

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Requests for Review of Decisions of the Universal)	
Service Administrator and Requests for Waiver)	
by:)	
)	
BCG, Inc.)	
)	
Reliable Telephone Company, LLC)	

ORDER

Adopted: May 16, 2011

Released: May 16, 2011

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

1. In this order, we deny requests filed by BCG, Inc. (BCG) and Reliable Telephone Company, LLC (Reliable Telephone). Each of the petitioners seeks a waiver of the filing deadline for the annual Telecommunications Reporting Worksheet (FCC Form 499-A) and reversal of the associated late filings fees assessed by the Universal Service Administrative Company (USAC) for failure to timely file its 2009 FCC Form 499-A.¹ For the reasons stated below, we find that the petitioners have failed to demonstrate that good cause exists to justify waiver of the filing deadline. We direct USAC to collect any outstanding balance from BCG and Reliable Telephone, including any penalties or interest charges related to their respective FCC Form 499-A late filings.

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.² 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.³ Providers whose contribution to the universal service fund (USF) would be *de minimis*, that is under \$10,000, however, are exempt from directly contributing.⁴ *De minimis*

¹ Letter from Dawn Kosiorowski, BCG, Inc., to Office of the Secretary, Federal Communications Commission, WC Docket No. 06-122 (filed June 2, 2010) (BCG Petition); Letter from Daniel S. Brown, Partner, Reliable Telephone Company, LLC to Office of the Secretary, FCC, WC Docket No. 06-122 (filed Aug. 16, 2010) (Reliable Telephone Petition).

² 47 U.S.C.A. § 254(d).

³ 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)); Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited May 16, 2011) (USAC 499 Filing Schedule).

⁴ 47 C.F.R. § 54.708.

providers for USF purposes are therefore not required to file the FCC Form 499-A, unless required to do so by the Commission's rules governing contributions to other federal regulatory programs.⁵

3. Generally, the Commission's rules may be waived for good cause shown.⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸ 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.⁹

4. Both petitioners were required to file a Form 499-A but missed the filing deadline for the 2009 FCC Form 499-A.¹⁰ BCG states that, as a first time filer, it did not realize it was required to file the form until after the deadline.¹¹ BCG also contends that it should not be held responsible for the late filing because it qualified for the *de minimis* exemption.¹² Reliable Telephone states that it had submitted the form but it was lost in the mail and never received by USAC.¹³ USAC billed each of the petitioners late filing fees based on their respective delinquent filings.¹⁴

5. We deny the petitioners' requests for waiver and reversal of late filing fees assessed for failure to timely file their 2009 FCC Form 499-A. BCG's claim that it did not realize it was required to file its 2009 FCC Form 499-A by the April 1 deadline is not a unique circumstance sufficient to warrant a waiver of the deadline.¹⁵ We have previously held that simple negligence on the part of a filer is insufficiently unique to justify waiver of a filing deadline.¹⁶ Businesses have a responsibility to

⁵ *Id.*; 47 C.F.R. § 52.17(b) (numbering administration); 47 C.F.R. § 52.32(b) (local number portability); 47 C.F.R. § 64.604(c)(5)(iii)(B) (telecommunications relay service).

⁶ 47 C.F.R. § 1.3.

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁸ *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.

⁹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125–28 (D.C. Cir. 2008) (*NetworkIP*); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ BCG Petition at 1; Reliable Telephone Petition at 1.

¹¹ BCG Petition at 1.

¹² *Id.*

¹³ Reliable Telephone Petition at 1.

¹⁴ BCG Petition, Attachment; Reliable Telephone Petition, Attachment.

¹⁵ BCG Petition at 1.

¹⁶ *See, e.g., 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) (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 499 instructions). In *NetworkIP*, the party seeking waiver had

familiarize themselves with the rules and regulations that are relevant to their industry.¹⁷ BCG's statement that it is unfamiliar with the filing procedures is not sufficient to demonstrate that waiver is appropriate under the circumstances. Further, even though BCG met the *de minimis* criteria for purposes of the universal service fund,¹⁸ it was required to file for purposes of the other federal regulatory programs.¹⁹

6. We also deny Reliable Telephone's request for waiver. Reliable Telephone is unable to provide proof that it submitted its 2009 FCC Form 499-A by the April 1, 2010 deadline. Reliable claims the filing was lost in the mail but provides no other evidence supporting this claim.²⁰ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²¹

7. Consistent with our prior decisions, we conclude that the petitioners have not demonstrated that there is good cause to grant the requested waivers. We therefore find that USAC correctly assessed the late filing fees at issue in accordance with Commission rules and requirements.²²

8. 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 filed by BCG, Inc. IS DENIED.

9. IT IS FURTHER 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 filed by Reliable Telephone Company, LLC IS DENIED.

10. IT IS FURTHER ORDERED that this order SHALL BE transmitted to the Universal Service Administrative Company.

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.

¹⁷ See 47 C.F.R. § 0.406.

¹⁸ BCG Petition, Attachment at 3.

¹⁹ 47 C.F.R. §§ 54.708, 52.17(b), 52.32(b), 64.604(c)(5)(iii)(B).

²⁰ Reliable Telephone Petition at 1.

²¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²² See 47 C.F.R. § 54.713.

11. 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

Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau