

**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 of a Decision of the	)	
Universal Service Administrator by	)	
IP Telcom Group, Inc.	)	

**ORDER**

**Adopted: August 8, 2011**

**Released: August 8, 2011**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we deny a request filed by IP Telcom Group, Inc. (IP Telcom) for review of a decision by the Universal Service Administrative Company (USAC) rejecting late filed revisions to IP Telcom's 2008 and 2009 annual Telecommunications Reporting Worksheet (FCC Form 499-A).<sup>1</sup> As discussed below, we find that IP Telcom has failed to demonstrate that good cause exists to justify waiver of the filing deadline for FCC Form 499-A revisions.

**II. BACKGROUND**

2. Section 254(d) of the Communications Act of 1934, as amended, 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.<sup>2</sup> Pursuant to the Commission's rules, carriers and certain other providers of interstate telecommunications are required to file FCC Form 499-A with USAC on April 1 each year.<sup>3</sup> The information gathered from the FCC Form 499-A is used for calculating contributions to support the universal service fund (USF), North American Numbering Plan administration, long-term number portability, and the interstate Telecommunications Relay Service (TRS) funds.<sup>4</sup>

3. In the 2004 *FCC Form 499-A One-Year Deadline Order*, the Wireline Competition Bureau (Bureau) established a one-year deadline for filers to submit any revisions to their original FCC

<sup>1</sup> Letter from Matthew Schulman, Regulatory Consultant for IP Telcom Group, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Sept. 30, 2010) (IP Telcom Request for Review).

<sup>2</sup> 47 U.S.C. § 254(d).

<sup>3</sup> See 47 C.F.R. §§ 54.706, 54.711, 54.713 (requiring all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to file the annual Telecommunications Reporting Worksheet (FCC Form 499-A)); FCC Form 499-A Telecommunications Reporting Worksheet Instructions at 5 (2011), <http://www.usac.org/res/documents/fund-administration/pdf/forms/form-499A-fy2011-instructions.pdf> (2011 FCC Form 499-A Instructions).

<sup>4</sup> See 47 C.F.R. §§ 52.17 (numbering administration), 52.32 (local number portability), 54.706 (universal service), 64.604 (interstate TRS).

Form 499-A that result in reduced contributions.<sup>5</sup> The Bureau found that a firm one year deadline for revisions that would result in reduced contributions would improve administrative efficiency, provide certainty, stability, and sufficiency for the funds covered by the FCC Form 499-A.<sup>6</sup> The Bureau determined that a one year period for such revisions was appropriate based, among other reasons, on experience with the USF contribution mechanism.<sup>7</sup> Accordingly, if a filer misreports its revenues in the annual FCC Form 499-A filing, it has until March 31 of the following year to revise its filing.<sup>8</sup> The Bureau has made clear that requests to file downward revisions to the FCC Form 499-A outside the 12-month window will not be granted unless there is a showing of good cause.<sup>9</sup>

4. *Request for Review.* IP Telcom requests review of USAC's decision to reject late filed revisions to its 2008 and 2009 FCC Form 499-A filings.<sup>10</sup> IP Telcom states that in its original 2008 and 2009 filings, it inadvertently declared an "arbitrary projected revenue amount,"<sup>11</sup> and that it misreported its international revenues.<sup>12</sup> IP Telcom states that, had it properly reported its international revenues, the company would not have incurred a contribution obligation to the TRS fund, other than the minimum \$25 fee.<sup>13</sup> IP Telcom states that it submitted incorrect filings because it did not have a clear understanding of the FCC Form 499 instructions.<sup>14</sup> In September 2010, IP Telcom's new regulatory consultant attempted to file with USAC revisions to the 2008 and 2009 filings that fell outside of the deadline for downward FCC Form 499-A revisions.<sup>15</sup> IP Telcom seeks a waiver of the one-year deadline for filing revisions to its 2008 and 2009 FCC Form 499-A filings.<sup>16</sup>

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<sup>5</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012, 1016, para. 10 (Wireline Comp. Bur. 2004) (*FCC Form 499-A One-Year Deadline Order*).

<sup>6</sup> *Id.* The *FCC Form 499-A One-Year Deadline Order* did not impose a similar deadline for revisions that result in increased contributions.

<sup>7</sup> See *id.* at 1017, para. 11.

<sup>8</sup> See USAC, Schedule of Filings, <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited July 19, 2011) (USAC Form 499 Filing Schedule). The one-year deadline is reflected in the FCC Form 499-A instructions. See, e.g., 2011 FCC Form 499-A Instructions at 8. Similar language was contained in the 2008 and 2009 FCC Form 499-A Instructions.

<sup>9</sup> See, e.g., *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by AT&T, Inc., Eureka Broadband Corporation*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10855 (Wireline Comp. Bur. 2010) (granting waivers of the 12-month filing deadline to two petitioners that demonstrated good cause) (*499-A Revision Approval Order*); *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (Wireline Comp. Bur. 2010) (finding that several petitioners had not met their burden of showing good cause) (*499-A Revision Denial Order*).

<sup>10</sup> IP Telcom Request for Review at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.*

### III. DISCUSSION

5. We find that IP Telcom has not demonstrated good cause to grant the requested relief. Accordingly, we deny the request for review of USAC's rejection of IP Telcom's late-filed revisions to its 2008 and 2009 filings and the request for waiver of the deadline for revising the FCC Form 499-A.

6. Generally, the Commission's rules may be waived for good cause shown.<sup>17</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.<sup>20</sup>

7. We find that IP Telcom's claim that it did not have a clear understanding of the FCC Form 499 instructions is not a unique circumstance sufficient to warrant a waiver of the deadline.<sup>21</sup> A strict one-year deadline for downward revisions to the FCC Form 499-A is important for the stability and administration of the funds covered by such form.<sup>22</sup> USAC processes thousands of forms each year, and it is administratively necessary for filers to meet the filing deadlines absent special circumstances.<sup>23</sup> We have previously held that simple negligence on the part of a filer is insufficiently unique to justify a waiver of the one-year deadline for Form 499-A revisions.<sup>24</sup> Businesses have a responsibility to

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<sup>17</sup> 47 C.F.R. § 1.3.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125–28 (D.C. Cir. 2008) (*NetworkIP*); *Northeast Cellular*, 897 F.2d at 1166.

<sup>21</sup> IP Telcom Request for Review at 1.

<sup>22</sup> *See supra* para. 3.

<sup>23</sup> *See FCC Form 499-A One-Year Deadline Order*, 20 FCC Rcd at 1017, para. 10; *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004). Firm deadlines also avoid unexpected increases in contribution amounts resulting from late-filed revenue adjustments. *See FCC Form 499-A One-Year Deadline Order*, 20 FCC Rcd at 1017, para. 10.

<sup>24</sup> *See 499-A Revision Denial Order* (denying deadline waivers where claims of good cause amount to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control); *Universal Service Contribution Methodology, Requests for Waiver of Decisions of the Universal Service Administrator by ComScape Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC*, WC Docket No. 06-122, Order, 25 FCC Rcd 7399 (Wireline Comp. Bur. 2010) (denying waiver requests when negligence caused late filing); *Universal Service Contribution Methodology, Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646, 4648–49, paras. 5, 8 (Wireline Comp. Bur. 2010); *Federal-State Joint Board on Universal Service, Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (Wireline Comp. Bur. 2007) (good cause not shown when filer claimed it did not have skilled personnel to interpret and correctly apply FCC Form 499 instructions). In *NetworkIP*, the party seeking waiver had filed a timely complaint with the Commission but included a payment that was \$5 short of the recently increased filing fee; when the party's complaint was rejected for not including the full filing fee, the party re-filed after the deadline and sought a waiver of the deadline. *NetworkIP*, 548 F.3d at 125–26. The court rejected the Commission's decision to grant a waiver, noting that "procrastination plus the universal tendency for things to go wrong (Murphy's Law)—at the worst possible moment (Finagle's Corollary)—is not a 'special circumstance,' as any junior high teacher can attest." *Id.* at 127. *Compare, 499-A Revision Denial Order* (good cause not shown for waiving FCC Form 499-A revision deadline when caused by negligence or errors within the petitioners control), with *499-A Revision Approval Order*, 25 FCC Rcd at 10858, (continued...)

familiarize themselves with the rules and regulations that are relevant to their industry.<sup>25</sup> IP Telcom's statement that it was unfamiliar with the filing procedures is not a sufficient basis to demonstrate that waiver is appropriate under the circumstances. Consistent with precedent, we therefore conclude that IP Telcom has not demonstrated that there is good cause to grant the requested waiver.<sup>26</sup>

8. We reject IP Telcom's argument that the Bureau's decision in the *Aventure Order* is applicable here.<sup>27</sup> As emphasized in the *Aventure Order*, waivers of filing deadlines are not routinely granted.<sup>28</sup> The unique circumstances presented in the *Aventure Order* are not present in this case. For example, the *Aventure Order* deals with revisions to quarterly FCC Form 499-Q filings (which has a shorter revision period), not to the annual FCC Form 499-A filings (which has a twelve month revision period). In addition, the petitioner at issue in the *Aventure Order* claimed that it did not realize its reporting error on its quarterly filing until it received an invoice from USAC, at which time it "immediately responded by filing a corrected FCC Form."<sup>29</sup> Here, IP Telcom repeated the same reporting error for at least two consecutive annual filings.<sup>30</sup> We therefore find that USAC properly rejected IP Telcom's late filed revisions to its 2008 and 2009 FCC Form 499-A filings.

#### IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154 and 254, and pursuant to sections 0.91, 0.291, 1.3 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722, the request for review and waiver filed by IP Telcom, Inc. 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

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para. 8 (good cause shown for waiving FCC Form 499-A revision deadline when records needed to timely file and substantiate revisions were destroyed in the September 11th terrorist attacks).

<sup>25</sup> See 47 C.F.R. § 0.406.

<sup>26</sup> Because we deny IP Telcom's request for waiver, we do not address its argument that its international revenues should have been reported on Line 418 rather than Line 412. For purposes of TRS contributions, revenues reported on Line 412 are included in the contribution base, whereas revenues reported in Line 418 are not. For USF purposes, neither Line 412 nor Line 418 is included in the contribution base.

<sup>27</sup> See IP Telcom Request for Review at 1, citing *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*).

<sup>28</sup> *Aventure Order*, 23 FCC Rcd at 10098, para. 7.

<sup>29</sup> *Id.* at 10096, para. 2.

<sup>30</sup> IP Telcom Request for Review at 1.