

service—rather than simply listing its assessable VoIP service on that line.² This error appears to have affected both Experior’s 2013 and 2014 Forms 499-A, and while Experior could revise its 2014 form and claim a *de minimis* exemption, the one-year downward revision deadline for the 2013 form had passed. As a result, USAC sent Experior an invoice demanding a Universal Service Fund (“USF”) contribution amount greater than Experior’s gross assessable VoIP revenues for all of 2012.³

ATS made a similar ministerial error on one of its FCC Forms 499-A, and has a pending appeal seeking a waiver of the one-year downward revision deadline. As explained in more detail below, Experior’s petition further demonstrates the need for the Commission to follow a reasonable revisions process for good faith, ministerial errors. The Commission has granted waiver requests in similar circumstances involving ministerial errors that impose disproportionate financial hardship on providers like ATS and Experior. Experior’s error illustrates that good faith, ministerial errors are inevitable, and that the Commission and Universal Service Administrative Company (“USAC”) should have a procedure for correcting such errors outside of the one-year deadline.

I. COMMISSION PRECEDENT JUSTIFIES WAIVERS FOR GOOD FAITH, MINISTERIAL ERRORS

The Commission’s rules permit companies to seek a waiver of Commission rules for “good cause shown.”⁴ The Commission has stated that it “generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the

² See Experior Request at 1.

³ See *id.*

⁴ 47 C.F.R. § 1.3.

policy objective of the rule in question.”⁵ The Commission has further noted that it “may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”⁶ In general, the Commission has analyzed the nature of the error and the magnitude of the harm when determining whether good cause exists to grant a waiver of USAC revision deadlines.⁷ On a number of occasions, the Commission has reversed USAC decisions and granted requests for waivers of filing deadlines in situations involving ministerial errors that are substantially similar to the circumstances described by Experior. ATS supports a policy that would grant waivers of the Form 499-A downward revision deadline for errors that were clerical in nature, that cause disproportionate financial hardship, and for which granting a waiver is in the public interest.

A. FCC Precedent Supports Waivers for Errors That Are Clerical in Nature

The FCC has granted waivers of revision deadlines where the error was clerical in nature. For example, the FCC has found good cause to waive revision deadlines where filers have mistakenly commingled assessable and non-assessable revenues in their contribution base.

⁵ *In re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance with Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, 20 FCC Rcd. 7709, 7714-15 (2005) (internal citations omitted).

⁶ *See In re Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; 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, 10097 n.10 (rel. June 26, 2008) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)) (“Aventure Order”).

⁷ *See In the Matter of Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, 28 FCC Rcd. 10358 (rel. July 22, 2013) (“American Broadband Order”); *In the Matter of Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, 28 FCC Rcd. 06150 (rel. May 3, 2013) (“Ascent Media Order”); *Aventure Order*, 23 FCC Rcd. 10096.

In the *Aventure Order*, the FCC found good cause to grant a waiver of the 45-day revision deadline for FCC Forms 499-Q where the filer had erroneously listed its total company revenues—“includ[ing] access and other revenues not subject to [USF] contributions”—in its contribution base, rather than simply listing its assessable interstate and international end-user revenues on its FCC Form 499-Q.⁸ Similarly, in the *Ascent Media Order*, the Commission concluded that a waiver was justified where the filer had “mistakenly reported its total projected company revenues instead of its end-user interstate and international telecommunications revenues” on its August 2007 FCC Form 499-Q.⁹

The same considerations that drove those cases (which involved errors in the Forms 499-Q) apply in the case of Form 499-A errors. Consequently, just as in the *Aventure Order* and the *Ascent Media Order*, the clerical nature of errors such as Experior’s supports a finding of good cause to grant a waiver of the one-year downward revision deadline for filing FCC Forms 499-A.

B. Commission Precedent Supports Waivers for Errors That Likely Will Cause Significant Financial Hardship

The Commission also has considered the magnitude of the error and the degree of financial hardship when deciding whether good cause warrants granting a waiver of a revision deadline. In the *Ascent Media Order*, the filer’s reporting error led to invoices that were ten times the company’s typical monthly invoice, in addition to significant interest and penalties.¹⁰ Similarly, in the *American Broadband Order*, a typographical error caused an extra zero to be added to the filer’s Form 499-Q projected revenues, leading to projected end-user

⁸ See *Aventure Order*, 23 FCC Rcd. at 10096, 10098-99, ¶¶ 2, 7.

⁹ See *Ascent Media Order*, 28 FCC Rcd. 06150, 6153-54, ¶¶ 6, 10.

¹⁰ See *id.* at 06153, ¶ 6.

telecommunications revenues that were ten times as large as intended.¹¹ Finally, in the *Aventure Order*, an error in reporting projected end-user telecommunications revenues led to an invoice that was nearly twenty times as large as the amount that the filer should have owed.¹²

A reasonable waiver policy should address such harms. A good faith error often can impose a great financial hardship on the petitioner, as appears to be the case with Exporior. Just as it does with Form 499-Q errors, the Commission should step in when the nature of the error would result in a substantial and undue burden, such as a significantly increased invoice that cannot be remedied through a true-up. Therefore, it is critical that the Commission remain consistent with its past precedent and find that a clerical error of significant magnitude justifies granting a waiver of the FCC Form 499-A filing deadline.

C. Granting Such Waivers Is in the Public Interest

Finally, the waiver policy ATS advocates is in the public interest. In the context of 499-Q filings, the Commission has found that a substantial delay in being made whole through the Form 499-A true-up process supported granting a waiver. In Form 499-A cases, there is no subsequent true-up through which the filer can reclaim the revenues that were erroneously included in its contribution base. Moreover, these sorts of ministerial errors on Forms 499-A are inevitable, and consequently it is in the public interest to provide a mechanism through which filers can correct those errors outside of the one-year window. Therefore, it is in the public interest for the FCC to grant a waiver of the one-year revision period to allow a petitioner to file an amended FCC Form 499-A.

¹¹ See *American Broadband Order*, 28 FCC Rcd. 10358, 10361, ¶ 6.

¹² See *Aventure Order*, 23 FCC Rcd. at 10097, ¶ 5.

II. CONCLUSION

For the foregoing reasons, ATS respectfully urges the Commission to grant waivers of the one-year downward revision deadline in case of good faith, ministerial errors made on a petitioner's FCC Form 499-A.

Respectfully submitted,



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