

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Petition for Reconsideration by Ascent Media Group, Inc.)	

ORDER ON RECONSIDERATION

Adopted: May 3, 2013

Released: May 3, 2013

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a petition filed by Ascent Media Group, Inc. (Ascent Media).¹ Ascent Media seeks reconsideration of certain aspects of the *Achieve Order*, in which the Wireline Competition Bureau (Bureau) dismissed as moot requests from several petitioners to waive the filing deadline for revising FCC Forms 499-Q, and denied separate requests to reverse decisions of the Universal Service Administrative Company (USAC) that imposed interest and penalties in connection with unpaid invoices for universal service fund (USF or Fund) contribution assessments.² As discussed below, we grant Ascent Media's request for waiver of the FCC Form 499-Q filing deadline and direct USAC to accept Ascent Media's revised August 2007 FCC Form 499-Q as if timely filed.³

¹ Ascent Media Group Petition for Reconsideration, WC Docket No. 06-122 (filed Jan. 14, 2009) (Ascent Media Petition). Petitions requesting reconsideration of action taken pursuant to delegated authority may be acted on by the designated authority. See 47 C.F.R. § 1.106. COMPTTEL filed comments in support of the petition and Ascent Media filed reply comments. See COMPTTEL's Comments in Support of the Petitions for Reconsideration of the Wireline Competition Bureau's Order Dismissing Requests for Review of USAC Decision, WC Docket No. 06-122 (filed Apr. 20, 2009); Ascent Media Group Reply in Support of Petition for Reconsideration, WC Docket No. 06-122 (filed May 5, 2009).

² Ascent Media Petition at 1-2; *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 (Wireline Comp. Bur. 2008) (*Achieve Order*). In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year. 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 the overpayment. See *infra* para. 4. In the *Achieve Order*, the Bureau dismissed as moot requests for waivers by several petitioners (including Ascent Media) seeking to revise their FCC Form 499-Q filings after the 45-day revision deadline, because USAC's annual-true-up process, based on the petitioners' FCC Forms 499-A, had already reconciled the contribution obligation for such petitioners. *Achieve Order*, 23 FCC Rcd at 17905, para. 5.

³ Ascent Media also requested a refund of interest and penalties resulting from its failure to pay its 2007 November and December invoices. Because we waive the FCC Form 499-Q revision deadline and direct USAC to process the form as if timely filed, the interest and penalties, if any, associated with these months will be reassessed based on the revised filing.

2. In addressing the instant petition, we reiterate the importance of timely filing accurate revenue information and paying resulting invoices. We also caution filers that our actions here do not in any way diminish USAC's "pay-and-dispute" policy,⁴ and we do not condone filers engaging in self-help measures to dispute contribution assessments.

II. BACKGROUND

A. The Act and the Commission's Rules

3. 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."⁵ Section 254(d) further provides that "[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."⁶ To this end, the Commission has determined that common carriers and private carriage providers that provide interstate telecommunications to others for a fee generally must contribute to the USF based on their interstate and international end-user telecommunications revenues.⁷

4. In the *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use in computing their universal service contributions.⁸ The Commission also designated USAC as administrator of the Fund, pursuant to which USAC performs billing and collection functions for the Commission as part of its administration of the USF support mechanisms.⁹ Under the Commission's rules, contributors are required to file FCC Form 499-Q each quarter, projecting their interstate and international revenues for the upcoming quarter and providing their

⁴ 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/cont/about/billing-disputes.aspx> (last visited Apr. 22, 2013). The Commission has sought comment on whether to adopt a rule codifying USAC's pay-and-dispute policy or otherwise affirm the policy. *Universal Service Contribution Methodology: A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5482-84, paras. 360-66 (2012) (*Contribution Methodology Reform and Modernization Further Notice*).

⁵ 47 U.S.C. § 254(d).

⁶ *Id.*

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9183-84, para. 795 (1997) (subsequent history omitted). Although the Commission exercised its permissive authority to assess private carriage providers, it exempted certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers from the contribution requirement. 47 C.F.R. § 54.706(d). The Commission also requires certain other providers of interstate telecommunications to contribute to the Fund. See, e.g., *Universal Service Contribution Methodology et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7544, para. 52 (2006) (requiring interconnected voice over Internet protocol (VoIP) providers to contribute to the Fund).

⁸ 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).

⁹ *Id.* at 18423-24, para. 42; 47 C.F.R. § 54.702(b).

interstate and international revenues from the previous quarter.¹⁰ USAC computes the entities' quarterly universal service contribution obligation based on the projected revenue information reported on the FCC Form 499-Q, and bills entities each month based on this obligation.¹¹ Contributors have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.¹² In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.¹³ 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 the overpayment.¹⁴

5. In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996 (DCIA), which directs government agencies to "try to collect a claim of the [U.S.] Government for money or property arising out of the activities of, or referred to, the agency."¹⁵ The Commission's DCIA rules generally require that entities or individuals doing business with the Commission pay their debts in a timely manner.¹⁶ In 2007, the Commission adopted rules to strengthen oversight of the USF contributions process and align it with the DCIA.¹⁷ First, the Commission restructured the rate of interest assessed against USF contributions debt that is more than 30 days delinquent, setting the interest rate for delinquent debt at U.S. prime rate plus 3.5 percent.¹⁸ The Commission designed this interest rate to be consistent with commercial practices, and to address shortcomings under the previous structure.¹⁹ Also, consistent with the Commission's DCIA rules, the

¹⁰ See 47 C.F.R. §§ 54.706(a)-(b), 54.711; see also 2012 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 19.

¹¹ 47 C.F.R. §§ 54.709, 54.711(a).

¹² *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (*2002 Contribution Methodology Order*); 2012 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 9.

¹³ *2002 Contribution Methodology Order*, 17 FCC Rcd at 24973, para. 37.

¹⁴ *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. *Id.* 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 *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).

¹⁵ See *Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*2004 DCIA Order*); 47 C.F.R. Part 1, Subpart O; 31 U.S.C. § 3711(a). Congress enacted the DCIA to strengthen federal debt collection procedures. Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

¹⁶ *2004 DCIA Order*, 19 FCC Rcd at 6542, para. 5.

¹⁷ *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16379, paras. 1, 14 (2007) (*2007 Comprehensive Review Order*).

¹⁸ *Id.* at 16379, para. 14. Prior to the *2007 Comprehensive Review Order*, USAC had varied measures to reduce contributor delinquency and pursue debtors with outstanding contribution obligations. In the *2007 Comprehensive Review Order*, the Commission adopted a single standard to be used in assessing late fees. *Id.* at 16378, para. 12.

¹⁹ *Id.* at 16376, para. 9.

Commission established that USF debt that is more than 90 days delinquent will incur an additional penalty of six percent per year.²⁰ Pursuant to section 54.713 of the Commission's rules, contributors must pay the amount billed by the due date provided in invoices to avoid the assessment of interest and penalties provided under the DCIA requirements.²¹ If a contributor does not pay a disputed assessment, USAC cannot waive the interest or penalties unless the disputed charges are later found to be a result of a USAC error, or USAC is directed to do so by the Commission.²²

B. Petition for Reconsideration

6. Ascent Media reported its total projected company revenue instead of its projected interstate and international telecommunications revenue on its August 2007 FCC Form 499-Q.²³ Ascent Media states that it did not realize its error until it received its October 2007 invoice, which was the first invoice based on this FCC Form 499-Q filing.²⁴ The October 2007 invoice, at \$717,000, was approximately ten times the monthly amount Ascent Media would be required to pay had it not over-reported its revenues.²⁵ In accordance with USAC procedures, this invoice was the first of three identical invoices for the fourth quarter 2007. Ascent Media states that the total amount invoiced in the fourth quarter 2007 exceeded its projected gross telecommunications revenues for the quarter.²⁶ Ascent Media paid the October invoice in full and, on November 14, 2007, prior to receiving its November invoice, filed an appeal with USAC, requesting that USAC accept its revised FCC Form 499-Q and recalculate its contribution obligation.²⁷ Ascent Media did not pay the November and December 2007 invoices, and USAC imposed DCIA interest and penalties as a result. In January 2008, USAC denied Ascent Media's appeal, and Ascent Media sought review of that decision by the Commission in February 2008.²⁸

7. In December 2008, the Bureau dismissed as moot Ascent Media's request for waiver of the deadline for revising the FCC Form 499-Q, and denied the company's request for refund of interest and penalties assessed for its failure to pay the November and December invoices.²⁹ On January 14, 2009, Ascent Media filed the instant petition for reconsideration asking the Bureau to reconsider and reverse the decision dismissing Ascent Media's request to waive the FCC Form 499-Q revision deadline, and reverse

²⁰ *Id.* at 16381, para. 17.

²¹ 47 C.F.R. § 54.713(a) ("A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed"), (b) ("If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, the payment is delinquent. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest . . . as well as administrative charges of collection and/or penalties . . .").

²² 47 C.F.R. § 54.702(c) (prohibiting the Administrator from making policy or interpreting Commission rules); *Contribution Methodology Reform and Modernization Further Notice*, 27 FCC Rcd at 5482, para. 362.

²³ Letter from Donna Cote, Ascent Media Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 06-122, at 2 (dated Feb. 6, 2008) (Ascent Media Request for Review).

²⁴ Ascent Media Petition at 2; *see* Ascent Media Request for Review at 8.

²⁵ Ascent Media Petition at 2-3.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

²⁸ Ascent Media Request for Review. Ascent Media requested that the Commission refund interest and penalties that accrued for the unpaid November and December invoices.

²⁹ *Achieve Order*, 23 FCC Rcd at 17906, para. 8.

USAC's imposition of interest and penalties associated with Ascent Media's failure to pay the November and December 2007 invoices.³⁰

III. DISCUSSION

8. We find in this limited circumstance that Ascent Media has demonstrated good cause to waive the filing deadline for the revised August 2007 FCC Form 499-Q.³¹ We therefore grant the petition for reconsideration and direct USAC to process the revised form as if timely filed.

9. The Commission may waive any provision of its rules for good cause shown.³² A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.³³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁴ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³⁵

10. We conclude that Ascent Media has, to the extent discussed below, met the high burden of justifying that waiver is warranted here. Ascent Media asserts that it mistakenly reported its total projected company revenues instead of its end-user interstate and international telecommunications revenues on the FCC Form 499-Q at issue.³⁶ Because of this error, Ascent Media's invoices were approximately 10 times its average monthly invoice.³⁷ Nevertheless, Ascent Media paid its overstated October 2007 invoice in full and on time.³⁸ Ascent Media's single payment for October 2007 was significant and represented more than 75% of the company's total USF obligation for all of 2007. Moreover, Ascent Media promptly filed an appeal with USAC on the date the October invoice was due.³⁹

11. Although the subsequent annual true-up process reconciled the amount paid by Ascent Media with the amount it should have owed based on Ascent Media's assessable revenue, the true-up process did not adjust the interest or penalties associated with the nonpayment of the November and December 2007 invoices, and these assessments remained on Ascent Media's account. While we do not condone Ascent Media's non-payment of its November and December 2007 invoices, strict enforcement of the filing deadline and the imposition of the associated interest and penalties in this case would

³⁰ Ascent Media Petition at 13.

³¹ *See Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; Aventure Communications Technology, LLC, 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, 10097-98, paras. 4-5 (*Aventure Order*).

³² 47 C.F.R. § 1.3.

³³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.

³⁵ *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); *Northeast Cellular*, 897 F.2d at 1166.

³⁶ Ascent Media Request for Review at 2.

³⁷ Ascent Media Petition at 2-3.

³⁸ *Id.* at 3.

³⁹ *See id.*

disproportionately penalize Ascent Media.⁴⁰ By the time USAC performed the annual true-up for Ascent Media's 2007 revenue, the interest and penalties for these two months equaled the approximate amount of Ascent Media's adjusted assessment for those months. Further, Ascent Media has revised its internal policies to ensure a filing error will not occur in the future.⁴¹ Given the magnitude of the interest and penalties, the timely payment of the sizeable October 2007 invoice -- a payment that far exceeded Ascent Media's total adjusted contribution obligation for the fourth quarter of that year -- and the prompt filing of the appeal with USAC, we find that good cause exists to waive the filing deadline for the revised August 2007 FCC Form 499-Q.⁴² We direct USAC to accept the revised August 2007 FCC Form 499-Q as if timely filed, and process it accordingly.

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, 405, and pursuant to authority granted in sections 0.91, 0.291, 1.3 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106, the petition for reconsideration filed by Ascent Media Group, Inc. is hereby GRANTED to the extent discussed herein.

13. 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

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

⁴⁰ See *Aventure Order*, 23 FCC Rcd at 10098, para. 6 (inadvertent reporting error of total company revenues rather than end-user revenues subject to USF contributions caused undue hardship justifying waiver of FCC Form 499-Q deadline).

⁴¹ Ascent Media Petition at 9.

⁴² Absent a waiver of the 45-day filing revision window, Ascent Media would be required to pay not only interest and penalties, but also a true-up differential. Under the true-up process, USAC refunds overpayment to contributors at the average of the two lowest contribution factors for the year. *2002 Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36. Ascent Media's overpayment occurred in the fourth quarter 2007 when the contribution factor was 11 percent; however, under the true-up process, USAC refunded the amounts owed to Ascent Media based on the average of the two lowest contribution factors for 2007, or 10.35%. Due to the magnitude of the refund and the contribution factor differential, the true-up amount refunded to Ascent Media was significantly lower than what it overpaid. By waiving the 45-day revision window and directing USAC to process the revision as if timely filed, we avoid the true-up differential based on the two lowest contribution factors. Processing of the Form 499-Q as timely also avoids application of the DCIA penalties and interest.