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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Request for Review by	)	Docket Nos. 96-45 and 97-21
A.R.C. Networks, Inc. of Decision	)	
of Universal Service Administrator	)	
	)	
	)	

REQUEST FOR REVIEW BY A.R.C. NETWORKS, INC. OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR

Glenn S. Richards
Susan M. Hafeli
Tom C. Wang
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
(202) 663-8000

Dated: November 20, 2001

EXECUTIVE SUMMARY

The Commission has delegated to the Universal Service Administrative Company ("USAC") responsibility for administering universal service fund ("USF") support mechanisms. In performing these administrative functions, USAC may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.

Contrary to this express limitation on its authority, USAC has adopted a policy of rejecting revised USF worksheets submitted beyond a one-year period. USAC relied on this policy in an October 24, 2001 Decision rejecting revised USF worksheets submitted by A.R.C. Networks, Inc. ("ARC"). As a result, ARC has been denied credit for more than $39,000 in excess USF assessments attributable to earlier, erroneous filings.

USAC's decision should be reversed. Only the Common Carrier Bureau – not USAC – may adopt administrative requirements.

Furthermore, USAC's policy prevents carriers from complying with a Commission requirement to file corrected worksheets. The USF worksheet instructions released by the Commission and Common Carrier Bureau obligate carriers to file revised worksheets when they discover an error in reported data. The instructions impose no cut-off date for such filings.

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BEFORE THE
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WASHINGTON, D.C. 20554

In the Matter of Request for Review by A.R.C. Networks, Inc. of Decision of Universal Service Administrator	))))))))	Docket Nos. 96-45 and 97-21

REQUEST FOR REVIEW OF DECISION
OF UNIVERSAL SERVICE ADMINISTRATOR

A.R.C. Networks, Inc. ("ARC" or the "Company"), by its undersigned attorneys and pursuant of Sections 1.115 and 54.719-724 of the Rules, submits this Request for Review ("Request for Review") of the Administrator's Decision on Contributor Appeal (the "Decision"), released October 24, 2001, by the Universal Service Administrative Company ("USAC"). USAC's Decision improperly denies ARC the ability to file a revised universal service fund ("USF") worksheet reporting its 1998 revenues.

I. Introduction and Statement of Interest

ARC is a leading integrated communications provider offering end-to-end solutions primarily to businesses and tenants of multi-tenant units in major markets in the northeastern and southwestern United States. While ARC currently focuses on the provision of local and long-distance voice telecommunications services and broadband data services, it is expanding its offerings to include Virtual Private Networks, on-line data backup and new network features such as Voice-over-DSL.

ARC expends substantial resources to comply with applicable federal and state reporting requirements. Nonetheless, an internal audit in late 2000 revealed that ARC's federal USF reporting during the period 1998 – 2000 was seriously flawed, resulting in excessive USF assessments. In early 2001, ARC attempted to rectify the matter by submitting to USAC two revised USF worksheets pertaining to 1998 revenues as well as original USF reporting worksheets pertaining to 1999 and 2000 revenues.

USAC rejected as untimely one of the two revised worksheets pertaining to ARC's 1998 revenues; it made no decision on the other filing. Because it deemed the revision untimely, USAC refuses to acknowledge that the USF assessments corresponding to ARC's 1998 revenues overstate ARC's USF obligation by $39,436.78. USAC also refuses to credit ARC's account with this sum. ARC files this Request for Review because USAC lacks the authority to reject its revised worksheet as untimely filed.

II. Statement of Facts

A. ARC's requested relief and USAC's denial

On February 2, 2001 ARC filed with USAC two revised USF worksheets (Forms 457) reporting its 1998 telecommunications revenues. Specifically, ARC filed one revised Form 457 for the six-month period January 1, 1998 – June 30, 1998 and another for the twelve-month period January 1, 1998 – December 31, 1998.[1] At the same time, ARC filed original Forms 499S and 499A for the reporting periods January 1, 1999 – June 30, 1999, January 1, 1999 – December 30, 1999, and January 1, 2000 – June 30, 2000. These filings were made after an

[1] These February 2001 revised Forms 457 actually were the second set of revised Forms 457 regarding ARC's 1998 revenues. After ARC submitted its initial Forms 457 in compliance with applicable deadline, USAC requested revisions thereto. See Letters of Lori Kuehn and Richard Rhyner, April 14, 1999 and April 16, 1999 respectively, attached hereto as Exhibit A.

internal investigation revealed that during the 30-month period ending June 2000 ARC had incorrectly reported its 1998 end-user revenues and failed to timely submit certain filings due in 1999 and 2000. According to ARC's calculations, which were set forth in an attachment to the February 2, 2001 filing, the combination of over-assessments and under-assessments resulted in a net over-assessment, through the second half of 2000, of $46,157.12.

On March 9, 2001 USAC rejected the revised Form 457 for the reporting period January 1, 1998 – December 31, 1998.[2] USAC stated that it was unable to accept this revised worksheet because it was not filed within one year of the original submission. *See,* March 9, 2001 Letter, attached hereto as Exhibit B.

B. ARC's appeal and USAC's Decision

ARC appealed USAC's denial by letter dated April 6, 2001. This letter, a copy of which is attached hereto as Exhibit C, explained that ARC's Forms 457 had misstated revenues for the 1998 year due to errors in the allocation of data from the Company's general ledgers. As a result, the first Form 457 (1/1/98 – 6/30/98) understated ARC's USF contribution requirement by $9,102.83 while the second Form 457 (1/1/98 – 12/31/98) overstated it by $39,436.78. While together the two filings overstated ARC's USF contribution requirement by $30,333.95, USAC addressed only the second filing, the 1998 true-up. As a result, ARC was assessed $39,436.78 in excess of its actual 1998 USF obligation.

ARC's April 6, 2001 letter noted that that neither its Chief Executive Officer nor its Chief Financial Officer were aware of the USF worksheet deficiencies at the time of filing. As

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[2] Neither USAC's March 9, 2001 rejection letter nor its October 24, 2001 Decision ruled on the revised Form 457 covering the first six-month period of 1998. In addition, the October 24 Decision deems appeal of the forms reporting 1999 revenues as moot, as those forms were timely

Footnote continued on next page

explained in its appeal, once ARC was made aware of these deficiencies it undertook a reorganization of its Accounting Department and replaced the individual responsible for, among other things, ARC's USF compliance.

On October 24, 2001, USAC affirmed its March 9, 2001 denial, rejecting ARC's revised Form 457 for the period January 1, 1998 – December 31, 1998. *See* Administrator's Decision on Contributor Appeal, October 24, 2001, attached hereto as Exhibit D.[3] This Decision appears to have been premised on two grounds: USAC's policy of refusing revisions beyond a one-year period and an alleged but inaccurate history of non-compliance by ARC.

The first ground is set forth in the first paragraph of USAC's two-paragraph *Explanation of Decision.* According to D. Scott Barash, Vice President and General Counsel for USAC, ". . . the USAC Board of Directors has authorized staff to allow carriers to file new or revised worksheets after the original due date. Since September 1, 1999, USAC has allowed carriers to file new or revised Universal Service Worksheets after the original due date and for a period limited up to 12 months from the initial due date of the worksheet in question." *Id.* at pages 1-2. USAC offers no supporting citation or authority for this policy, however. The second paragraph of USAC's *Explanation of Decision* includes allegations that ARC failed to file its USF worksheet on three separate occasions: the periods January 1, 1998 – June 30, 1998 (the subject of ARC's first revised Form 457), January 1, 1998 – December 31, 1998 (the subject of both

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Footnote continued from previous page

submitted and "were already processed earlier this year." Although it may have processed these forms, as of the date of this filing USAC had not credited ARC's account.

[3] USAC states in this letter that ARC's appeal was not received until July 27, 2001. Attached hereto as Exhibit E is documentation demonstrating that the appeal and supporting materials were delivered to and accepted by USAC on April 6, 2001. After learning that USAC was unable to locate this package, ARC re-sent the materials to USAC by letter dated July 26, 2001.

ARC's second revised Form 457 and USAC's denial), and January 1, 1999 – June 30, 1999 (which ARC acknowledges was not timely filed, but was submitted on February 2, 2001). The paragraph concludes that ARC had adequate opportunity to revise its Forms 457 within the one-year period.

USAC's October 24 Decision states that ARC may file an appeal of its Decision with the Commission within 30 days of the date of the letter. The 30-day period expires November 23, 2001. This Request for Review is therefore timely filed.

III. Question Presented for Review

Under Commission rules, the request for review must state the questions presented for review, with reference to the relevant Commission rule, order, or statutory provision. 47 C.F.R. § 54.721(b).

The question presented herein is whether USAC, acting independently of the Commission, may adopt a policy that imposes a one-year statute of limitations on the filing of revised USF worksheets. In addition to the Orders cited herein, the Commission is referred to its universal service rules, particularly 47 C.F.R. §§ 54.702, 709, 711, and 713, and its FCC Forms 457 and 499A, the USF worksheets and instructions.

IV. Factors Warranting Commission Reversal of USAC's Decision

Applications for review of delegated authority must "specify with particularity" the applicable factor(s) that warrant Commission action. *See* 47 C.F.R. § 1.115(b)(2). Four of these factors warrant Commission reversal of USAC's decision. Specifically, the Administrator's action (1) is in conflict with statute, regulation, case precedent, and/or established Commission policy; (2) involves application of a precedent and/or policy which should be overturned or

revised; (3) is predicated, in part, on an erroneous finding as to an important or material question of fact; and (4) presents prejudicial procedural error.

A. USAC's action conflicts with Commission regulations and policy

1. USAC lacks the delegated authority to adopt the administrative policy on which the ARC denial is predicated

Pursuant to Commission rules, USAC is responsible for "billing contributors, collecting contributions to the universal support mechanisms, and disbursing universal service support funds." See 47 C.F.R. § 54.702(b) (2001). See also In the Matter of Changes to the Board of Directors of the National Exchange Carrier Association, 1999 WL 809695, 17 CR 1192 (Oct. 8, 1999). USAC, the USF Administrator, is explicitly prohibited from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. See 47 C.F.R. § 54.702(b) (2001). "Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission." Id.

The Commission's rules governing contributor reporting requirements are found in Sections 54.709, *Computations of required contributions to universal service support mechanisms,* 54.711, *Contributor reporting requirements*, and 54.713, *Contributors' failure to report or to contribute.* These sections recognize that in some instances carriers will either submit the USF worksheet late or fail to make any filing. USAC's permissible response to these situations is set forth in the Commission's rules. Pursuant to 47 C.F.R. § 54.713, when a carrier either files late or fails to file, USAC "shall advise the Commission of any enforcement issues . . . and provide any suggested response." *See* 47 C.F.R. § 54.713. It is not authorized to take enforcement action on its own initiative. Further, "[o]nce a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator [USAC] may refund any overpayments made by the contributor, less any fees, interest, or costs." Id. The

rules do not specifically address the filing of revised worksheets. Consequently, the rules contemplate neither a deadline for the submission of revised USF worksheets nor the prospect that carriers will be foreclosed from filing correcting worksheets.

The Commission has delegated authority only to the Common Carrier Bureau – not USAC – to adopt administrative requirements applicable to the universal service support mechanisms. *See* 47 C.F.R. § 54.711(c) (authorizing the Common Carrier Bureau to "require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.") and *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms* , Report and Order, 14 FCC Rcd 16602 at ¶ 39 (delegating authority to the Chief of the Common Carrier Bureau to make future changes to the Telecommunications Reporting Worksheet and noting that the Bureau's authority to administer contributor reporting requirements "extend[s] to administrative aspects of the requirements, e.g., where and when worksheets are filed, incorporating edits to reflect Commission changes to the substance of the mechanisms, and other similar details.")

The Commission's rules do not specifically address the instant situation, wherein a carrier discovers that its prior USF filings contained inaccuracies that resulted in excessive USF assessments. Because the Commission's rules "do not address [this] particular situation," under 47 C.F.R. § 54.702(b) USAC must "seek guidance from the Commission." There is no evidence to suggest that it has done so. Indeed, the October 24 Decision indicates that the USAC Board of Directors acted unilaterally when deciding that it would not accept revised worksheets beyond a one-year period.

2. USAC's one-year deadline conflicts with the Commission-imposed duty to correct errors in reported data

The Commission's universal service rules do not address the filing of revised worksheets and do not include a deadline for the submission of revised USF worksheets. The worksheet instructions, however, address the filing of revised worksheets and impose upon carriers the duty to file corrected worksheets, regardless of the date of revision. USAC's policy conflicts with this requirement.

The Commission first released a draft worksheet and accompanying instructions as Appendix C to its 1997 Order, Changes to the Board of Directors of the National Exchange Carrier Association and the Federal-State Joint Board on Universal Services, Report & Order and Second Order on Reconsideration, FCC 97-253, CC Docket Nos. 97-21 & 96-45 (1997). Neither the draft instructions nor the instructions accompanying the first official Form 457, released August 4, 1997, addressed worksheet revisions or included a deadline for the filing of revised worksheets. *See* FCC Announces Release of Universal Service Worksheet, Form 457, Public Notice, DA 97-1671 (rel. Aug. 4, 1997).

In July 1999 the Commission adopted its Telecommunications Reporting Worksheet, Form 499, replacing various forms including the Form 457. The worksheet instructions attached as Appendix B thereto included a Section II.E entitled "Obligation to File Revisions." Section II.E obligates carriers to file corrected worksheets to correct errors and, for filings submitted beyond the calendar year, specifies the supporting documentation that must accompany the revision:

> [a contributor] must file a revised worksheet if it discovers an error in the data that it reports. . . . Contributors should file revised Form 499-A worksheets by December 31 of the same calendar year. *Revisions filed after that* must be accompanied by an explanation of the causes for the change along with documentation showing

> how the revised figures derive from corporate financial records. (Emphasis added)

The current Form 499 includes this same section, revised only to direct the contributor to submit "complete information" showing how the revised figures derive from corporate financial records.

While Section II.E states a preferred revision date ("by December 31 of the same calendar year"), it does not bar submissions after a date certain. Indeed, by establishing additional requirements for revised worksheets filed beyond the preferred date, the Commission evidenced its intent that USAC accept revised worksheets regardless of the date of filing.

Despite the on-going duty of reporting carriers to file corrected worksheets, on March 9, 2001 USAC rejected as untimely ARC's February 2001 submission of revised Forms 457 correcting its reported 1998 revenues. It is undisputed that ARC included with its revised forms the requisite explanations and supporting documentation. In fact, ARC's supporting material was resubmitted with its April 2001 appeal, which was subjected to a "thorough review" by USAC. Administrator's Decision at 1, Exhibit D. There is nothing in the record to suggest that ARC's supporting material was inadequate or failed to satisfy the Section II.E requirements.

B. USAC's Decision applies a policy that should be overturned or revised

USAC's policy of imposing a one-year statute of limitations to USF worksheet revisions creates hardship for and imposes inequities upon ARC and similarly-situated carriers that belatedly discover reporting errors that significantly affect their contribution responsibilities. The policy should be overturned or revised.

In reviewing this policy, it should be noted that USAC's correspondence with ARC reveals that the one-year deadline is not consistently interpreted or applied. While USAC's

March 9 letter states that the one-year filing deadline runs from the date of the original submission, the October 24 Decision states that it runs from the original filing deadline.

However construed, USAC's one-year statute of limitations on revised filings is unreasonable in comparison to other programs that require payment based on revenues. The Internal Revenue Service, for example, permits an individual or company to file for a credit or refund of an overpayment up to three years after the overpayment was made. See 26 U.S.C.A. § 6511 (2001). A comparable three-year period would not be unreasonable for the purposes of USF reporting and credits.

C. USAC's Decision was predicated, in part, on an erroneous finding as to an important or material question of fact

USAC's March 9, 2001 rejection of ARC's request consisted of a one-sentence recitation of USAC's informal statute of limitations. The October 24 Administrator's Decision refers to this policy and adds an recitation of ARC's filing history. According to USAC,

> [o]n separate occasions A.R.C. Networks failed to file the required Universal Service Worksheets reporting revenue for the periods January 1, 1998 to June 30, 1998, January 1, 1998 to December 31, 1998, and January 1, 1999 to June 30, 1999. On all three separate occasions USAC sent non-responder letters notifying A.R.C. Networks of its failure to file the Forms . . . Nevertheless, the FCC Forms reporting 1998 revenue were submitted significantly after the initial deadline and outside the 12 month time limit for submitting revised revenue reporting approved by the USAC Board of Directors. Thus, after careful review of the facts and information contained in A.R.C. Network's Appeal, USAC must deny the appeal.

The recital appears intended to bolster USAC's conclusion that relief is unwarranted.

USAC predicated its denial, in part, on the erroneous belief that ARC made *no* filing regarding its 1998 revenues until some time "outside the 12 month time limit for submitting revised" reports. This belief is incorrect. According to ARC's records, it submitted its original

Forms 457 for the six-month and twelve-month 1998 reporting periods in compliance with applicable deadlines. Exhibit A demonstrates that USAC received these filings, as it requested revisions thereto. ARC submitted the requested revisions in 1999. While USAC accepted the 1999 revisions, it rejected ARC's 2001 revisions.

D. USAC's reliance on a statute of limitations its Board had no authority to adopt constitutes prejudicial procedural error

USAC rejected ARC's revised Form 457 based on a one-year statute of limitations that its Board of Directors had no authority to adopt. Reliance on an improperly adopted procedural policy constitutes procedural error. Because USAC's procedural error resulted in the denial of ARC's revised worksheet and a corresponding USF credit of $39,436.78, USAC's error is, by definition, prejudicial.

V. Statement of Relief Sought

Pursuant to 47 C.F.R. § 54.721(b), a request for review shall state with particularity the respects in which the action taken by the Administrator should be changed. ARC requests that the Commission reverse USAC's decision in this matter and direct USAC to accept ARC's revised Forms 457 reporting revenue for the year 1998 and to credit ARC's account by $39,436.78, which is the amount of USF over-assessments attributable to inaccurately reported 1998 revenues.

CONCLUSION

For the reasons described herein, A.R.C Networks respectfully requests that the Commission reverse USAC's decision in this matter, require USAC to accept ARC's revised FCC Form 457 reporting telecommunications revenues for 1998, and credit ARC's account accordingly.

Respectfully submitted,

Glenn S. Richards
Susan M. Hafeli
Tom C. Wang
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
(202) 663-8000

Dated: November 20, 2001

EXHIBIT A

USAC Requests for Revisions
To ARC Forms 457

April 14, 1999 and April 16, 1999

NECA NATIONAL EXCHANGE CARRIER ASSOCIATION

100 South Jefferson Road
Whippany, New Jersey 07981
Phone: 973/560-4426
Fax: 973/560-4434
E-Mail: LKUEHN@NECA.ORG

Lori S. Kuehn
Associate Manager- Universal Service
Revenue Administration

DATE: 4/14/99

TO: Universal Service Contributor (TRS Code 813032)

FROM: Universal Service Revenue Administration

RE: FCC Form 457 Revision Required

The enclosed FCC Form 457 submitted has been returned for the following reason(s):

- ☐ Missing Officer Signature (Pg. 1, Block 3, Line 15).
- ☐ No interstate percentages or revenues reported (Pg. 2, Block 4, Columns b & c). Please provide a good-faith estimate of interstate revenues if actual figures are not available. NOTE: If your company does not have any interstate telecommunications revenue, you are not required to complete the Form 457. Please return your worksheet along with a memo stating that your company does not provide interstate services.
- ☐ No "Revenues From All Other Sources" (revenue received from billing an end-user directly) reported (Pg. 2, second half of Block 4).
- ☐ Identical revenue reported in both "Revenue From Other Contributors" and "Revenue From All Other Sources" (Pg. 2, Block 4).
- ☐ Negative revenue reported (Pg. 2, Block 4).
- ☐ Types of revenue reported (Pg. 2, Block 4) do not correspond to the carrier type checked (Pg. 1, Line 4).
- ☒ Federal Subscriber Line Charges are considered 100% interstate (Pg. 2, Line 35). Please review.
- ☐ Other: _____

Please revise the enclosed form(s) <u>within one week</u> of receiving this letter and return to:

USAC- Universal Service Administration
100 South Jefferson Rd.
Whippany, NJ 07981

FCC Form 457 worksheet instructions are enclosed. If you have a question that is not covered in these instructions, please call the USAC help line at (973)560-4400. Your prompt attention is required. If corrected form(s) are not received, your company will be considered a non-f [illegible] penalty.

Sincerely,

Lori S. Kuehn

Enclosure

USAC
UNIVERSAL SERVICE
ADMINISTRATIVE CO.

100 So. Jefferson Road
Whippany, New Jersey 07981

Richard J. Rhyner, CPA, CIA, CFE
Director -Support Funds and Regulatory Compliance
(973) 884-8035 FAX (973) 884-8469
E-mail: rrhyner@naca.org

April 16, 1999

Michael P. Sable, CFO
Arc Networks, Inc.
1770 Motor Pkwy.
Hauppauge, NY 11788

re: Arc Networks, Inc.
TRS Number 813032
FCC Form 457, September 1, 1998

Dear Michael P. Sable,

A recent review of the 6 month revenues (January - June 1998) reported by Arc Networks, Inc. on the September 1, 1998 FCC Form 457 for the Federal Communication Commission's Universal Service Fund (USF) reflects a 47.46% decrease in Interstate/International revenues from the average six month revenues reported for the period January – December 1997.

The FCC's Rules[1] provide authorization for the USF fund administrator to request supporting documentation for data submitted to the administrator. Please consider this letter USAC's request for documentation to support the revenues reported by Arc Networks, Inc. on the September 1, 1998 FCC Form 457. Please be aware that the FCC and Arthur Andersen, L.L.P., USAC's external auditor, have the authority and the responsibility to also conduct service provider reviews.

Acceptable forms of documentation include audited financial statements, General Ledger Trial Balance data for all revenue accounts, General Ledger subsidiary revenue reports, summary reports of billing runs to subscribers, etc. Please provide written explanations for differences or changes to the previously submitted Form 457 revenue reports. All documentation forwarded to USAC will be treated as confidential information pursuant to the FCC's rules[2] and will be used to verify FCC Form 457 reported revenues. Please forward this supporting documentation by May 17, 1999 to:

Universal Service Administrative Company
Attn: Manager - Revenue Administration
100 So. Jefferson Road
Whippany, New Jersey 07981

Sincerely,

Richard J. Rhyner

1 FCC Rules § 54.707 "The Administrator shall have the authority to audit contributors and carriers reporting data to the administrator."
2 See 47 C.F.R. § 0.457(d).

EXHIBIT B

USAC Denial of Revised Form 457

March 9, 2001

Universal Service Administrative Company

March 9, 2001

A.R.C. Networks, Inc.
1770 Motor Parkway
Hauppauge, NY 11788

Attn: Charles Garber

RE: Form 457 Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 457 that you submitted for the purpose of revising revenue reported by A.R.C. Networks, Inc. for the period January 1 – December 31, 1998. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. **If you wish to file an appeal, your appeal must be *received* no later than 30 days after the date of this letter.**

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 457 Rejection letter and identify the outcome that you request;
- Mail your letter to:

  Letter of Appeal
  USAC
  2120 L Street, NW, Suite 600
  Washington, DC 20037

- Appeals submitted by fax, telephone call, and e-mail **will not** be processed.
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."
- Explain the appeal to the USAC. Please provide documentation to support your appeal.

- Attach a photocopy of this Revised Form 457 Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

(1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 457 Rejection Letter; or
(2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 30 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "Docket Nos. 96-45 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Harter at (973) 884-8116 or Lori Terraciano at (973) 560-4426.

Sincerely,

USAC

EXHIBIT C

ARC Appeal to USAC of March 9 Denial

April 6, 2001

ARC Networks

April 6, 2001

Letter of Appeal
Universal Service Administrative Company, Inc.
2120 L Street, NW, Suite 600
Washington, DC 20037

Letter of Appeal
A.R.C. Networks, Inc. Filer 499ID 813032

Gentlemen:

This letter is to request your review and reversal of the USAC (Whippany) decision with regard to our late filings of Forms 457 and 499 as stated in their letter of March 9, 2001, copy attached.

On February 2, 2001 we filed revised Forms 457 for the due dates 9/1/98 and 3/31/99 as well as original Forms 499S and 499A for the due dates 9/1/99, 4/1/00 and 9/1/00 with the attached memo and summary indicating that, as a result of these filings, the net amount due to the Fund through December 31, 2000 was $ 24,366.45 for which we enclosed our check.

Our contributions for the period January 1, 1999 to June 30, 1999 were based on Form 457 due September 1, 1998 which was incorrectly completed and which caused an underpayment of $ 9,012.83.

Our contributions for the period July 1, 1999 to June December 31, 1999 were based on Form 457 due March 31, 1999 which was incorrectly completed and which caused an overpayment of $39,436.78

Our contributions for the period January 1, 2000 to June 30, 2000 were based by the Fund on revenues reported on the Form 457 due March 31, 1999 as the Form 499S due September 1, 1999 had not been filed. This resulted in an overpayment of $ 15,823.17.

Our contributions for the period July, 1, 2000 to December 31, 2000 , which we computed, were based on revenues reported on Forms 499A due April 1, 2000 and Form 499S due September 1, 1999, neither of which had been filed. Our computations resulted in an underpayment of $ 70,523.57 Incidentally, during that six-month period we did not receive any monthly statements or notices from the USAC.

In our letter of February 2, 2001 we stated that we understood several of the periods for which we had submitted revised Forms may be beyond the cut-off dates normally allowed by the Fund for filing revisions and asked for consideration in accepting the filings at this time and granting the resulting credit in the amount of $ 46,247.12 for the net overpayment for the period January 1, 1999 through June 30, 2000. In response we received the March 9, 2001 USAC letter rejecting our revised filings as beyond one year from the date of the original submission.

In support of our request for credit we are submitting copies of the original Form filed and revised Form filed, each with a spreadsheet distributing the General Ledger Trial Balance Revenue Account data to the respective Form revenue line. The cause of the difference in the totals on the original Form and the

1333 Broadway Suite 1001, New York, NY 10018 • (212) 566-2100 • Fax: (212) 566-2136

revised Form may be ascertained by a comparison of the distribution of the revenue amounts on the respective spreadsheets. We have also attached a schedule for each period detailing the computation of the contribution assessed based on the original filing and/or the computation of the contribution that would have been assessed had the filing been correct.

I would like to make you aware that neither I, nor our Chief Executive Officer, Joseph Gregori, were aware of our filing delinquencies. The matter was brought to our attention by a consultant who we retained to review the recovery (from customers) of our USF contributions. As a result of this review we realized that some of our filings were incorrect and that other filings had not been made. We immediately reorganized our accounting department and the individual previously responsible for USF compliance is no longer with the Company.

I have impressed upon our new Controller the importance of timely filings and we intend to stay in compliance. The filing of our Form 499A due April 1, 2001 and our payments since our letter of February 2, 2001 have been timely.

We appeal to your sense of fairness and equity asking that we only be required to pay the charges legitimately due had all our filings been correctly submitted – nothing more and nothing less. We believe that it is neither fair nor reasonable for us to be penalized in the amount of $46,247.12 for an administrative error that we have taken immediate action to rectify. Further we have been unable to locate a specific FCC rule that prohibits the filing of revised Forms beyond a one-year period. We believe that if such a rule does exist we have good cause to request we be granted a waiver and such waiver is hereby requested.

Please contact Jerome Sanders at (212) 566-2100 (E-mail - jerrysanders@infohwy.com) if you need any additional information. You may also reach me at the same phone number (E-mail - cgarber@infohwy.com).

Thank you for your consideration in this matter

Sincerely yours,

Charles N. Garber, CFA
Chief Financial Officer

EXHIBIT D

Administrator's Decision

October 24, 2001