

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Universal Service Contribution Methodology) WC Docket No. 06-122
)
Appeal of Pacific Centrex Services, Inc. and)
Request for Waiver)

To: The Chief, Wireline Competition Bureau

**APPEAL OF DECISION OF UNIVERSAL SERVICE
ADMINISTRATOR AND REQUEST FOR WAIVER**

Pacific Centrex Services, Inc. (“PCS”) hereby requests review of a decision of the Universal Service Administrative Company (“USAC”) rejecting the filing of the April 2013 FCC Form 499A, and April 2014 FCC Form 499A, (hereinafter, “2013 and 2014 FCC Form 499A filings”) and waiver of the Commission’s decision to requiring the filing of the 499A within one (1) year of the revision window due date.

On October 29, 2015, USAC received the original 2013 and 2014 FCC Form 499A filings from PCS (Filer ID 823954). On November 4, 2015, USAC rejected each filing as each was received “outside the one year revision window.” (hereinafter, “One Year Rule”).

PCS is a small company providing resold telecommunications services within California. PCS entrusted the preparation of the ongoing compliance filings, including the 2013 and 2014 FCC Form 499A filings to the same employee, who also handled multiple tasks.

The Commission may waive its rules for “good cause shown.”¹ A waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²

¹ 47 C.F.R. §§ 1.3; *see also* 47 C.F.R. § 1.925(b)(3).

² *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also* 47 C.F.R. § 1.925(b)(3)(i).

In considering waiver requests, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.”³ Waivers may be granted where, “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”⁴

Good cause exists to grant PCS a waiver of the One Year Rule in this case. As a result of the failure to timely file revenue information in an Original 2013 and 2014 Form 499-A filings, USAC invoiced PCS for \$172,772 in excess of PCS’ actual USF contribution liability for the applicable periods. Paying the overstated invoices would cause the company financial hardship; PCS struggled financially since filing for protection under Chapter 11 of the Bankruptcy Code in 2009.

The error in delaying the timely filing of the 2013 and 2014 FCC Form 499A filings occurred due to changes internally with the support staff assigned to handle the federal universal service and other ongoing regulatory filings. The departing staff member did not include the FCC Form 499A within the compliance filing matrix for the company. The staff member charged with the responsibility was unaware of this filing obligation and handled multiple compliance tasks, providing no time to conduct a substantial review of the company compliance obligations. During this same period, the company operated without the resources available to consult with telecommunications regulatory compliance experts to confirm the various ongoing regulatory compliance obligations, including, the handling of the federal universal service FCC Form 499A filings. Immediately upon uncovering the issue with the overstated invoicing, PCS engaged outside regulatory counsel to assist in the preparation and filing of the outstanding 2013 and 2014 FCC Form 499A filings.

The Wireline Competition Bureau has “found that there is good cause” to waive universal service filing deadlines where “the missed deadlines were the result of minor ministerial, clerical, or procedural

³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“*WAIT Radio*”). See also *Request for Review of the Decision of the Universal Service Administrator by Tekoa Academy of Accelerated Studies*, Order, 23 FCC Rcd 15456, 15458 ¶ 5 (WCB 2008).

⁴ 47 C.F.R. § 1.925(b)(3)(ii).

errors,”³ as was the case here. In particular, some of these grants specifically involved filing deadlines that were missed as a result of errors or misunderstandings on the part of the personnel responsible for making the filing, as in this instance. Because PCS has made a showing of good cause equivalent to these petitioners’ showings, it too should be granted a waiver.

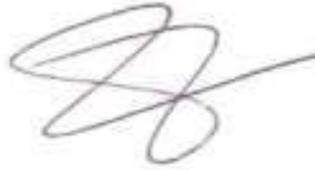
The Commission also has found good cause to waive universal service filing deadlines where the missed filing deadline would cause the filer financial hardship.⁵ As noted above, paying the inflated USF assessments resulting from the revenue overstatement by USAC cause the company financial hardship. Consistent with precedent, the Commission should find that this represents good cause justifying a waiver.

Finally, the Commission must not uphold the rejections of the filing of the 2013 FCC Form 499A or 2014 FCC Form 499A as enforcing payments of USF contributions calculated on PCS mistakes result in contributions which exceed PCS revenue from interstate telecommunications. Such a result violates established judicial precedent. See *Texas Office of the Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Circ. 1999)(hereinafter, “Texas Case”). In the Texas Case, the Court of Appeals for the Fifth Circuit stated unequivocally that a USF contribution amount that exceeds a contributor’s interstate revenues, on that basis alone, violates Section 254’s requirement that carriers contribute to the US “on an equitable and non-discriminatory basis.” In this case, USAC billed PCS based upon data which vastly overstates PCS USC contribution requirement. In fact, USAC imposes a contribution amount of \$95,732 for 2012 compared to interstate revenues of \$78,626 during this same period; and \$88,493 for 2013 compared to revenues of \$37,736 during this period.

⁵ See, e.g., Hargray Petition at 3-4; Cross Wireless Petition at 2; Windstream Petition at 3; Twin Valley Telephone Petition for Waiver, WC Docket No. 08-71 (filed Aug. 9, 2010) at 2, *granted in Jan. 11 Waiver PN*.

For the foregoing reasons, good cause exists to grant PCS a waiver of the One Year Rule. PCS respectfully requests that the Commission grant the requested waiver and direct USAC to accept the 2013 FCC Form 499A and 2014 FCC Form 499A and issue corrected invoices immediately.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Patrick D. Crocker', written in a cursive style.

By: _____
Patrick D. Crocker
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107 W Michigan Avenue, 4th Floor
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May 6, 2016

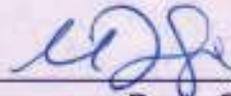
Declaration of Devin Semler

I declare under penalty of perjury that:

I am the President of Pacific Centrex Services, Inc.

I have reviewed the foregoing "Appeal of Decision of the Universal Service Administrator and Request for Waiver" and the facts stated therein are true and correct.

Executed on May 6, 2016



Devin Semler