

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
NextMetro, LLC d/b/a BroadAspect)	
Form 499 Filer ID No. 831123)	WC Docket No. 06-122
Request for Review and)	
Request for Waiver of USAC Administrator's)	
December 17, 2015 Decision)	

REQUEST FOR REVIEW AND REQUEST FOR WAIVER

NextMetro, LLC d/b/a BroadAspect (Form 499 Filer ID No. 831123) ("BroadAspect," or the "Company"), by and through its attorneys, and pursuant to Sections 1.3 and 54.719 of the rules of the Federal Communications Commission ("FCC," or the "Commission"), respectfully requests review of the December 17, 2015 decision (the "Decision") of the Universal Service Administrative Company ("USAC"), in which USAC denied BroadAspect's request for cancellation of the late fees and penalties associated with its 2009-2015 FCC Form 499-As.¹ USAC's refusal to grant BroadAspect's request for cancellation of the late fees and penalties assessed based on the Company's Form 499-A filings would impose undue hardship upon the Company, lead to inequitable results, and would violate principles of competitive neutrality. Accordingly, BroadAspect requests that the Commission reverse USAC's decision, and waive all late fees and penalties assessed upon the Company.²

I. Background

BroadAspect is a cloud and fiber optic network service provider delivering the custom-designed and specialized cloud infrastructure computer networking, and systems integration services

¹ BroadAspect is aware of the Commission's recent policy update requiring parties to first petition USAC for an appeal of a USAC decision prior to filing an appeal with the FCC. However, this policy does not apply to requests for waivers of the Commission's rules. See *Appeals & Audits*, USAC.ORG, <http://www.usac.org/about/about/program-integrity/appeals.aspx> (last visited Jan. 1, 2016).

² BroadAspect seeks *de novo* review by the FCC's Wireline Competition Bureau of the December 17, 2015 USAC decision pursuant to 47 C.F.R. §§ 54.719(a)-(c), 54.723(a).

to its business customers. The Company also provides Interconnected VoIP ("I-VoIP") services in conjunction with its cloud, networking and integration services.

Beginning in 2008, BroadAspect believed it qualified for the Systems Integrator Exemption ("SI Exemption") because the Company derived less than five percent (5%) of its total revenue from its voice communications service offerings, which happened to be provided over the Internet – as VoIP – as opposed to traditional switched telephony technology. Based on its belief that it qualified as a Systems Integrator (recently affirmed by USAC), the Company did not register with USAC or file FCC Forms 499-A. In October 2015, BroadAspect determined that its revenues would potentially exceed the SI Exemption's 5% threshold in the near future. Thus, out of an abundance of caution, and acting in good faith, the Company filed a Form 499 Registration, and its 2015 Form 499-A. Because BroadAspect reported a service start date of June 2008 in its Form 499 Registration, it subsequently filed Forms 499-A for calendar years 2009-2015.

Since BroadAspect met the Commission's *de minimis* threshold for its FYs 2008-2014 revenue, it did not have a direct USF contribution obligation for those calendar years. Nevertheless, in November 2015, the Company received an invoice from USAC for late fees and penalties associated with its late filing of its 2009-2015 Form 499-As, totaling \$30,100.00.³

On December 11, 2015, BroadAspect filed a letter with USAC to withdraw its 2009-2015 Form 499-As, and to cancel the November 2015 Invoice on the grounds that: (1) it qualified as a Systems Integrator in FYs 2008-2014; and (2) it had inadvertently filed the forms despite having such an exemption.⁴ The Company stated in the letter that it was withdrawing its 2009-2015 Form 499-As based on its conclusion that since it derived less than five percent of its systems integration revenue from the resale of telecommunications during those calendar years, it was exempt from

³ See USAC, Statement of Account, Invoice No. UBDI0000810585 (Nov. 20, 2015) ("November 2015 Invoice"). Please see Exhibit A for a copy of the invoice.

⁴ Letter from Joanna G. Wallace, Counsel for NextMetro, LLC d/b/a BroadAspect to USAC, Customer Operations – Billing, Collections, and Disbursements at 1 (Dec. 11, 2015) ("BroadAspect Letter to USAC"). Please see Exhibit B attached hereto for a copy of the letter.

Form 499-A filing requirements during those years.⁵ Finally, BroadAspect requested that USAC cancel the November 2015 Invoice for late filing fees and penalties.⁶

On December 17, 2015, a USAC representative filed a response to BroadAspect's letter, rejecting the Company's request for cancellation of the November 2015 Invoice's late filing fees and penalties.⁷ The USAC representative stated that even though BroadAspect qualified as a Systems Integrator, it was required to file FCC Form 499-As because the Company provided I-VoIP services.⁸ Specifically, the USAC representative stated:

Moreover, the FCC Form 499-A instructions require all interconnected VoIP providers, *even those that qualify for de minimis status*, to file the FCC Form 499-A. Similarly, meeting the . . . systems integrator exception in the FCC Form 499-A instructions for contributing to universal service support mechanisms does *not* negate the requirement of all providers of interconnected VoIP to file the form.⁹

Furthermore, the USAC representative concluded that despite the fact that BroadAspect was subject to the SI Exemption, it would not waive the late filing fees assessed for these filings – such a waiver could only be obtained from the Commission.¹⁰

Based upon the USAC Decision, BroadAspect must now pay \$30,100.00 in late fees and penalties for its failure to timely file its 2009-2015 Form 499-As – despite the fact that similarly situated systems integrators providing telecommunications services rather than I-VoIP would not be required to file Form 499-As, and would not be subject to late fee penalties. Accordingly, for the reasons discussed herein, the FCC should reverse the USAC Decision, order USAC to remove all late

⁵ *Id.* (citing 2015 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 5 (rel. Oct. 2014) ("FCC Form 499-A Instructions")) ("Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators provide integrated packages of services and products that may include, but are not limited to computer capabilities, interstate telecommunications, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision and maintenance of telecommunications and computer equipment, and help desk functions.").

⁶ BroadAspect Letter to USAC at 1.

⁷ Email from USAC to Joanna G. Wallace, Counsel for NextMetro, LLC d/b/a BroadAspect at 1 (Dec. 17, 2015) ("USAC Decision"). Please see Exhibit C attached hereto for a copy of the email.

⁸ *Id.*

⁹ *Id.* (emphasis added).

¹⁰ *Id.*

fees and penalties associated with BroadAspect's filed 2009-2015 FCC Form 499-As, and grant the Company a waiver of Sections 54.711 and 54.713 of the Commission's rules.

II. Standard of Review

The FCC has the authority to waive its rules for "good cause shown."¹¹ A waiver is appropriate where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹² To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.¹³ Furthermore, the Commission may waive a rule where particular facts make strict compliance inconsistent with the public interest, or based upon considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Good cause exists and the public interest would be served by waiving the application of Sections 54.711 and 54.713 of the Commission's rules under the special circumstances described herein.

III. USAC's Penalties Impose Undue Hardship Upon BroadAspect

Failing to reverse the USAC Decision and allowing \$30,100.00 in late fees and penalties to be assessed upon BroadAspect would impose undue hardship upon the Company. As demonstrated in its 2015 FCC Form 499-A,¹⁵ the Company earned only \$62,047.33 in total I-VoIP revenue for 2014. As a result, the Company would need to forfeit approximately half of its 2014 I-VoIP revenue to

¹¹ 47 C.F.R. § 1.3.

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule); *WAIT Radio* at 1157 (stating that although the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if the applicant's proposal does not undermine the public interest policy served by the rule).

¹⁴ *In re Federal-State Joint Board on Universal Service et al.*, Order, 20 FCC Rcd. 19212 at ¶ 5 (FCC Wireline Comp. Bur. 2005). See also *Northeast Cellular Telephone Co.*, 897 F.2d at 1166 ("The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."); *ICO Global Commc'ns (Holdings) Ltd. v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005) (quoting *Northeast Cellular Telephone Co.*, 897 F.2d at 1166) (same).

¹⁵ BroadAspect will provide the Commission with a copy of its 2015 FCC Form 499-A upon request.

satisfy the invoice. The late fees and penalties impose a heavy financial burden on a company that, barring this unfortunate development, would have no direct financial obligation to USAC since it qualifies as an exempt Systems Integrator and will likely qualify as *de minimis* going forward once it exceeds the 5 percent Systems Integrator threshold.

IV. Requiring BroadAspect to Pay the Invoiced Late Fees and Penalties Would be Inequitable Given the Lack of Clarity Regarding the Obligation of I-VoIP Providers to File FCC Forms 499-A When they Qualify as Systems Integrators

Inequity would also result if the Commission fails to reverse the USAC Decision and cancel the late filing fees and penalties associated with BroadAspect's failure to timely file its 2009-2015 Form 499-As. As demonstrated herein, there is inherent conflict between the SI Exemption and the requirement that *de minimis* I-VoIP providers must file FCC Form 499-A. Given that the Commission has failed to resolve this uncertainty, BroadAspect cannot be said to have been "on notice" of its obligation to file the FCC Forms 499-A, and requiring the Company to pay the outstanding invoice would be an unjust and inequitable result.

The Commission created the SI Exemption in 1997 in response to a petition for reconsideration filed by the Ad Hoc Telecommunications Users Committee.¹⁶ In creating the SI Exemption, the Commission sought to limit the burden of complying with universal service contributions for "non-common carriers that obtain a *de minimis* amount of their revenues from the resale of telecommunications."¹⁷ In determining what constitutes a *de minimis* amount of revenue, the Commission concluded that a systems integrator that derives less than five percent (5%) of its systems integration revenue from the resale of telecommunications would be considered *de minimis*, and therefore exempt from making direct universal service contributions.¹⁸

At that time, I-VoIP services were neither defined nor regulated by the FCC, and I-VoIP services were not widely available to enterprise consumers. Thus, in referring to the "resale of

¹⁶ *In re Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, 13 FCC Rcd. 5318, 5472-75 (1997) ("*SI Exemption Order*").

¹⁷ *Id.* at 5472.

¹⁸ *Id.* at 5472-73.

telecommunications," the Commission's order applied the SI Exemption to the entire scope of then available or then known regulated communications services.

The Commission has since defined "I-VoIP," and extended USF and other Title II obligations to I-VoIP providers.¹⁹ While the Commission has not amended its rules or the FCC Form 499-A Instructions to clarify the scope of the SI Exemption as applied to I-VoIP services, in extending USF contribution obligations to I-VoIP providers, the Commission classified I-VoIP providers as "providers of interstate telecommunications" under section 254(d).²⁰ Because I-VoIP is treated as "telecommunications" for purposes of the Federal USF, it follows that the SI Exemption applies to I-VoIP that is resold by Systems Integrators. Furthermore, because the SI Exemption clearly states that Systems Integrators are exempt from filing FCC Form 499-A or contributing to the USF,²¹ I-VoIP providers that qualify as Systems Integrators should also be exempt from filing FCC Form 499-A.

In the *USAC Decision*, USAC conceded that BroadAspect qualifies as a Systems Integrator, however it rejected the Company's argument that it was not required to file the 2009-2014 FCC Forms 499-As. USAC stated:

Moreover, the FCC Form 499-A instructions require all interconnected VoIP providers, even those that qualify for *de minimis* status, to file the FCC Form 499-A. Similarly meeting the government and/or systems integrator exception in the CC Form 499-A instructions for contributing to the universal service support mechanisms does not negate the requirement of all providers of Interconnected VoIP to file the form. In other words although under the systems integrator exception, NextMetro, LLC is not required to contribute to

¹⁹ *In re Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518 at ¶ 34 (2006) (extending USF contribution obligations to I-VoIP providers ("USF I-VoIP Extension Order"); *In re IP-Enabled Services*, Report and Order, 22 FCC Rcd. 11275 at ¶ 32 (2007) (extending TRS contribution obligations to I-VoIP providers); *In re Telephone Number Requirements for IP-Enabled Service Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531 at ¶¶ 38-39 (2007) (extending LNP and NANP administration contribution obligations to I-VoIP providers). The Commission also extended FCC regulatory fee obligations to I-VoIP providers, effectively requiring I-VoIP providers to file Form 499-A. See *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15712 at ¶ 11 (2007) (extending FCC regulatory fee obligations to I-VoIP providers).

²⁰ *USF I-VoIP Extension Order* at ¶ 35.

²¹ FCC Form 499-A Instructions at 5 ("Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are *not required to file or contribute directly to universal service.*") (emphasis added).

the universal service support mechanisms, as an interconnected VoIP provider, the FCC has indicated that it still must file an annual FCC Form 499-A.²²

In support for its position, USAC cited to section 54.708 of the Commission's rules, the 2006 Order extending USF contribution obligations to I-VoIP providers, and several other Commission decisions. However, USAC's reliance on this authority is misplaced. Section 54.708 of the Commission's rules states merely that *de minimis* I-VoIP providers are required to file FCC Form 499-A; it does not expressly state that I-VoIP providers are required to file FCC Form 499-A even if they qualify as Systems Integrators. Similarly, the Commission's 2006 Order extending USF contribution obligations to I-VoIP providers, and all other authority relied on by USAC is silent on whether I-VoIP providers that qualify as Systems Integrators are required to file FCC Forms 499-A. The inherent conflict between the SI Exemption and the requirement that *de minimis* I-VoIP service providers must file FCC Form 499-As was raised for Commission consideration in a 2015 Petition for Declaratory Ruling filed by The Compliance Group ("*TCG Petition*").²³ To date, the Commission has not acted on the *TCG Petition*.

Given the lack of clarity in the rules and in the 499 Instructions regarding whether Systems Integrators that provide I-VoIP are required to file FCC Form 499-A, and the Commission's inaction on the *TCG Petition*, BroadAspect could not be said to have been "on notice" of its obligation to file

²² USAC Decision at 1 (citing FCC Form 499-A Instructions at 2-5). See also 47 C.F.R. § 54.708 ("The foregoing notwithstanding, all interconnected VoIP providers . . . must file the Telecommunications Reporting Worksheet."); *USF I-VoIP Extension Order* at ¶ 61 (requiring all interconnected VoIP providers, even those that qualify for the *de minimis* exemption to register and file the FCC Form 499-A); *In re Allegiance Communications, LLC*, Order, 26 FCC Rcd. 5865 at Consent Decree ¶¶ 3, 7, 8 (FCC Enf. Bur. 2011); Letter from Hillary S. DeNigro, Chief, Investigations & Hearings Division – Enforcement Bureau to Jeff Tarbert, Vice President of Operations/ General Manager, TransAria, File No. EB-08-IH-1161, Citation, DA 10-912, 25 FCC Rcd. 5627, 5628-29 (FCC Enf. Bur. 2010) ("Even if TransAria was not required to contribute to the USF for one or more years or file Quarterly Worksheets, either because it had not begun to offer interconnected VoIP service or because it qualified for the *de minimis* exemption to the rule, section 54.708 of the Commission's rules requires that all providers of interconnected VoIP service must file the annual Telecommunications Reporting Worksheet.").

²³ See generally The Compliance Group, Inc., *Petition for Declaratory Ruling that the Systems Integrator Exemption Applies to the Resale or Provision of Interconnected VoIP by Systems Integrators*, WC Docket No. 06-122, CC Docket No. 96-45 (filed Mar. 17, 2015).

Form 499-A.²⁴ In light of this uncertainty, it would be inequitable to hold BroadAspect responsible for late fees and penalties resulting from the late filing of its 2009-2015 Form 499-As.

V. Requiring BroadAspect to Pay Late Fees Violates the FCC's Principles of Competitive Neutrality

The Commission's principles of competitive neutrality would be violated if BroadAspect were required to pay \$30,100.00 in late fees and penalties resulting from the Company's failure to timely file its 2009-2015 Form 499-As. Since its inception, the Commission has considered the USF subject to the principles of competitive neutrality by "allowing the marketplace to direct the development and growth of technology and avoiding endorsement of potentially obsolete services" in the determination of USF contribution obligations.²⁵ In other words, the principles of competitive neutrality prohibit the Commission from crafting USF contribution policies to favor one form of technology over other, newer forms.

However, that is exactly what the Commission would permit by failing to reverse the USAC Decision, and finding BroadAspect subject to fees and penalties associated with the late filing of the Company's Form 499-As. Doing so would implicitly favor one form of systems integrators (*i.e.*, providers of legacy telecommunications services) over others providing newer, in-demand technologies (*i.e.*, I-VoIP services). Accordingly, the Commission should reverse the USAC Decision and exempt BroadAspect from payment of late filing fees and penalties based on the established principles of competitive neutrality.

²⁴ See *In re Request for Review by InterCall, Inc. of Decision of the Universal Service Administrator*, Order, 23 FCC Rcd. 10731 at ¶ 24 (2008) (finding because it was reasonable for InterCall to believe that audio bridging services were not subject to USF contribution obligations, the provider was only responsible for prospective USF contributions). *But see In re Universal Service Contribution Methodology, Request for Review of a Decision of the Universal Service Administrator by MeetingOne.com*, Order, 26 FCC Rcd. 15464 at ¶ 15 (FCC Wireline Comp. Bur. 2011) (refusing to exempt MeetingOne.com from both prospective and retroactive USF fees because the industry was "on notice" since the *InterCall Order* that audio bridging service providers were required to contribute to the USF).

²⁵ See *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776 at ¶ 45 (1997) (quoting *In re Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd. at ¶ 101 (1996)).

VI. The Universal Service Fund Would Not Be Adversely Impacted by Cancelling the Late Fees and Penalties

Reversing the USAC Decision and exempting BroadAspect from payment of fees and penalties resulting from the Company's failure to timely file its 2009-2015 Form 499-As would not adversely impact the purpose and effect of the USF. Like traditional systems integrators reselling telecommunications, BroadAspects contributes indirectly to the USF through the imposition of USF pass-through charges from its underlying suppliers. As a result, exempting BroadAspect from paying the late fees and penalties would not erode the USF, as its suppliers will continue to pay into the Fund as direct contributors.

VII. Granting a Waiver Would Benefit the Public Interest

Finally, granting a waiver of the late fees and penalties would benefit the public interest. As stated, it will restore principles of competitive neutrality, and it will allow BroadAspect to continue to operate and provide I-VoIP services in competition with other systems integrators, to the benefit of consumers.

VIII. Conclusion

For the foregoing reasons, BroadAspect respectfully requests that the Commission grant this Request for Review, and waive the late fees and penalties assessed in connection with its 2009-2014 FCC Forms 499-A.

Respectfully submitted,



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Counsel for NextMetro, LLC d/b/a BroadAspect

January 13, 2016

Attachments

Exhibit A

USAC Invoice



Universal Service Administrative Company

Helping Keep Americans Connected

Filer 499 ID: 831123

Invoice Number: UBDI0000810585

Statement Date: 11/20/2015

New Balance: \$ 30,100.00

Payment Due Date: 12/15/2015

Amount Enclosed:

NextMetro,LLC
Attention: Christopher Chamberlain
P.O. Box 1186,
Ashburn, VA, 20146

Mail Payment To:

Universal Service Administrative Company
PO Box 105056
Atlanta, GA 30348-5056

Address Change? See reverse side for instructions.

If paying for multiple Filer 499 IDs, please check here and complete form on back.

Send top portion of statement with payment in enclosed envelope. Keep bottom portion for your records.

STATEMENT OF ACCOUNT

Date	Description	Charges	Credits
	Previous Balance		\$0.00
11/13/2015	Late Filing Sanction	\$30,100.00	
TOTAL OUTSTANDING USAC BALANCE AS OF 11/13/2015		\$30,100.00	

Transactions occurring after 11/13/2015 are not reflected on this statement.

Under the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (DCIA), your BALANCE DUE is a demand that you pay a DEBT owed to the United States on or before the DUE DATE. If the DUE DATE is non-business day, payment must be received the business day before that date. Any portion of the DEBT unpaid after the DUE DATE is a DELINQUENT DEBT, which may result in sanctions, including interest, penalties, and administrative charges. Failure to file a Telecommunications Worksheet may result in a late filing fee DEBT added to your BALANCE DUE. Read the reverse of this Invoice for important information about those sanctions and your legal rights and obligations.

Statement Date	Invoice Number	Filer 499 ID	Balance Due USAC
11/20/2015	UBDI0000810585	831123	\$ 30,100.00
FORM 499Q DATA		PAYMENT INFORMATION	
This month's support mechanism charges were calculated using an FCC contribution factor of 0.167000 and the following revenue data: <u>August 2015 499Q</u> 120b 120c If the figures do not correspond with your records, please contact USAC Customer Service at 888-641-8722		All payments received (regardless of specific instructions) will be applied to your outstanding USAC balance in historical order as outlined in FCC order 07-150. Please remit ACH payments in a CCD+ format to ABA #071000039, Account #5590045653. All Wire Transfers should be sent to ABA #026009593, DDA (or Account) #5590045653. Payments must include your Company Name, Filer 499 ID, and Invoice Number to ensure timely posting.	

IMPORTANT LEGAL INFORMATION ABOUT YOUR ACCOUNT AND YOUR RIGHTS AND OBLIGATIONS

- 1. DEMAND FOR PAYMENT, DUE DATE & DELINQUENCY.** Under 31 U.S.C. § 3701, C.F.R. § 901.2 and 47 C.F.R. § 1.1911, this is a First Demand for Payment of your **BALANCE DUE**, which is a DEBT owed to the United States. Any portion of that amount unpaid after the **PAYMENT DUE DATE** (i.e., the **DATE OF DELINQUENCY**) is a **DELINQUENT DEBT** for which USAC and the FCC may take **COLLECTION ACTION** against you as a **DELINQUENT DEBTOR**. Under 31 U.S.C. § 3717, we will assess interest, penalties and administrative charges (below), from the **DATE OF DELINQUENCY**, and if the DEBT remains delinquent, we will refer the matter to the Secretary of the Treasury (Treasury) or the Department of Justice (Justice). **COLLECTION ACTION** may also include judicial enforcement by Justice and/or administrative action by the FCC or Treasury, e.g.: administrative offset, denial of certain federal benefits, and/or referral to private collection attorneys, any or all of which may incur additional charges. Under 31 U.S.C. § 3716, the United States may collect the debt by administrative offset. In addition, the USAC and the FCC will withhold action on any pending application (Red Light) made by a **DELINQUENT DEBTOR**, and the delinquency will be reported to credit-reporting agencies. You may learn more about the DCIA by reading 31 U.S.C. §§ 3701, 3711, 3716, 3717, and 3720B, the Federal Claims Collection Standards (e.g., 31 C.F.R. § 900.1, et seq.), and 47 C.F.R. § 1.1901, et seq.
- 2. RECORD REQUEST.** If you believe the amount of the **BALANCE DUE** is in error, you may ask to inspect, or for USAC to review, the records relevant to this invoice, by submitting, within 15 days of this invoice date, a written request for inspection or review specifying the nature of the error(s) to **CUSTOMER SERVICE**. If you wish to appeal this invoice, you may file an appeal within 60 days of the statement date on the invoice 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.asp>
- 3. PAYMENT PLAN.** If you are unable to pay the **BALANCE DUE** in full, you may request a written payment plan agreement, the terms of which will require interest and administrative charges.
- 4. CONSEQUENCES IF YOU DO NOT PAY THE FULL BALANCE DUE.** A failure to submit payment may result in sanctions, including, but not limited to, administrative or judicial proceedings to recover the **DELINQUENT DEBT**, and all accrued administrative charges, penalties, and interest, as set forth below.
INTEREST, PENALTIES, AND CHARGES. Interest at the annual rate equal to the U.S. prime rate as of the **DATE OF DELINQUENCY** plus 3.5 percent accrues from that **DATE** until the **DEBT** is paid in full. This interest rate incorporates administrative charges of collection pursuant to 47 C.F.R. § 54.713. Moreover, a penalty of 6 percent a year accrues on any part of the **DEBT** that is more than 90 days **DELINQUENT**. If the **DEBT** remains unpaid, the full amount of the **DELINQUENT DEBT**, plus accrued interest and penalties, may be transferred to the Treasury or Justice for **COLLECTION ACTION**, and you will be required to pay the administrative costs of processing and handling a **DELINQUENT DEBT** as set by the Treasury (currently 28 percent of the debt). However, if you pay the full amount of the **DELINQUENT DEBT** and associated administrative fees within 30 days of the due date, the interest will be waived. These requirements are set out at 31 U.S.C. § 3717.
- 5. LATE FILING FEES FOR INCOMPLETE OR LATE-FILED WORKSHEETS.** Telecommunications Reporting Worksheet (Worksheet) Forms 499-Q or 499-A must be received on Feb 1, Apr 1 (499-A), May 1, Aug 1, and Nov 1. A Worksheet not received when due is **DELINQUENT**, and if more than 30 days **DELINQUENT**, USAC will assess a **LATE FILING FEE** equal to the greater of \$100 per month or an amount computed using the rate of the U.S. prime rate (in effect on the date the applicable Worksheet is due) plus 3.5 percent applied to the amount due per an invoice calculated by USAC. The **LATE FILING FEE** will be included in the **BALANCE DUE**. Any portion of the **LATE FILING FEE** unpaid after the **DUE DATE** will be **DELINQUENT** and subject to DCIA procedures discussed above, including **INTEREST, PENALTIES, and CHARGES**.

If you fail to file your Worksheet and to pay your contribution, interest will accrue on the greater amount due from the earliest date of the failure to file or to pay your contribution.

Payment for Multiple 499 Filer IDs

If paying for more than one Filer 499 ID, complete the form at (<http://www.usac.org/res/documents/cont/pdf/payments/USACPaymentIdentificationForm.pdf>) and submit one copy with the payment coupon(s) for each ID. You may not apply a credit balance from one Filer 499 ID to pay a balance due on another Filer 499 ID. If you are submitting an electronic payment, please send your worksheet by fax or e-mail to **CUSTOMER SERVICE**.

Filer 499 ID	Invoice Number	Amount
1		\$
2		\$
3		\$
4		\$
5		\$
TOTAL AMOUNT		\$

The Total Amount must equal the total of all checks submitted.

NOTE: By using this worksheet, you certify that payment made on behalf of another filer is in consideration of fair value on behalf of the payer, and the funds will not be reallocated, reapplied, or returned in the event of insolvency or bankruptcy.

How to Make Payments

Include the company name, filer 499 ID, and invoice number with all payments to avoid late payment charges and FCC Red Light action.

Make checks payable to:

USAC, P O Box 105056, Atlanta, GA 30348-5056

Address payments sent by an overnight mail service to:

USAC, c/o Bank of America (105056), 1075 Loop Road, Atlanta, GA 30337: (404) 209-6377.

Electronic payments:

Please remit ACH payments in a CCD+ format to ABA #071000039, DDA (or Account) #5590045653.

All Wire Transfers should be sent to ABA #026009593, DDA (or Account) #5590045653. U.S. Dollar Foreign Currency Wire Transfers should use SWIFT code and address of BFAUS3N.

Change of Invoice Billing Address

To change your USAC invoice billing address, send **CUSTOMER SERVICE** (below) your written request on company letterhead signed by a company officer with a revised FCC Form 499 (<http://www.usac.org/about/tools/forms.asp>).

Change of Address for Disbursements and Remittances

To change your disbursement or remittance information address, send USAC, FCC Form 498, 2000 L Street, NW, Suite 200, Washington, DC 20036, your written request on company letterhead signed by a company officer with a completed a Form 498 (<http://www.usac.org/about/tools/forms.asp>).

CUSTOMER SERVICE will respond to matters involving:

- Universal Service Fund invoices (including change of address and errors)
- USAC disbursements (remittances, checks and ACHs)
- Form 498 and SPIN issues and
- FCC Form 499 and revenue reporting issues.

Contact **CUSTOMER SERVICE** at:

USAC Billing and Disbursement
2000 L Street, NW
Suite 200
Washington, DC 20036

Phone: (888) 641-8722
Fax: (888) 637-6226
E-mail: customersupport@usac.org
Web: www.usac.org



DETAILED SUMMARY OF CHARGES AND CREDITS

SUPPORT MECHANISM CHARGES

Your monthly support mechanism charges were calculated according to the following formulas:

LIRE Eligibility

If a carrier's quarterly interstate revenue equals less than 12.00% of their combined quarterly interstate and international revenue, the carrier is eligible for the Limited Interstate Revenue Exemption (LIRE). Based on your 499Q data, your interstate revenue equals _____ percent of your combined interstate and international revenue. Therefore, you are eligible for the LIRE exemption. As a result, your international revenue will not be used in determining your quarterly contribution base.

Quarterly Contribution Base

The quarterly contribution base is a portion of your quarterly revenue that USAC considers when determining your quarterly Universal Service Fund contribution. The quarterly contribution base equals your interstate plus international revenue. Your current quarterly contribution base equals:

$$\frac{\text{Interstate Revenue (Line 120B)}}{\text{Interstate Revenue (Line 120B)}} + \frac{\text{International Revenue (Line 120C)}}{\text{International Revenue (Line 120C)}} = \frac{\text{Quarterly Contribution Base}}{\text{Quarterly Contribution Base}}$$

Adjusted Quarterly Contribution

USAC adjusts carriers' quarterly contribution bases by the amount that they are expected to contribute in that quarter. The calculation for an adjusted contribution amount is as follows, and takes into account the circularity deduction:

$$\frac{\text{Quarterly Contribution Base}}{\text{Quarterly Contribution Base}} * \frac{0.167000}{\text{FCC Contribution Factor}} = \frac{\text{Unadjusted Contribution}}{\text{Unadjusted Contribution}}$$

$$\frac{\text{Unadjusted Contribution}}{\text{Unadjusted Contribution}} - \left(\frac{\text{Unadjusted Contribution}}{\text{Unadjusted Contribution}} * \frac{0.144526}{\text{FCC Circularity Factor}} \right) = \frac{\text{Adjusted Contribution}}{\text{Adjusted Contribution}}$$

De Minimis Eligibility

Carriers whose expected annual contribution is less than \$10,000 are considered de minimis and are exempted from paying into the Universal Service Fund. To be exempt, a carrier must meet the de minimis criteria on both the current 499A and 499Q forms.

You meet the de minimis criteria on neither the 499A or the current 499Q. Therefore, you are not eligible for the de minimis exemption during the current quarter.

Your eligibility was calculated using the contribution factors established by the FCC for determining de minimis status on each form:

499A:

$$\frac{\text{499A Contribution Base}}{\text{499A Contribution Base}} * \frac{0.152000}{\text{FCC Estimated Annual Factor}} = \frac{\text{Estimated 499A Contribution}}{\text{Estimated 499A Contribution}}$$

499Q:

$$\frac{\text{Adjusted Contribution}}{\text{Adjusted Contribution}} * 4 = \frac{\text{Estimated 499Q Contribution}}{\text{Estimated 499Q Contribution}}$$

For more information on the FCC estimated annual factor, please see the Form 499A Instructions. For more information on the current FCC contribution factor, visit the FCC website at www.fcc.gov.

Support Mechanism Charges

Your total monthly contribution is determined by multiplying one-third of your adjusted quarterly contribution base by the current quarter's FCC contribution factor.

$$\frac{1}{3} * \frac{\text{Adjusted Quarterly Contribution}}{\text{Adjusted Quarterly Contribution}} = \frac{\text{Total Monthly Contribution}}{\text{Total Monthly Contribution}}$$



LATE FILING SANCTION

A late filing fee (described on the reverse of the invoice) may be imposed for failing to file a Worksheet (Form 499-Q or 499-A). That late filing fee is the greater of \$100 per month or an amount computed using the rate of the U.S. prime rate (in effect on the date the applicable Worksheet is due) plus 3.5 percent multiplied against the filer's monthly contribution obligation as determined by the Administrator. The fee, included in the BALANCE DUE is a DELINQUENT DEBT if not paid, and subject to COLLECTION ACTION. The reverse of the Invoice provides more information.

Filing - Due Date A	Monthly USF Obligation B	Filing Received Date C	Rate D	Days/Months Delinquent E	Additional Sanction Amount F	Accrued Sanction Amount G	Total Sanction Amount (F + G) H
Apr 15 499A - 4/1/2015	\$485.68	10/07/2015	100.00/mo	7 MONTH(S)	\$700.00	\$0.00	\$700.00
Apr 14 499A - 4/1/2014	\$444.38	10/10/2015	100.00/mo	19 MONTH(S)	\$1,900.00	\$0.00	\$1,900.00
Apr 13 499A - 4/1/2013	\$380.08	10/13/2015	100.00/mo	31 MONTH(S)	\$3,100.00	\$0.00	\$3,100.00
Apr 12 499A - 4/2/2012	\$244.29	10/13/2015	100.00/mo	43 MONTH(S)	\$4,300.00	\$0.00	\$4,300.00
Apr 11 499A - 4/1/2011	\$175.63	10/13/2015	100.00/mo	55 MONTH(S)	\$5,500.00	\$0.00	\$5,500.00
Apr 10 499A - 4/1/2010	\$103.12	10/13/2015	100.00/mo	67 MONTH(S)	\$6,700.00	\$0.00	\$6,700.00
Apr 09 499A - 4/1/2009	\$12.24	10/13/2015	100.00/mo	79 MONTH(S)	\$7,900.00	\$0.00	\$7,900.00
TOTAL					\$30,100.00	\$0.00	\$30,100.00



Filer 499 ID: 831123
 Invoice Number: UBDI0000810585
 Statement Date: 11/20/2015

Interest & DCIA Penalties

A DELINQUENT DEBT incurs interest at the annual rate equal to the U.S. prime rate as of the DATE OF DELINQUENCY plus 3.5 percent from that DATE until the DEBT is paid in full. Any portion of the DEBT unpaid more than 90 days, incurs a penalty of 6 percent a year from the DATE OF DELINQUENCY. The reverse of the Invoice provides more information on interest, penalties, and administrative charges.

Description - Debt Due Date	Principal	Payment/ Credit Date	Interest Rate	Days Late	Additional Interest (B* (D/365)*E)	Accrued Interest	Total Interest (F+G)	Payment & Credits Applied	Interest Outstanding	Principal Outstanding
A	B	C	D	E	F	G	H	J	J	K
Outstanding Items										
UBDI0000810585 - 12/15/2015	\$30,100.00		0.00%	0	\$0.00	\$0.00	\$0.00		\$0.00	\$30,100.00
					<u>\$0.00</u>			<u>\$0.00</u>	<u>\$0.00</u>	<u>\$30,100.00</u>
								Principal Outstanding		\$30,100.00
								Interest & Penalties		\$0.00
								Total Amount Due		<u>\$30,100.00</u>

Exhibit B

Letter to USAC

December 11, 2015

VIA EMAIL & U.S. MAIL

Universal Service Administrative Company
Customer Operations
Billing, Collections, and Disbursements
2000 L Street NW, Suite 200
Washington, DC 20036
Form499@usac.org

**Re: NextMetro, LLC d/b/a BroadAspect (Filer ID No. 831123)
Notice of Withdrawal of 2009-2015 FCC Form 499-As**

Ladies and Gentlemen:

NextMetro, LLC d/b/a BroadAspect (File ID No. 831123) ("BroadAspect," or the "Company"), by undersigned counsel, hereby withdraws its FCC Forms 499-As for calendar years 2009-2015. The Company is withdrawing its Form 499-As because it qualified as a Systems Integrator from 2008-2014, and inadvertently filed the forms despite having such an exemption. The Company requests that the invoices for late fees and penalties associated with the late filing of its Form 499-As totaling \$30,100.00 as of November 20, 2015 should be cancelled.¹

Although BroadAspect qualified for the Systems Integrator exemption beginning in 2008, the Company determined that it may exceed the Systems Integrator's five percent threshold in the near future. Thus, out of an abundance of caution, and acting in good faith, the Company filed a Form 499 Registration and its 2015 Form 499-A. Because the Company reported a service start date of June 2008 in its Form 499 Registration, it filed Forms 499-A for calendar years 2009-2014.

Under the Systems Integrator exemption ("SI Exemption"), a company that derives less than five percent (5%) of its systems integration revenue from the resale of telecommunications is exempt from filing FCC Form 499-A.² Because BroadAspect determined that it derives less than five percent of its systems integration revenue from the resale of telecommunications, it meets the SI Exemption and was not required to file FCC Forms 499-A for calendar years 2009-2015. Accordingly, the Company is withdrawing the FCC Forms 499-A for calendar years 2009-2015, and requests that USAC cancel the invoices for USF late fees and penalties assessed against the Company.

Should you have any questions regarding the contents of this letter, please contact the undersigned.

¹ See USAC Invoice Number UBDI0000810585 dated November 20, 2015. A copy of the invoice is attached.

² 2015 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 5 (rel. Oct. 2014) (emphasis added).

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Respectfully submitted,



Joanna G. Wallace

Counsel for NextMetro, LLC d/b/a BroadAspect

Enclosures

Exhibit C

USAC Decision

From: Form499 <form499@usac.org>
Date: December 17, 2015 at 3:15:05 PM EST
To: "'mail@commlawgroup.com'" <mail@commlawgroup.com>
Cc: "'cchamberlain@broadaspect.com'" <cchamberlain@broadaspect.com>
Subject: NextMetro, LLC. d/b/a BroadAspect (Filer 831123)

Dear Joanna G. Wallace:

According to NextMetro, LLC's 2009-2015 FCC Form 499-A worksheets, NextMetro, LLC provides *interconnected VoIP* services. As you may be aware, the FCC has extended Telecommunications Reporting Worksheet obligations to providers of interconnected VoIP services.¹ Moreover, the FCC Form 499-A instructions require all interconnected VoIP providers, even those that qualify for *de minimis* status, to file the FCC Form 499-A.² Similarly, meeting the government and/or systems integrator exception in the FCC Form 499-A instructions for contributing to the universal service support mechanisms does not negate the requirement of all providers of interconnected VoIP to file the form. In other words, although under the systems integrator exception, NextMetro, LLC is not required to contribute to the universal service support mechanisms, as an interconnected VoIP provider, the FCC has indicated that it still must file an annual FCC Form 499-A.³ Further, although NextMetro, LLC's notice of withdrawal of 2009-2015 FCC Form 499As implies that it does not contribute to TRS, LNP or NANPA, the FCC's rules and orders indicate that NextMetro, LLC may have a contribution obligation to one or more of these funds.⁴

Therefore, in the future, to ensure that NextMetro, LLC meets its FCC Form 499-A filing obligations, but still receives the benefit of the systems integrator exception, it will need to take the following steps:

- File the FCC Form 499-A accurately reporting its Interconnected VoIP revenue on line 404.4, 404.5 and/or 414.2, and designate "1" in the "Interconnected VoIP" box on line 105;
- Check the box on Line 603 indicating that NextMetro, LLC is exempt from contributing to the universal service support mechanisms; and
- Complete the explanation section of Line 603 of the FCC Form 499-A, indicating that the exemption is based on the systems integrator exception.

Since USAC received a letter indicating that NextMetro, LLC qualifies for the systems integrator exemption, USAC will exempt NextMetro, LLC from contributing to universal service support mechanisms for 2009-2015 FCC Form 499As. However, USAC will not waive the late filing fees assessed for these filings. If the company wants relief from the late filing fees, NextMetro, LLC will need to seek a waiver from the FCC.

Please let me know if you have any questions regarding this email or the procedures set forth above.

Thank you,
Tariqua

Regards,
USAC
(888) 641-8722 (ph)

^[1] *In the Matter of Universal Service Contribution Methodology, 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, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, IP-Enabled Services*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, 21 FCC Rcd 7518, 7537-38, 7548-49, ¶¶ 36-37, 52, 60-61 (2006) (*2006 Contribution Methodology Order*); *In the Matter of Allegiance Communications, LLC*, File No. EB-08-IH-1364, Order, DA 11-666, 26 FCC Rcd 5865, 5869, ¶ 7 (2011) (*Allegiance Order*).

^[2] Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 2-5 (2015).

^[3] 47 C.F.R. § 54.708 (“The foregoing notwithstanding, all interconnected VoIP providers...must file the Telecommunications Reporting Worksheet.”); *2006 Contribution Methodology Order*, 21 FCC Rcd 7518, 7548-49, ¶ 61 (requiring all interconnected VoIP providers, even those that qualify for the *de minimis* exemption to register and file the FCC Form 499-A); *Allegiance Order*, 26 FCC Rcd 5865, 5868-69, ¶¶ 3, 7, 8; Letter from FCC to Jeff Tarbert, File No. EB-08-IH-1161, Citation, DA 10-912, 25 FCC Rcd 5627, 5628-29 (2010) (“Even if TransAria was not required to contribute to the USF for one or more years or file Quarterly Worksheets, either because it had not begun to offer interconnected VoIP service or because it qualified for the *de minimis* exemption to the rule, section 54.708 of the Commission’s rules requires that all providers of interconnected VoIP service must file the annual Telecommunications Reporting Worksheet.”).

^[4] See 47 C.F.R. § 52.17(b),(c); *Allegiance Order*, 26 FCC Rcd 5865, 5868-69, ¶¶ 4, 5, 6; *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements IP-Enabled Services, Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility Analysis Numbering Resource Optimization*, Docket Nos. WC 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188, 22 FCC Rcd 19531, 19552, ¶ 40 (“The reporting requirements for determining interconnected VoIP providers’ contribution to the shared costs of numbering administration and LNP require interconnected VoIP providers to file an annual FCC Form 499-A.”).

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