

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

In the Matter of
Universal Service Contribution Methodology
Requests for Waiver of Decisions of the Universal
Service Administrator by
Ambess Enterprises, Inc., et al.
WC Docket No. 06-122

ORDER

Adopted: April 16, 2010

Released: April 16, 2010

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we dismiss as moot seven requests for waiver of actions taken by the Universal Service Administrative Company (USAC). Specifically, the petitioners request that the Commission waive certain filing deadlines associated with the filing of their FCC Forms 499-Q 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 the petitioners, we dismiss as moot the petitioners' requests.

II. BACKGROUND

2. USAC performs billing and collection functions for the Commission as part of its administration of the universal service support mechanisms. 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

1 Ambess Enterprises, Inc. Appeal of Decision of the Universal Service Administrative Company and Request for Waiver, CC Docket No. 96-45 (dated Nov. 25, 2008) (Ambess Request for Review); Letter from Adam Kane, Aspire Telecom, Inc., to Secretary, FCC, WC Docket No. 06-122 (dated Apr. 9, 2009) (Aspire Letter); Letter from David Weidenborner on behalf of Pelzer Communications, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Jan. 14, 2009) (Pelzer Letter); Emergency Request for Review and Request for Waiver of USAC 45-Day Revision Deadline of Progress International, LLC, CC Docket No. 96-45 (filed Sept. 12, 2008) (Progress Request for Review); Letter from Lynn Kay, Ready Telecom, Inc., to Secretary, FCC, CC Docket No. 96-45 (dated Feb. 4, 2009) (Ready Letter); Letter from Stephen Wilson, Spectrotel, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Mar. 24, 2009) (Spectrotel Letter); Wholesale Carrier Services, Inc. Appeal of Decision of the Universal Service Administrative Company and Request for Waiver, WC Docket No. 06-122 (filed Aug. 27, 2008) (Wholesale Request for Review) (collectively, the petitioners). 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 47 C.F.R. § 54.702(b).

quarter.<sup>3</sup> USAC computes the entities' quarterly universal service contributions based on the projected revenue information provided on the FCC Form 499-Q bills entities, and USAC bill entities each month based on this obligation.<sup>4</sup> Filers have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.<sup>5</sup> In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.<sup>6</sup> 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 overpayment.<sup>7</sup>

3. Petitioners timely submitted their FCC Forms 499-Q, but overstated the amount of revenues that were subject to universal service contributions.<sup>8</sup> The 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 the petitioners' contribution obligations based on the reported quarterly information and invoiced them monthly based on this determination.<sup>9</sup> The petitioners then filed the pending requests to 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.<sup>10</sup>

### III. DISCUSSION

4. We dismiss the petitioners' waiver requests as moot. 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 entities during the prior calendar year.<sup>11</sup> The true-up process provides contributors with an accurate reconciliation of their revenue information as well as their universal service contribution obligations.

5. USAC's annual true-up, based on the FCC Forms 499-A that were filed in April 2008 and 2009 has reconciled the contribution obligation for each of the petitioners.<sup>12</sup> USAC has also

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<sup>3</sup> 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> (February 2010) (last visited April 16, 2010).

<sup>4</sup> 47 C.F.R. § 54.711(a).

<sup>5</sup> *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*).

<sup>6</sup> *Id.* at 24973, para. 37

<sup>7</sup> *Id.* at 24972, para. 36. 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.*

<sup>8</sup> See Ambess Request for Review at 4; Aspire Letter at 1; Pelzer Letter at 1; Progress Request for Review at 1; Ready Letter at 1; Spectrotel Letter at 1; Wholesale Request for Review at 1-2.

<sup>9</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36.

<sup>10</sup> See e.g., Ready Request for Review at 1-2 (Ready reported annual data rather than quarterly data which resulted in an invoice that places an undue hardship on the company).

<sup>11</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36.

<sup>12</sup> See *infra* at Appendix.

confirmed that any adjustments resulting from the reconciliation process were posted to the petitioners' accounts.<sup>13</sup> We therefore dismiss the petitioners' requests as moot.

6. We take this opportunity to remind all filers of the importance of timely filing their FCC Forms 499-Q.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

#### IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority delegated in sections 0.91, 0.204(b), 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.204(b), 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.

8. 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

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

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<sup>13</sup> See E-mail from Michelle Garber, Universal Service Administrative Company, to Erica Myers, FCC (dated May 5, 2009); see E-mail from Stefani Watterson, Universal Service Administrative Company, to Erica Myers, FCC (dated Mar. 4, 2010).

<sup>14</sup> See Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited April 16, 2010) (USAC Form 499 Filing Schedule).

<sup>15</sup> See <http://www.universalservice.org/fund-administration/forms/> (last visited April 16, 2010).

<sup>16</sup> *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).

<sup>17</sup> See 47 C.F.R. § 54.713.

## APPENDIX

<b>Company Name</b>	<b>Filer ID</b>	<b>Date Request Filed</b>	<b>Late filed FCC Form 499-Q</b>	<b>FCC Form 499-A</b>
Ambess Enterprises, Inc.	821772	November 25, 2008	Aug. 2007	2008
Aspire Telecom, Inc.	826773	April 9, 2009	May 2008	2009
Pelzer Communications, Corp.	824520	January 14, 2009	Feb. 2007	2008
Progress International, Inc.	825928	September 12, 2008	Nov. 2007	2009
Ready Telecom, Inc.	822376	February 4, 2009	May 2008	2009
Spectrotel, Inc.	819208	March 24, 2009	Aug. 2008	2009
Wholesale Carrier Services, Inc.	822308	August 27, 2008	Feb. 2008	2009