Letter).

²⁶ See Request for Review at 4.

²⁷ See *Telrite Corp.*, File No. EB-05-IH-2348, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7239, para. 16 (2008). It is imperative that contributors file accurate revenue data in the FCC Forms 499 so that the Commission can be assured that payment obligations are correctly apportioned among all carriers consistent with the directives of the Act and that the burdens are not improperly shifted from non-compliant to compliant carriers. See *Telrite Corp.*, 23 FCC Rcd at 7243-44, para. 29; see also 47 U.S.C. §254(d).

²⁸ See *True-Up Report and Order*, 16 FCC Rcd at 5755, para. 19.

²⁹ *Id.* at 5752-53, paras. 12-13.

³⁰ *Id.* at 5755, paras. 18-19. Although in the *True-Up Report and Order* the Commission noted that true-ups are typically posted the following May and June, we note that USAC may require additional processing time. To account for this, we estimate that the typical posting interval is slightly longer.

³¹ See *id.*

³² Request for Review at 9. 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

reason exists for it to pay millions of dollars more than it properly owes, only to have the overpayments returned to the company many months later.³³ Level 3 asserts that this cannot be deemed consistent with “more effective implementation of overall policy.”³⁴ We disagree. As previously noted, section 254(d) of the Act directs the Commission to treat every contributor on an equitable and nondiscriminatory basis to ensure a predictable and sufficient universal service fund.³⁵ The facts presented here do not distinguish Level 3 from numerous other contributors that have had similar requests denied, nor has Level 3 demonstrated good cause to deviate from that established precedent.³⁶ Moreover, the Commission has been clear that it cannot allow contributors to fashion remedies of their own choosing.³⁷ Submission of inaccurate revenue data, like nonpayment of disputed invoices, can impact the predictability of the universal service fund for other contributors as well as for those receiving disbursements.³⁸ Consistent with precedent, we therefore deny Level 3’s request for waiver.

8. We also find that Level 3 has not demonstrated that good cause exists to waive late fees, penalties, and interest charges assessed on its account.³⁹ The Commission has held that contributors have

public interest. *Northeast Cellular*, 897 F.2d at 1166. *Accord, NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently “unique situation” to grant waiver).

³³ *Id.* at 12.

³⁴ *Id.*; see also *Second Order on Reconsideration*, 18 FCC Rcd at 4824, para. 15.

³⁵ 47 U.S.C. § 254(d).

³⁶ See, e.g. *Universal Service Contribution Methodology, Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, WC Docket No. 06-122, Order, 23 FCC Rcd 17903, 17906, para. 8 (Wireline Comp. Bur. 2008) (*Achieve Order*) (finding that a lapse in the obligation to maintain accurate registration information is not good cause for waiver of late fees, penalties, and interest); *Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783, 6785, para. 8 (Wireline Comp. Bur. 2007) (finding that failure to hire and retain appropriate personnel to properly complete the FCC Form 499 is not good cause for waiver); *Request for Review by i-Tel Long Distance a/k/a Impact Telecommunications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6788, 6790, para. 8 (Wireline Comp. Bur. 2007) (finding that misunderstanding of the qualifications for the *de minimis* exemption is not good cause for waiver); *Request for Review by WorldxChange Corp. of Action by Universal Service Administrator*, CC Docket No. 96-45, Order, 22 FCC Rcd 5082, 5083-84, para. 5 (Wireline Comp. Bur. 2007) (finding that error by petitioner is not good cause for waiver of filing deadline and late payment fees); *Request for Review by Telco Group Inc. of Action by Universal Service Administrator*, CC Docket No. 96-45, Order, 22 FCC Rcd 5079 (Wireline Comp. Bur. 2007) (finding that company database problems are not good cause for late filing).

³⁷ *Achieve Order*, 23 FCC Rcd at 1906-07, para. 9. Level 3 asserts that a monthly fine, such as one assessed by the Commission’s Enforcement Bureau in a notice of apparent liability, would be less punitive and would still provide incentives for contributors to adhere to universal service contribution assessment processes. See Level 3 July 29 *Ex Parte* Letter. Level 3 misunderstands the Commission’s enforcement process, which is a punitive measure imposed on contributors that do not comply with the universal service contribution rules *in addition to*, rather than in place of, the penalties for inaccurate payments set out in the Commission’s universal service rules at section 54.713. 47 C.F.R. § 54.713.

³⁸ See *Telrite Corp.*, 23 FCC Rcd at 7238-39 para. 14, 16. Inaccurate revenue data reported on annual and quarterly FCC Forms 499 harm the universal service fund because USAC and the Commission are unable to project accurately both the contribution base and the contribution factor. See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16378, para. 12 (2007) (*Comprehensive Review Order*). In adopting the true-up process, the Commission created incentives for carriers to accurately report their quarterly revenues by instructing USAC to base overpayment refunds on an average of the lowest two contribution factors for the year, and collect underpayments based on an average of the two highest contribution factors from that year. See *True-Up Report and Order*, 16 FCC Rcd at 5753, para. 12.

³⁹ See *supra* note 36.

an obligation to provide accurate revenue information.⁴⁰ The Commission established the annual true-up process to afford relief to contributors that make errors in the information filed on their revenue reporting forms.⁴¹ In filing its FCC Forms 499-A in April 2008, Level 3 was aware that its universal service assessments would be based on the information submitted on those forms. Level 3 did not take timely action to correct the data it had submitted, failing to correct its errors for more than four months.⁴²

9. Moreover, Level 3 could have avoided incurring the late fees, penalties, and interest charges from which it seeks relief by paying the full invoiced amount in compliance with USAC's "pay and dispute" policy.⁴³ As Level 3 states in its filings, it paid only the contribution obligation that it calculated based on the revised FCC Forms 499-A that were filed in August 2008.⁴⁴ Rather than paying the amount it was invoiced based on its April 2008 filings, Level 3 chose to fashion a remedy of its own in advance of credits being processed. Level 3's self-help remedy resulted in late fees, penalties and interest charges being applied to its account. Absent enforcement of USAC's pay and dispute policy, other contributors may choose to engage in similar self-help by recalculating invoices with which they disagree, thereby harming the predictability of the universal service fund.⁴⁵ We, therefore, deny Level 3's request for reversal of late fees, penalties and interest assessed based on its non-payment of its billed contribution assessment.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, 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), that the request for review of the decision by the Universal Service Administrative Company filed by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Witel Communications, LLC IS DENIED.

11. IT IS FURTHER ORDERED, 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), that the requests for waiver of late fees, penalties, and interest charges by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Witel Communications, LLC IS DENIED.

12. IT IS FURTHER ORDERED, 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), that the petition for stay of the decision by the Universal Service Administrative Company by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Witel Communications, LLC IS DENIED.

⁴⁰ See 47 C.F.R. § 54.713; see also *Comprehensive Review Order*, 22 FCC Rcd at 16376, para. 9.

⁴¹ See *True-Up Report and Order*, 16 FCC Rcd 5748. The revised methodology was also adopted to provide an incentive for carriers to accurately report their quarterly revenues. *Id.* at 5753, para. 12.

⁴² Request for Review at 4.

⁴³ See *supra* note 22; see also *Federal State Joint Board on Universal Service; Aventure 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, 23 FCC Rcd 10096 (Wireline Comp. Bur. 2008) (*Aventure Order*) (granting waiver of the FCC Form 499-Q revision deadline due in part to contributor's compliance with the pay and dispute policy).

⁴⁴ See Request for Review at 6.

⁴⁵ *Achieve Order*, 23 FCC Rcd at 17906-07, para. 9.

13. IT IS FURTHER ORDERED, 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), that the motion for waiver of public notice by Level 3 Communications, LLC, ICG Telecom Group, Inc., Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., Progress Telecom, LLC, and Wiltel Communications, LLC IS DENIED.

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

Sharon E. Gillett
Chief
Wireline Competition Bureau