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September 4, 2003

VIA FEDERAL EXPRESS
202/418-0330

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
9300 E. Hampton Drive
Capitol Heights, Maryland 20743

RE: Appeal by Total Communication Services, Inc. of USAC's Decision on Contributor's Appeal; Filer 499 ID 814987; Docket Nos. 96-45 and 97-21

Dear Ms. Dortch:

I am contacting you on behalf of Total Communication Services, Inc. (TCS) to appeal the Administrator's Decision on Contributor Appeal received by the company. I am attaching a copy of the Administrator's Decision on Contributor Appeal. We request that the FCC grant the TCS appeal and order the Universal Service Administrative Company (USAC) to accept TCS' revised Form 499-A to replace the form that was originally filed in April 2001 and forward it to the appropriate entities for processing.

Our client prefers that you contact me if you need additional information about the company or its appeal of the Administrator's Decision on Contributor Appeal. My contact information is:

Bradford W. Bayliff
Casey & Gentz, L.L.P.
Suite 1060
919 Congress Avenue
Austin, Texas 78701
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TCS's problems associated with the revised form began when it noticed an abnormal increase in its June 2001 USF assessment. The Administrator's Decision on Contributor Appeal notes that USAC's records indicate that the first contact made by TCS was on June 6, 2002. TCS

states that it promptly contacted NECA, the program administrator at the time, to inquire why it was being assessed an unusually high amount and to request a review of its USF assessments. During the summer of 2001, the company was told by NECA that, because it had filed its 499-A late, its USF assessments had been estimated and a true-up would be performed at a later date after NECA processed the late-filed 499-A. Based on conversations with NECA staff, the company understood that the estimate was greater than its actual liability and expected that an upcoming true-up would result in a reduction of the assessment.

The company's treasurer left the company shortly after the company filed its 499-A. Employee turnover resulted in no single person being responsible to follow up on the revised assessments expected as a result of using the actual report instead of the NECA-estimated revenues. In the quarter following the increased assessment, however, the company's assessments returned to a normal level that did not require additional contacts with NECA. Because of this, TCS continued to expect an adjustment to its billed amounts. Because TCS was waiting for the expected adjustment, it did not file a revised Form 499-A during the balance of 2001 and early 2002.

After making several calls to the USF billing agency early in 2002 and experiencing frustration at not being able to resolve its questions about the assessments, our client requested that we investigate the circumstances surrounding the increased assessments in 2001. We contacted the FCC, NECA, USAC, and PriceWaterhouse to request information about the cause for the increased assessments in 2001. Because the responsibility for processing Form 499-A had passed during the time our client's problems arose, no one party could answer our questions about why the company's assessments spiked during a few months in 2001.

The transition from NECA to PriceWaterhouse significantly affected our ability to obtain accurate information about the company's assessments. After many telephone calls, emails, and FAXed requests, we obtained copies of the company's filed forms. On July 24, 2002, an employee of the USAC Billing and Disbursement Office provided us with a helpful recap of the company's monthly assessments.

The recap showed that the assessments were not based on estimates, as the company was originally told by NECA, but the 499-A filed by the company's treasurer. Had TCS been told that there would be no adjustment made to its assessment, it would have reviewed its filed reports earlier and timely filed a revised 499-A. After learning that the assessments were not based on estimates but on the filed reports, the company president reviewed the material received from the USAC Billing and Disbursement Office and the methodology used to identify revenues that were reported on the forms that were filed. He discovered that the filed forms were incorrectly prepared and prepared the revised Form 499-A that was submitted to USAC.

The difficulty in obtaining accurate information from the appropriate USF representative significantly contributed to the company's delayed revision of the 499-A Form. The USAC Explanation of Decision states that, "Because USAC received TCS' revision to its Form 499-A on November 6, 2002, after the revision deadline, USAC must deny this appeal." The FCC's appeal process must consider the factors surrounding the company's submission of its revised

report. It is disingenuous to allow companies to request an appeal if the rules do not make any provision to allow consideration of the circumstances surrounding the inaccurate information TCS received from NECA regarding the expected adjustment and the inability of the company to communicate its concerns due to the transition from NECA to USAC as the processing agent for the FCC. The difficulty TCS experienced in obtaining accurate information from the appropriate USF representative due to the changes in administrators and the inaccurate information provided to TCS by NECA about the cause of the increased assessment should allow the FCC to authorize USAC to accept the revised form.

We request that you grant the TCS appeal and order USAC to accept the company's revised 499-A and forward it to the appropriate entities for processing. Please contact me using the provided contact information if you have questions or need additional information about this request.

Sincerely yours,

Bradford W. Bayliff

Enclosure

cc: Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(w/encl.)
Via Federal Express

Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

July 7, 2003

VIA FEDERAL EXPRESS

Bradford W. Bayliff, Esquire
Casey & Gentz, LLP
919 Congress Avenue, Suite 1060
Austin, Texas 78701-2157

Re: Total Communication Services, Inc. (TCS) (ID # 814987)

Dear Mr. Bayliff:

After thorough review, the Universal Service Administrative Company (USAC) has completed its evaluation of the Letter of Appeal on behalf of Total Communication Services, Inc (TCS) dated January 7, 2003 (Appeal). Your Appeal requests that USAC accept TCS' late-filed Federal Communications Commission (FCC) Form 499-A (Form 499-A) reporting revenue for the period January 1 – December 31, 2000.

Background:

TCS submitted a revised Form 499-A, reporting revenue for the period January 1 – December 31, 2000, on November 6, 2002. This Form 499-A was due on April 1, 2001. Any revisions to that Form 499-A were due on April 1, 2002. Because USAC received TCS' revised Form 499-A after the revision deadline, USAC rejected the form based on its policy.

In its Appeal, TCS asserts that it contacted USAC after noticing an "abnormal" increase in its June 2001 Universal Service Fund assessment. USAC records indicate that the Form 499-A at issue was used to true-up the April 2001 invoice and to ensure that the charges assessed during the second quarter of 2001 were based on the *Contribution Methodology Order*[1] adopted by the FCC. Further, USAC records indicate that initial

[1] *See,* Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T, CC Docket No. 96-45, *Report and Order and Order on Reconsideration,* FCC 01-85 (March 14, 2001) (*Contribution Methodology Order*).

contact made by TCS to address the June 2001 charges was made on June 6, 2002, more than one year after the charges were assessed. This initial contact was well after the then-applicable 30-day appeal deadline for dispute of the June 2001 charges and well after the Form 499-A revision deadline of April 1, 2002.

Explanation of Decision:

Because USAC received TCS' revision to its Form 499-A on November 6, 2002, after the revision deadline, USAC must deny this appeal.

Decision on Appeal: Denied.

USAC hereby denies TCS' Appeal.

If you disagree with the USAC response to your Appeal, you may file an appeal with the FCC within 60 days of the date of this letter. 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."

Sincerely,

USAC

Universal Service Administrative Company

cc: Anita Cheng, FCC Common Carrier Bureau
James Shook, FCC Enforcement Bureau