



Administrator's Decision on Contributor Appeal

By Certified Mail

August 27, 2014

Mr. Stephen L. Goodman
Butzel Long, P.C.
1747 Pennsylvania Ave., NW
Suite 300
Washington, DC 20006

Re: Atlantel, Inc. (Filer ID 828289)
Letter of Appeal dated April 7, 2014

Dear Mr. Goodman,

The Universal Service Administrative Company (USAC) has completed its evaluation of the appeal you submitted on behalf of Atlantel, Inc. (Filer ID 828289) (Atlantel), dated April 7, 2014. The appeal concerns the rejection of Atlantel's revised 2010, 2011 and 2012 FCC Forms 499-A, which USAC received on February 18, 2014. Atlantel requests that USAC accept the late-filed revised FCC Forms 499-A. As discussed in more detail below, USAC hereby denies Atlantel's appeal.

Decision on Appeal: Denied.

Federal Communications Commission (FCC or Commission) regulations require that telecommunications carriers file an annual FCC Form 499-A. In addition, carriers are required to file quarterly FCC Forms 499-Q, unless they meet the *de minimis* exemption.¹

¹ See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."); see also 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (providing that "[i]f a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability.") (internal citations omitted). We note that regulations governing the Telecommunications Relay Service require all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47 C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications

USAC relies on projected revenue for the upcoming quarter as reported on the FCC Form 499-Q to bill each carrier its federal Universal Service contribution obligations.² USAC relies on the annual FCC Form 499-A to reconcile billings for the previous year, as projected on the FCC Forms 499-Q.³

The FCC has stated that timely filing of the FCC Form 499 is an essential administrative requirement that serves the public interest and is a requirement on which the FCC relies in order to determine the quarterly Universal Service contribution factor.⁴ The FCC established a 45-day revision window to give contributors an opportunity to revise their quarterly forms while adequately maintaining appropriate Universal Service funding in a given quarter. The FCC also established a 12-month revision window to permit contributors to revise FCC Form 499-A filings.⁵ The FCC Form 499-A revisions are due on March 31 of the calendar year following the original April 1 deadline.⁶ However, an FCC Form 499-A revision is always required if the revision results in an increased contribution obligation (i.e., the carrier's previously filed FCC Form 499-A resulted in the carrier having a Universal Service contribution obligation less than what the carrier owes based on information then or currently available to the carrier).⁷ In all cases, it is the carrier's obligation to ensure filings are made in a timely and accurate manner.

The 2010, 2011 and 2012 FCC Forms 499-A were due on April 1, 2010, April 1, 2011, and April 2, 2012, respectively.⁸ Any revisions that would result in reduced contributions were due on or before March 31 of the calendar year following the original April 1 deadline.⁹ USAC's records indicate that Atlantel filed its original 2010 FCC Form 499-A on April 21, 2010; its original 2011 FCC Form 499-A on April 20, 2011; a revised 2011 FCC Form 499-A on March 16, 2012; and its original 2012 FCC Form 499-A on April 30, 2012. USAC reviewed and accepted all forms because they were received before the one-year downward revision deadline. USAC reported these revenues to the FCC as well as the Local Number Portability (LNP), North American Numbering Plan Administration

carriers providing service in the United States to complete an FCC Form 499-A. 47 C.F.R. §§ 52.32(b), 52.17(b).

² See generally 47 C.F.R. pt. 54.

³ *Id.*

⁴ *In the Matter of Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, DA 05-520, 20 FCC Rcd 4224, 4225-26, ¶¶ 3, 5 (2005).

⁵ *In the Matter of 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 Associations, Inc.*, CC Docket No. 96-45, Order, DA 04-3669, 20 FCC Rcd 1012, 1016, ¶ 10 (2004) (*Revision Deadline Order*).

⁶ *Id.*

⁷ *Id.* at ¶ 1.

⁸ See Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 10 (2010) (*2010 Instructions*); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5 (2011) (*2011 Instructions*); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5 (2012) (*2012 Instructions*); see also 47 C.F.R. § 1.4(e), (j).

⁹ See *2010 Instructions* at 12; *2011 Instructions* at 8; *2012 Instructions* at 8; *Revision Deadline Order*, 20 FCC Rcd at 1016, ¶ 10.

(NANPA), and Telecommunications Relay Service (TRS) fund administrators (collectively, the Fund Administrators). Based on the revenues reported on Atlantel's 2010, 2011 and 2012 FCC Forms 499-A, USAC determined that Atlantel qualified for the federal Universal Service *de minimis* exemption¹⁰ for calendar years 2009, 2010 and 2011 and, therefore was not required to contribute to the federal Universal Service Support Mechanisms during those years.

Atlantel filed revised 2010, 2011 and 2012 FCC Forms 499-A on February 18, 2014.¹¹ Consistent with Atlantel's previous filings, the revenue reported on its revised 2010, 2011 and 2012 FCC Forms 499-A qualified Atlantel for the federal Universal Service *de minimis* exemption for calendar years 2009, 2010 and 2011, and, therefore, Atlantel was not required to contribute to the federal Universal Service Support Mechanisms during those years. However, even when a revised FCC Form 499-A filed outside of the March 31 annual deadline has no impact on contributions to the federal Universal Service Support Mechanisms, USAC reviews the form to determine its impact on the other funds. If the revised form will result in a downward revision to the LNP, NANPA, and/or TRS contribution bases, USAC rejects the form pursuant to the *Revision Deadline Order*.¹² Because Atlantel's revised 2010, 2011 and 2012 FCC Forms 499-A would have resulted in downward revisions to Atlantel's LNP, NANPA, and TRS contribution bases and were submitted after the FCC-mandated one-year downward revision deadline for the FCC Forms 499-A, USAC issued letters to Atlantel rejecting the 2010, 2011 and 2012 FCC Forms 499-A on February 28, 2014.¹³

On April 7, 2014, Atlantel appealed the rejection of the revised 2010, 2011 and 2012 FCC Forms 499-A filed on February 18, 2014. In its appeal, Atlantel states that "[t]he rejection letters failed to address Atlantel's claim that the one year deadline is inapplicable in this case....[I]t appears that the one-year deadline should not apply, insofar as the revised filings do not decrease the universal service contribution base for Atlantel."¹⁴ As previously mentioned, the one-year deadline to downwardly revise the

¹⁰ See 47 C.F.R. § 54.708.

¹¹ USAC notes that Atlantel also filed a revised 2013 FCC Form 499-A on February 18, 2014, which USAC accepted. This revision is not at issue in Atlantel's appeal.

¹² *Revision Deadline Order*, 20 FCC Rcd at 1012, ¶ 1 ("In this Order, the Wireline Competition Bureau...modifies the deadline for filing revisions to the annual Telecommunications Reporting Worksheet (Worksheet of Form 499-A). In addition, we update the Instructions to the Telecommunications Reporting Worksheet...to clarify our intention to reject as untimely any Form 499-A revised filing not submitted within twelve months of the due date of the original filing in question, if the revision would decrease regulatory fees or contributions to support mechanisms for universal service, interstate Telecommunications Relay Service, number administration, or local number portability.").

¹³ Letter from USAC, to Oscar Peloso, President, Atlantel, Inc. (Feb. 28, 2014) (rejecting the 2010 FCC Form 499-A revision); Letter from USAC, to Oscar Peloso, President Atlantel, Inc. (Feb. 28, 2014) (rejecting the 2011 FCC Form 499-A revision); Letter from USAC, to Oscar Peloso, President, Atlantel, Inc. (Feb. 28, 2014) (rejecting the 2012 FCC Form 499-A revision).

¹⁴ Letter from Stephen L. Goodman, counsel for Atlantel, Inc., to USAC, at 1 (Apr. 7, 2014) (*Appeal Letter*).

FCC Form 499-A was mandated by the FCC in the *Revision Deadline Order*.¹⁵ Specifically, in the *Revision Deadline Order*, the FCC states that “any revised [FCC Form] 499-A that would result in decreased contributions must be submitted by March 31 of the year after the original filing due date.”¹⁶ In addition, in the *Revision Deadline Order*, the FCC clarified its “intention to reject as untimely any [FCC] Form 499-A revised filing not submitted within twelve months of the due date of the original filing in question, if the revision would decrease regulatory fees or contributions to support mechanisms for universal service, interstate Telecommunications Relay Service, number administration, or local number portability”¹⁷ and stated that “a firm deadline for revised Worksheets will...promote efficiency in administration of support mechanisms for universal service, interstate Telecommunications Relay Service, the North American Numbering Plan and Local Number Portability....”¹⁸

Thus, contrary to Atlantel’s assertions, the one-year downward revision deadline is not limited to revisions that would result in decreased contributions to the federal Universal Service Support Mechanisms *only*; rather, the one-year downward revision deadline also applies to revisions that would decrease regulatory fees or contributions to the other funds.¹⁹ Accordingly, even though the revised 2010, 2011 and 2012 FCC Forms 499-A submitted by Atlantel on February 18, 2014 did not result in decreased contributions to the federal Universal Service Support Mechanisms, the revised forms would have resulted in decreased regulatory fees and contributions to the LNP, NANPA, and TRS funds. As a result, consistent with the *Revision Deadline Order*, USAC properly rejected Atlantel’s revised 2010, 2011, and 2012 FCC Forms 499-A filed on February 18, 2014.

Atlantel also states that it “requested a waiver of the one-year deadline, to the extent any waivers were necessary.”²⁰ Specifically, Atlantel states:

The rejection letters neglected to address Atlantel’s waiver requests. Such a failure to address the waiver requests is inconsistent with the requirement that administrative agencies must give a “hard look” at waiver requests. In this case, USAC apparently did not even give the waiver request a perfunctory look.... Atlantel is a relatively small company with limited operations in the United States, so that payment of the regulatory fees that were not actually owed would work a disproportionate hardship and could threaten its continued U.S. operations.²¹

FCC rules require persons and entities having business with the Commission to familiarize themselves with the rules and regulations that are relevant to their business.

¹⁵ *Revision Deadline Order*, 20 FCC Rcd at 1016, ¶ 10.

¹⁶ *Id.*

¹⁷ *Id.* at 1012, ¶ 1 (emphasis added).

¹⁸ *Id.* at 1013, ¶ 2.

¹⁹ *See id.* at 1012-13, 1016-17, ¶¶ 1-2, 10.

²⁰ *Appeal Letter* at 1.

²¹ *Id.* at 1-2.

For carriers, this includes familiarizing themselves with the FCC Form 499-A and its corresponding instructions, including the requirement to timely file the form. It is the responsibility of the entity with the reporting obligation to timely file its FCC Forms 499 so that USAC may accurately project the contribution base and the contribution factor, as well as assess the entity's federal Universal Service contribution obligations. Only the FCC may waive the one-year downward revision deadline for good cause shown.²² USAC, as the Administrator of the federal Universal Service Fund, is not permitted to waive the one-year deadline unless directed to do so by the FCC.

Additionally, in the appeal, Atlantel states that "filling out the FCC Form 499-A can be quite confusing, particularly for someone where [sic] English is not their first language."²³ Atlantel goes on to discuss certain portions of the FCC Form 499-A instructions, which Atlantel believes are unclear, including references to the reporting of foreign revenues and the 47 C.F.R. § 43.61 reports, which it states that it is not yet required to file.²⁴ USAC notes that the FCC Form 499 instructions are developed by the FCC. The Commission has delegated to the FCC Wireline Competition Bureau (WCB) the authority to set federal Universal Service reporting requirements, including but not limited to revising the FCC Forms 499 and accompanying instructions.²⁵ The FCC WCB revises the FCC Forms 499 and accompanying instructions on an annual basis and publishes them in the Federal Register.²⁶ In its role as the federal Universal Service Administrator, USAC applies the FCC's rules, orders and the FCC Form 499 instructions as written to verify the information reported in the FCC Forms 499.²⁷

As previously stated, the 2010, 2011 and 2012 FCC Forms 499-A were due on April 1, 2010, April 1, 2011, and April 2, 2012, respectively; and any revisions that would result in reduced contributions were due on or before March 31 of the calendar year following the original April 1 deadline.²⁸ Because Atlantel's revised 2010, 2011 and 2012 FCC Forms 499-A would have resulted in decreased regulatory fees and contributions to the LNP, NANPA, and TRS funds and were submitted after the FCC-mandated one-year downward revision deadline for the FCC Forms 499-A, and because there was no error

²² See 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); see also *In the Matter of Universal Service Contribution Methodology, Request for Review of a Decision of the Universal Service Administrator by IP Telecom Group, Inc.*, WC Docket No. 06-122, Order, DA 11-1371, 26 FCC Rcd 11213, 11215, ¶ 6 (2011) (rejecting a request for review of USAC's rejection of late-filed revisions to the FCC Form 499-A, citing to 47 C.F.R. § 1.3 and noting that "[t]he Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest").

²³ *Appeal Letter* at 2.

²⁴ See *id.* at 2-3.

²⁵ See 47 C.F.R. § 54.711(c); *In the Matters of 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, FCC 97-253, 12 FCC Rcd 18400, 18442, ¶ 81 (1997) (*Second Order on Reconsideration*).

²⁶ See 47 C.F.R. § 54.711(a), (c); *Second Order on Reconsideration*, 12 FCC Rcd at 18442, ¶ 81.

²⁷ See 47 C.F.R. § 54.711(a).

²⁸ See *supra* notes 8-9.

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on USAC's part, Atlantel's request that USAC accept its late-filed revised FCC Forms 499-A is hereby denied.

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/cont/about/program-integrity/appeals.aspx>

Sincerely,

USAC

cc: Cheryl Collins, FCC Office Managing Director
Terry Cavanaugh, FCC Enforcement Bureau
Pamela Kane, FCC Enforcement Bureau
William Kehoe, FCC Enforcement Bureau
Vickie Robinson, FCC Wireline Competition Bureau
Chin Yoo, FCC Wireline Competition Bureau
