

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Request for Review by)
)
Atlantel Inc. of) Docket No. WC 06-122
Decision of the)
Universal Service Administrator)

REQUEST FOR REVIEW OF A DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR

Atlantel Inc. ("Atlantel"), pursuant to Section 54.721 of the Commission's Rules, seeks review of the decision of the Universal Service Administrator rejecting Atlantel's revised Form 499's correcting its previous erroneous filings. The Universal Service Administrator determined that the filings were untimely and indicated that it could not grant a waiver of the deadlines unless directed to do so by the Commission. As demonstrated herein, failure to allow Atlantel to correct the erroneous filings would work a manifest injustice, thus warranting a waiver of the deadlines for correcting the Form 499's in the particular circumstances of this case.

Atlantel is a small wholesale provider of international services that offers capacity to resellers using VoIP technology. Atlantel has its main offices in Argentina, and has no employees in the United States. Atlantel made a good faith effort to comply with FCC regulations, including the filing of Form 499's with USAC. Atlantel discovered it had made mistakes in its Form 499's when it received a dunning letter from a collection agency seeking to collect for outstanding regulatory fees. After receiving the dunning letter, Atlantel reviewed the FCC database with regard to debts allegedly owed by Atlantel, which showed amounts

outstanding for previous years' ITSP annual regulatory fees. Atlantel then reviewed its previously filed FCC Form 499-A's and discovered that it had incorrectly listed revenues both by including traffic between foreign points that did not transit the United States in Line 412, and by failing to properly list all of its revenues as coming from other carriers in either Line 311 or Line 511. These incorrect filings apparently resulted in the assessment of ITSP annual regulatory fees that were not actually owed when the Form 499-A's are properly completed.

Shortly after learning of its mistakes, Atlantel filed revised FCC Form 499-A's with USAC to correct these earlier mistakes. Atlantel requested a waiver, to the extent one was needed, for acceptance of the revised Form 499-A's.¹ Atlantel's initial request was dismissed summarily. Atlantel timely filed a Letter of Appeal with USAC, which was denied in a letter dated August 27, 2014 (a copy of that letter is attached). Atlantel is now seeking review by the Commission of that USAC decision, within the 60-day period specified in Section 54.720 of the Commission's Rules.

Atlantel believes that its initial difficulty in properly filling out the Form 499-A is understandable. Populating the FCC Form 499-A can be quite confusing, particularly for someone where English is not their first language. Line 412 in the FCC Form 499-A simply

¹ In addition, along with its submission of the corrected forms and waiver request, Atlantel also indicated at fn. 1 that:

Atlantel recognizes that the revised filing would reduce (to zero) the amount owed for ITSP Regulatory fees for 2011. *Cf., Federal State Joint Board on Universal Service*, 20 FCC Rcd 1012 (2004). Moreover, to the extent that Atlantel would be obtaining relief from the incorrect regulatory fees, it would presumably need a waiver of 47 C.F.R. §1.1167 insofar as it is not paying the disputed amount while challenging the assessment. A copy of this letter is separately being sent to the Managing Director.

indicates that it is the place to list revenues from: “International calls that both originate and terminate in foreign points”. The Instructions for the FCC Form 499-A (at page 19) provide that:

International calls that traverse the United States but both originate and terminate in foreign points are excluded from the universal service contribution base. Such end-user revenues should be segregated from other toll revenues by showing them on Line 412. Such reseller revenues should be reported on Line 311. Telecommunications providers should not report international settlement revenues from traditional settlement transiting traffic on the Worksheet.

The inference of these instructions is that international calls between two foreign points that do not transit the United States are not to be reported in Line 412, although it does not state so explicitly with respect to the instructions for Line 412. Elsewhere in the Instructions (at page 22) they do generally explain that:

Interstate and international telecommunications means communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.

From this, one could presumably infer that insofar as communications between two points wholly outside the United States are not “international telecommunications,” and thus should be reported on Line 418.3 (“other”), but the Instructions are not explicit about this. The instructions are also confusing insofar as they indicate (at p. 20) that:

For carriers providing international telecommunications services, the total revenues identified as international on Line 419(e) should match the total U.S. billed revenues that will be reported each year pursuant to 47 C.F.R. § 43.61 except in very limited circumstances, such as receipts from foreign carriers for calls that are reoriginated and reported as U.S. billed traffic.

Atlantel, however, as a service provider that resells international VoIP calls, is not yet required to file any Section 43.61 reports.² Given the ambiguity and inconsistencies in the instructions, it is easy to see how a small, foreign carrier could be confused as to where to properly record foreign revenues on the FCC Form 499-A.

There was also some confusion regarding the need for a waiver to file the revisions.

According to the USAC website (<http://www.usac.org/cont/499/revising-worksheets.aspx>) with regard to FCC Form 499 revisions:

FCC Form 499-A revisions submitted outside of the revision deadline window *that decrease the universal service contribution base will be rejected.* All FCC Form 499-Q revisions submitted outside of the revision deadline will be rejected. In both cases, however, USAC will record receipt of the filing to stop continued late filing fees. (emphasis added)

In Atlantel's case, the revisions did not decrease the universal service contribution base.³

² The Commission has recently adopted a requirement that interconnected VoIP service providers file reports on international services. *Reporting Requirements for U.S. Providers of International Telecommunications Services Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, 28 FCC Rcd 575 (2013); *Public Notice*, "Carriers Should Continue to File Annual International Traffic and Revenue Reports And Circuit-Status Reports Pursuant to Sections 43.61 and 43.82 of the Commission's Rules," 28 FCC Rcd 1054 (2013). However, even under the new rules, Atlantel would not be required to file information on its international VoIP services since it would fall under the exemption for service providers with less than \$5 million in revenue.

³ Somewhat differently, the Form 499-A instructions provide "Filers must submit any revised Worksheet that would result in decreased contributions by March 31 of the year after the original filing due date." [citing *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order, 20 FCC Rcd 1012, 1013, para. 2 (Wireline Comp. Bur. 2004), *pet. for recon. and applications for review pending.*] Atlantel observes that challenges to that cited Bureau decision have been pending for nearly a decade. In addition, a search of the OMB database -- <http://www.reginfo.gov/public/do/PRASearch> -- revealed no contemporaneous Paperwork Reduction Act items addressing revisions to Form 499 with regard to the changes made by that Bureau decision. Under those circumstances, penalizing Atlantel by not allowing corrective filings would seemingly violate the Paperwork Reduction Act. 44 U.S.C § 3512.

Atlantel believes that the circumstances here warrant waiver of the one-year deadline USAC is applying with regard to Form 499-A revisions. As an initial matter, Atlantel notes that USAC never passed upon the merits of Atlantel's waiver request. The Commission, however, is required to give a "hard look" at waiver requests.⁴ In determining whether to grant a waiver, the Commission looks at a variety of factors:

The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived 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, 1157, (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972).⁵

Atlantel's confusion, particularly when combined with the fact that no regulatory fees were actually due because of the wholesale-only nature of their services and the disproportionate hardship that results from imposition of regulatory fees not actually owed, renders it manifestly unjust to deny Atlantel the opportunity to file corrected FCC Form 499-A's. In other cases, the Commission has waived the deadlines for revisions to Form 499's to allow corrections of mistakes where the errors vastly overstated the resulting fees and assessments.⁶ The purpose of

⁴ *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1224-25 (D.C. Cir. 1999) (Waiver requests "are not subject to perfunctory treatment, but must be given a hard look.")

⁵ *Request for Review of Decisions of the Universal Service Administrator by Iowa Department of Education*, 27 FCC Rcd 9848 (2012) at n. 14.

⁶ E.g., *Emergency Request for Review by Peak Communications, Inc. of a Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q*, 29 FCC Rcd 966 (2014); *Universal Service Contribution Methodology Emergency Request for Review of Decision of the Universal Service Administrator and Request for Waiver of Deadline by Peerless Network, Inc.*, 29 FCC Rcd 7546 (2014); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, 28 FCC Rcd 10358 (Wireline Comp. Bur. 2013). Cf., *In the Matter of East Buchanan Telephone*

Form 499 reporting is to collect amounts owed for various funds – here funds were not actually owed, and it would work a hardship to impose these fees that do not actually apply to this very low-margin business.⁷ Atlantel thus requests that the Commission waive the one-year deadline that USAC has applied and allow acceptance of the revised Form 499's.

Respectfully submitted,
Atlantel Inc.

By: _____/s/_____
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Dated: October 14, 2014

Cooperative, 29 FCC Rcd 5022 (allowed to file revised hearing aid compatibility report – NALF rescinded).

⁷ These same circumstances would also justify a waiver of 47 C.F.R. §1.1167 so that Atlantel would not need to pay the regulatory fees and then seek a refund.

DECLARATION OF OSCAR PELOSO

I, Oscar Peloso, am President of Atlantel Inc. ("Atlantel"). I have personal knowledge of the representations made by Atlantel in its "Request for Review by Atlantel Inc. of Decision of the Universal Service Administrator." Based upon my personal knowledge, I verify the truth and accuracy of the information in Atlantel's request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2014.



Oscar Peloso
President
Atlantel Inc.



CERTIFICATE OF SERVICE

I, Stephen L. Goodman, certify that in accordance with 47 C.F. R. § 54.721(c), I filed this Request with the Commission electronically via ECFS, and also served a copy of this Request on the USAC Administrator via U.S. mail consistent with the requirement for service of documents set forth in 47 C.F.R. § 1.47 on October 14, 2014 at the following address:

Letter of Appeal
Universal Service Administrative Company
Form 499 Data Collection Agent
2000 L Street NW, Suite 200
Washington, DC 20036

/s/
Stephen L. Goodman