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November 10, 2004

Via Facsimile and Overnight Mail

DOCKET FILE COPY ORIGINAL

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

Re: ABS-CBN Telecom North America, Incorporated, Filer ID 815865
Request for Review of Decision of Universal Service Administrator
Pursuant to Rule 54.719(c)
CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of ABS-CBN Telecom North America, Incorporated, transmitted herewith is a copy of its Request for Review of Decision of Universal Service Administrator Pursuant to Rule 54.719(c). By copy of this letter, the original and four (4) copies have been filed with the Office of the Secretary, as well as one (1) copy with the Commission's Wireline Competition Bureau. An Electronic copy has also been filed with the Wireline Competition Bureau.

An additional copy of this filing is enclosed, to be date-stamped and returned in the postage-prepaid envelope provided.

Should there be any questions regarding this filing, kindly contact the undersigned.

Respectfully submitted,

Jonathan S. Marashlian
Regulatory Counsel

Enclosures

cc: Wireline Competition Bureau

No. of Copies rec'd 0+4
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Before the
WIRELINE COMPETITION BUREAU
of the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Request for Review by	)	CC Docket No. 96-45
	)	
ABS-CBN Telecom	)	
North America, Incorporated	)	
Filer ID 815865	)	File No.
	)	
of Decision of Universal Service Administrator	)	
Pursuant to Rule 54.719(c)	)	

STATEMENT OF INTEREST

In accordance with the Commission's Rules, 47 C.F.R. 54.720(a), ABS-CBN Telecom North America, Incorporated ("ABS"), FCC Filer 499 ID 815865, by its attorneys, files this Request for Review of the Universal Service Administrative Company's ("USAC") September 13, 2004 decision regarding ABS' contribution appeal. *See* "Administrator's Decision on Contributor Appeal," September 13, 2004 (attached hereto at Exhibit A)[1]. USAC's rejection of ABS' revised fourth quarter 2003 Telecommunications Reporting Worksheet (Form 499-Q), dated October 30, 2003 has caused ABS irreparable harm. Therefore, ABS seeks a review of the USAC decision.

INTRODUCTORY STATEMENT OF FACTS

1. ABS is a small telecommunications reseller of interstate and international long distance telephone service. It started providing telecommunications services to U.S. customers in 1997.

[1] *See also* Exhibit B – July 8, 2004 letter from ABS to USAC; Exhibit C June 8, 2004 letter from USAC to ABS; Exhibit D FCC Form 499Q dated July 29, 2003; Exhibit E FCC Form 499Q dated October 28, 2003.

2. Since 1997, ABS has consistently qualified for the "international exemption" for computation of its USF fees because its international revenue exceeds its interstate revenue by a ratio of 88 to 12.[2] Since its inception, ABS has consistently filed accurate Telecommunications Reporting Worksheets and paid its Universal Fund contributions ("USF") in a timely manner.

3. Prior to April 1, 2003, the Commissions rules specified that a company must base its USF contribution payments on actual revenues received and, if there was an error, could true-up their payment record with a corrected FCC Form 499-Q ("499-Q") within 90 days of the timely filed 499-Q. After April 1, 2003, the Commission's Contribution Rules[3] changed in two key areas that affect ABS: first, the contribution assessment is now based on estimated projected collected revenues rather than actual collected revenues; and second, the time to file an amended 499-Q was reduced from 90 to 45 days.[4]

4. A representative sample of ABS' invoices from USAC for the year 2003 and 2004 clearly indicate the discrepancy in contributions due the clerical error which is the basis for this Petition:

2003	**Contributions**
September	**$2,649.82**
October	**$1,006.71**
November	**$1,016.71**
December	**$1,006.71**
2004	
[redacted]	

[2] *See* 47 C.F.R. § 54.706(c): Prior to April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions.

[3] 47 C.F.R. § 54.706 Contributions.

[4] 47 C.F.R. § 54.709(a).

March	$[illegible]
April	**$1,864.38**
May	**$2,531.72**

ABS prepared and timely filed its 4th Quarter 499-Q, however, an inadvertent typographical error resulted in the misplacement of the decimal point in the **$40,000.00** interstate revenue projection, thus causing the figure to be reported as **$400,000.00.** As a result of this clerical error, when USAC calculated ABS' contribution obligation for the 1st Quarter of 2004, ABS "lost" its international exemption. With the loss of the exemption, from January through March, ABS was billed for a total of $193,000.00 in purported USF contributions - a stark contrast to ABS' normal contribution level of approximately $6,000.00 for a historically representative three month period.

5. The obvious error in ABS' November 499-Q was not identified by either NECA or USAC, despite its glaring inconsistency with ABS' long history of 499 reporting.

6. Immediately upon discovery of this error, ABS filed a revised Form 499-Q on January 29, 2004. Nonetheless, the revised form was twice rejected by USAC decisions[5] on the basis that ABS submitted its revised 499-Q outside of a 45-day "revision window" set forth in the instruction manual.[6]

7. USAC decided that ABS would be made whole when the annual true-up occurs because it would "receive adjustments or credits, as appropriate, on its invoices beginning in mid-2005." However, the "true-up" will not occur until April of 2005 and credits will not be issued until July 2005. And then, credits will be issued over the course of three invoices, meaning ABS will not be made whole until mid-September 2005. This is an incredible hardship

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[5] *See* "Administrator's Decision on Contributor Appeal," September 13, 2004. Exhibit A.
[6] *Id.* at 2.

for any company let alone a small company such as ABS. The USAC decision simply does not represent an equitable remedy.

8. The Commission's Rule, 47 C.F.R. 54.711(a) provides that the "Commission or the Administrator may verify any information contained in the Telecommunications Worksheet." Certainly, where a provider's contribution is so radically different from its previous filings, as is the case here, the Administrator should have flagged the ABS filing. Just as ABS is required to operate in good faith, so too should USAC.

STATEMENT OF THE ISSUES FOR REVIEW

9. ABS respectfully requests the Bureau consider the following issues for review:

A. That USAC's decision rejecting ABS' December 29, 2003 499-Q revision for an innocent and obvious scrivener's error created an undue burden on ABS;

B. That USAC's refusal to refund the $193,000 overpayment of USF contributions is a violation of the Communications Act 47 U.S.C. 254 (b)(4) – "Equitable and Nondiscriminatory Contributions";

C. That USAC's "policy" of refusing to promptly refund overpayments when a request for such refund is made outside the 45-day 499-Q revision window set forth in the 499-Q instruction manual, but which is neither required by statute nor set forth in a properly promulgated Commission rule or decision, is *ultra vires* in violation of Commission rule 54.702(d), 47 C.F.R. § 54.702(d); and

D. That USAC's "policy" of withholding overpayments of contributions pending an annual true-up of USF obligations for 2004 is *ultra vires* and constitutionally infirm in violation of the 5th Amendment to the United States Constitution.

LEGAL ANALYSIS

I. That USAC's decision rejecting ABS' December 29, 2003 499-Q revision for an innocent and obvious scrivener's error created an undue burden on ABS.

10. Rule 54.713 directs USAC to "refund any overpayments made by the contributor." Neither Rule 54.713 nor any other properly promulgated Commission rule or decision authorizes USAC to withhold overpayments for any period of time where such overpayment is the result of a clearly demonstrated typographical error.

11. When the Commission appointed USAC as a permanent administrator of the federal Universal Service support mechanisms, the Commission specifically delineated USAC's functions and responsibilities in regards to billing, collection and disbursement authority:

> "The Administrator shall be responsible for billing contributors, collecting contributions to Universal Support Mechanisms, and disbursing Universal Support Funds."
>
> 47 CFR § 54.702(b)

12 In addition, the Commission authorized USAC to make refunds:

> "Once a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs."
>
> 47 CFR § 54.713

13. USAC's denial of ABS' appeal lacks rationality because it is applied only to late-filed Form 499 revisions that "have the effect of reducing contributors' USF obligations." *Id.* ABS's revised 499-Q will not reduce its USF contributions because it does not owe the amount of the contribution that was erroneously made in the first instance. Hence, USAC's ruling here is not consistent with the policy it says it "has consistently followed." *Id.*

II. That USAC's refusal to refund the $193,000.00 overpayments of USF contributions is a violation of the Communications Act 47 U.S.C. 254 (b)(4) – "Equitable and Nondiscriminatory Contributions."

14. The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. 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. 47 CFR § 54.702(d). Here Congress has spoken, requiring that payments into the USF must be equitable and non-discriminatory. It is not equitable to require ABS to pay more than its jurisdictionally appropriate share of USF contributions.

16. Part 54 of the Commission's Rules are silent with respect both to the procedures telecommunications providers must follow to request a refund and those USAC must follow when presented with a *bona fide* refund request. Where the Commission Rules are silent, the Commission must decide in favor of ABS.

III. That USAC's "policy" of refusing to promptly refund overpayments when a request for such refund is made outside the 45-day 499-Q revision window set forth in the 499-Q instruction manual, but which is neither required by statute nor set forth in properly promulgated Commission rule or decision, is *ultra vires* in violation of Commission rule 54.702(d), 47 C.F.R. § 54.702(d).

17. As USAC indicated in its Decision, providers who over report revenue can obtain timely (within approximately 3 monthly billing cycles) "credits" to their USAC accounts by filing a revised Telecommunications Reporting Worksheet (Form 499s) within the revision deadline set forth in Form 499 instructions. However, USAC's application of the revision deadline to deny ABS its refund exceeds not only its authority, but that of the Commission as well, because the 45-day revision deadline is not a validly promulgated Rule. Absent a valid Rule or other statutory authority, USAC's decision to impose any condition on a contributor's

right to a refund for overpayments are beyond its authority and otherwise arbitrary and capricious.

18. Furthermore, USAC's decisions to first reject ABS' December 29, 2003 499-Q revision and then deny ABS' appeal of this rejection are not based on valid delegated authority. USAC's decisions extend beyond its limited discretion and rest on no known statutory provision or duly adopted Commission rule or decision and is thus a violation of the Administrative Procedures' Act to which all Commission policy is subject.

19. The Commission should right this wrong and order the prompt refunding of ABS' $193,000.00 overpayment, with interest.

IV. That USAC's "policy" of withholding overpayments of contributions pending an annual true-up of USF obligations for 2004 is *ultra vires* and constitutionally infirm in violation of the 5th Amendment to the United States Constitution.

20. It is well-settled, in the analogous context of income tax law, that the timely filing of a claim for refund according to regulations established pursuant to statute is a prerequisite of the existence of a right to sue for the recovery of illegally exacted taxes. *See e.g.*, 26 USCA § 156; *Tucker v. Alexander*, 275 U.S. 228, 48 S.Ct. 45, 72 L.Ed. 253; *J. P. Stevens Engraving Co. v. United States* (C.C.A.) 53 F.(2d) 1; *Snead v. Elmore* (C.C.A.) 59 F.(2d) 312. However, there being no "regulations established pursuant to statute" in the context of the Universal Service program, there can be no arbitrary time bar to a telecommunications providers' ability to request and obtain a refund of excessive USF contributions. This is particularly true when it is proven, as here, that the government has no right to retain funds obtained in error.

21. A citizen's right to refund of overpayments to the government is well settled. In *Fox v. Edwards,* 287 F.669 (2d Cir. 1923), it was held that if it appears that an amount has been paid in income taxes in excess of that properly due, the amount shall be credited upon any tax

then due, and "any balance of such excess shall be immediately refunded to the taxpayer." *Id.* at 670 (emphasis added).

22. Through its reliance on a 499-Q revision deadline that can only be found in an instruction manual and not in any validly promulgated Rule, USAC acted in violation of express Commission Rules[7] that direct USAC to refund overpayments. In doing so, USAC has created and followed policies for which it has no authority and thereby deprived ABS of its property by wrongfully withholding significant funds that are not owed to the government and that are needed in the prudent and responsible management of ABS' operations.

23. There is no legitimate governmental purpose in holding ABS' $193,000.00 overpayment. In *Penn Central Transportation Co. v. New York City*,[8] the Court developed three factors in assessing a takings effect by a government regulation:

a) The character of the governmental action;

b) The economic impact of that action; and

c) The action's interference, if any, with investment backed expectations.

24. Clearly, were the Bureau to use the *Penn Central Factors* to weigh the actions of USAC against the economic burden imposed on ABS, it could not help but conclude that a continued failure to refund ABS' overpayment is not only unjust but a taking of property prohibited under the Constitution of the United States.

25. USAC's deprivation of ABS' property has been done without due process of law and is therefore in violation of ABS' constitutional rights as guaranteed by the 5th Amendment to the Constitution.[9]

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[7] *See Bell Atlantic Co. v. FCC*, 24 F. 3d 144, 1445-47 (D.C. Cir. 1994).

[8] 438 U.S. 104 (1978).

26. USAC received nearly $200,000.00 to which it is not entitled and which all parties agree will eventually be returned to ABS, but only after many months (approximately July to September of 2005).

27. By retaining the monies to which it is clearly and concededly not legally entitled, USAC not only deprives ABS of cash which is critically important to its on-going operations and monthly obligations, but also needed to maintain existing service and expand its business.

28. Immediate return of the $193,000.00 over-contribution is necessary from a corporate housekeeping and financial accounting perspective because these funds must be accounted for at the end of 2004 according to generally accepted accounting principles. Waiting until July to September of 2005 is simply not an acceptable option.

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[9] USAC defends its decisions on the basis that ABS' revisions were "not filed prior to the revision deadlines" by reference to the instructions for FCC Form 499-Q. USAC's reliance is misplaced. The instructions may serve as guidelines by informing contributors what time frames are contemplated in making the required filings. But they cannot be used to override ABS' substantive rights because they are not a valid regulation. The FCC Form 499-Q instructions were never subjected to notice and comment as required under the Administrative Procedures Act, 5 U.S.C. 552 (APA). More importantly, the consequences of not complying with these instructions or USAC's policies applied in such circumstances were never subjected to the notice and comment period required by the APA. Indeed, the instructions to the worksheets for the years 1998-2000 do not even mandate that a contributor file a revised worksheet in any time period. In fact, these instructions state only that a contributor must file the revised worksheet if it discovers an error in the data that it reports, but do not specify any time period for filing a revised report requesting a refund.

STATEMENT OF RELIEF REQUESTED

29. As a matter of right and equity, ABS' overpayment must be refunded immediately. USAC's wrongful actions have deprived ABS of its property. ABS has an unqualified general right to have the government return its overpayment and a specific right to have its USF contributions overpayment returned in a timely manner.

30. ABS requests the Commission take such action as is necessary and proper to direct USAC to issue a refund, as required by 47 C.F.R. 54.713, evidencing ABS' overpayment of $193,000.00 not later than December 31, 2004.

31. ABS additionally requests that it receive the time value of its money wrongfully held by USAC.

Respectfully submitted,
ABS-CBN Telecom North America, Inc.
FCC Filer 499-ID # 815865

By _____
Charles H. Helein
Jonathan S. Marashlian

The Helein Law Group, LLPP
Its Attorneys

CERTIFICATE OF SERVICE

I, Sherry A. Reese, do hereby certify that on this tenth day of November, 2004, I caused the noted copies of the foregoing "Request for Review of Decision of Universal Service Administrator Pursuant to Rule 54.719(c), CC Docket No. 96-45" of ABS-CBN Telecom North America, Incorporated to be served upon the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, Maryland 20743
(Original and 4 Copies – Via Facsimile and Overnight Mail)

Wireline Competition Bureau
445 12th Street, SW
Washington, DC 20554
(1 Copy – Via Overnight Mail)

Sherry A. Reese

Sherry A. Reese

EXHIBIT

A

Administrator's Decision on Contributor Appeal

September 13, 2004

BY FEDERAL EXPRESS

ABS-CBN Telecom North America, Inc.
Zoilo dela Cruz
859 Cowan Road
Burlingame, CA 94010

Re: ABS-CBN Telecom North America, Inc (Filer ID # 815865)

Dear Mr. dela Cruz:

By your letter dated July 7, 2004 and submitted on behalf of ABS-CBN Telecom of North America, Inc. (ABS-CBN), you requested review of a decision of the Universal Service Administrative Company (USAC) in accordance with 47 C.F.R. Section 54.719(b) (Request or Appeal). USAC has completed its evaluation of ABS-CBN's Request and, for the reasons set forth below, affirms its decision and denies ABS-CBN's Appeal.

Background:

ABS-CBN appeals USAC's rejection of a late-filed revision to its quarterly Telecommunications Reporting Worksheet (Worksheet).[1] FCC regulations in force during the relevant time period required contributors to file Worksheets both annually and quarterly and required USAC to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54. The Form 499-Q at issue in this Appeal had a due date of November 3, 2003, with an FCC-established 45-day revision window of December 18, 2003. ABS-CBN submitted an original Form 499-Q on October 30, 2003 that, among other things, reported projected revenue and resulted in charges posting to ABS-CBN January, February, and March 2004 invoices. ABS-CBN submitted a revision to its Form 499-Q on January 29, 2004. Because the Form 499-Q was filed after the closing of the revision window, USAC rejected the form.

[1] The quarterly and annual Worksheets are known respectively as FCC Form 499-Q (Form 499-Q) and FCC Form 499-A (Form 499-A).

SEP-13-04 14:59 FROM:USAC ID:2022897836 PAGE 2/6

Worksheet Revision Window

FCC regulations do not require USAC to accept late-filed revisions to the Worksheets. However, in order to improve the accuracy of the revenue reported and to help ensure that the USF remains both predictable and sufficient, the USAC Board of Directors has authorized USAC to allow contributors to file new or revised Worksheets after the original due date.[2] USAC has consistently followed this policy by not permitting late-filed Worksheets that have the effect of reducing contributors' USF obligations. Accordingly, since September 1, 1999, contributors have been permitted to file new or revised Annual Worksheets after the original due date and, with respect to reporting decreased revenues, for a period of up to 12 months from the initial due date of the Worksheet in question.

Similarly, for Quarterly Worksheets, up until November 2002, carriers had until the next Quarterly Worksheet due date to file revisions that result in reduced contributions. Effective February 2003, the FCC changed the revision window for all revisions to Quarterly Worksheets to 45-days.[3] Thus, the Form 499-Q that was due November 3, 2003 (the first business day after November 1, 2003), and the deadline for revisions was 45 days later, or December 18, 2003.

Discussion:

The Form 499-Q had a due date of November 3, 2003, and an FCC-established revision window of 45 days, or December 18, 2003. ABS-CBN attempted to submit its Form 499-Q on January 29, 2004. Because ABS-CBN attempted to submit its Form 499-Q after the due date and outside of the revision window, USAC rejected the form consistent with FCC regulations.

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[2] *See Minutes of July 27, 1999, USAC Board of Directors Meeting*; *see also* 47 U.S.C. § 254(b)(5).

[3] *See 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*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*), ¶¶ 20-27, Appendix C, p.82 (February 2003 FCC Form 499-Q Instructions); *see also id.* at ¶36.

For all Forms 499-Q, the filing deadline and notice of the revision window are clearly stated in the form instructions, are indicated on the form itself, are discussed in a document entitled "Helpful Hints" that is included with the form, and are posted on USAC's website: www.universalservice.org. Every quarter, in advance of the filing date, USAC mails a copy of the upcoming Form 499-Q to every filer. In addition, questions concerning forms and revisions can be addressed to USAC's data collection agent via email at "Form499@universalservice.org".

Remedy:

Although ABS-CBN missed the window for submission of the Form 499-Q, ABS-CBN has a remedy. USAC's annual reconciliation process, based on ABS-CBN's 2004 annual revenue, is designed to provide ABS-CBN with a remedy in this instance. ABS-CBN is required to file a 2004 FCC Form 499-A reporting 2004 annual revenue. The annual true-up is designed to compare ABS-CBN's reported actual 2004 revenue and reconcile it with the reported 2004 projected collected revenue from the Forms 499-Q. Therefore, assuming, but not concluding, that ABS-CBN's first quarter monthly charges should be adjusted, ABS-CBN would receive adjustments or credits, as appropriate, on its invoices beginning in mid-2005.

Explanation of Decision:

Because ABS-CBN's submission was received on January 29, 2004, after the due date and after the closing of the 45-day revision window established by the FCC, USAC properly rejected the form as untimely. For the reasons discussed herein, USAC must deny ABS-CBN's appeal.

Decision on Appeal: Denied.

USAC hereby denies ABS-CBN's Appeal.

If you disagree with USAC's response to your Appeal, you may file an appeal with the FCC. Your appeal must be **POSTMARKED** within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via the United States Postal Service, you should direct the appeal to:

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

Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8:00 A.M. – 7:00 P.M.)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the decision at issue.

Sincerely,

USAC

Universal Service Administrative Company

cc: Tim Peterson, Tom Putnam, and Regina Dorsey, FCC Office of Managing Director
Cathy Carpino, FCC Wireline Competition Bureau
Hillary DeNigro and Eric Bash, FCC Enforcement Bureau

EXHIBIT

B

ABS-CBN TELECOM

COPY

7 July 2004

Universal Service Administrative Company
200 L Street, NW, Suite 200
Washington, DC 20036

RECEIVED
JUL 08 2004
BY: AW

Dear Sir or Madam,

ABS-CBN Telecom North America, Inc.
FCC Filer 499 ID 815865
CC Docket No. 96-45

I write on behalf of ABS-CBN Telecom North America, Inc. (the "Company").

The Company earnestly requests reconsideration of the Federal Communications Commission's ("FCC") decision dated June 8, 2004 denying our request for revision of our FCC Form 499-Q (copy attached).

While the Company admits that the revisions were filed beyond the 45-day window set by the FCC, the Company requests the FCC to accept the revisions based on the following grounds:

1. The incorrect data was a result of a typographical error that moved the decimal point to the right thereby increasing the amount to $400,000 from $40,000. For your reference, attached is a copy of our original and corrected FCC 499-Q filing (November 3, 2003 filing).

2. Our actual revenues for the months of January, February and March 2004 only total $37,565 as shown in our FCC 499-Q for the said period (copy attached). We are also attaching copies of our FCC 499-Q for the period April 1 – June 30, 2004 to show that our actual and projected revenue is approximately $35,000 to $40,000.

3. The uncorrected data has resulted in undue hardship to the Company. The USAC has billed the Company approximately $193,000 for January, February and March 2004 based on the erroneously entry. We normally remit approximately $6,000 for this period. This impacts our cash flow, and quite possibly, the continued existence of the Company.

In light of the foregoing, we urge the FCC to reconsider its decision and allow the revision of the company's FCC Form 499 (November 3, 2003 filing).

859 Cowan Road, Burlingame, CA 94010 USA • 1-800-84 BAYAN

COPY

Please feel free to call the undersigned at (650) 652-6915 for any questions.

Yours sincerely,

Zoilo dela Cruz
Senior Manager, Finance

EXHIBIT

C

Universal Service Administrative Company

June 8, 2004

Attn: Zolio Delacruz
ABS-CBN Telecom North America, Inc.
859 Cowan Rd.
Burlingame, CA 94010

Form 499 Filer ID: 815865

RE: November 3, 2003 Form 499-Q Revision Rejection

Federal Communications Commission (FCC) regulations require carriers to file an FCC Form 499-A annually and an FCC Form 499-Q quarterly and require the Universal Service Administrative Company (USAC) to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54. The November 2003 FCC Form 499-Q was due November 3, 2003, with revisions due by December 18, 2003 (45 days later).[1] This 45-day form revision window is clearly noted in the instructions for the FCC Form 499-Q, is discussed in a document entitled "Helpful Hints" that was included with the form, and is posted on USAC's website www.universalservice.org. In addition, questions concerning forms and revisions can be addressed to USAC via email at Form499@universalservice.org.

Because USAC received the November 2003 FCC Form 499-Q submitted by the above-referenced Form 499 Filer ID 815865 ABS-CBN Telecom North America, Inc. after the due date and outside of the 45-day revision window, the form was untimely and will not be processed.

If this submission was intended to revise revenue reported on a previously filed original Form 499-Q, please note USAC has relied upon the revenue previously projected by you for the purposes of calculating your universal service charges for January, February, and March 2004. If you failed to timely file an original Form 499-Q, please note USAC has relied on revenue previously reported by you for the purpose of calculating your universal service charges for January, February, and March 2004.

[1] *See In re Federal -State Joint Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 02-329 (Released December 13, 2002) ("*Interim Contribution Methodology Order*") at ¶ 36 ("contributors will have an opportunity to correct their [revenue] projections up to 45 days after the due date of each Form 499-Q filing and through the annual true-up process").

80 South Jefferson Rd., Whippany, NJ 07981 Voice: 973/560-4460 Fax: 973/599-6507
Visit us online at: http://www.universalservice.org

When a carrier fails to file an FCC Form 499 by the due date, in order to calculate universal service charges for the relevant period, FCC regulations require USAC to estimate that carrier's revenue based upon previously reported revenue information.[2]

Please note that although you missed the revision window for submission of the Form 499-Q, the annual/quarterly (A/Q) true-up will provide a remedy. USAC's 2005 A/Q true-up will reconcile and revise contributor's account accordingly. The 2005 Form 499-A, reporting annual 2004 revenue, has a due date of April 1, 2005. Upon receipt of contributor's 2005 Form 499-A, USAC will perform the A/Q true-up and post appropriate credits or adjustments to your account.

If you wish to appeal this decision with USAC, your appeal must be *postmarked* no later than 60 days after the date of USAC's rejection letter. Appeals postmarked after 60 days from the date of this letter will be automatically dismissed.

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 Form 499-Q rejection and identify the outcome that you request;
- Be sure to refer to CC Docket No. 96-45 on all communication with the FCC.
- The appeal must identify the "Legal Reporting Name" and "Filer 499 ID."
- 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 the appeal with USAC.
- Explain the appeal to the USAC. Please provide supporting documentation.
- Attach a photocopy of the Form 499-Q rejection decision under appeal.
- Mail your letter to:
  Letter of Appeal
  USAC
  2000 L Street, NW, Suite 200
  Washington, DC 20036
- Appeals submitted by fax, telephone call, and e-mail **will not** be processed.

The response will indicate whether USAC:

[2] *See* 47 C.F.R. 54.709(d) (where a contributor fails to file a Worksheet by the due date USAC "shall bill that contributor based on whatever relevant data [USAC] has available, including, but not limited to [that contributor's] data from previous years").

EXHIBIT

D

FCC Form 499-Q Telecommunications Reporting Worksheet

Quarterly Filing for Universal Service Contributors >>> Please read instructions before completing <<< Approval by OMB 3060-0855

Block 1: Contributor Identification Information

101 Filer 499 ID	815865
102 Legal name of reporting entity	ABS-CBN Telecom North America, Inc.
103 IRS employer identification number	94-3221737
104 Name telecommunications service provider is doing business as	
105 Holding company [All affiliated companies should show same name here.]	
106 FCC Registration Number (FRN)	
107 Complete mailing address of reporting entity's corporate headquarters	859 Cowan Road Burlingame, CA 94010

Block 2: Contact Information

108 Person who completed this worksheet	Ric Cordero
109 Telephone number of this person	(650) 697-3700
110 Fax number of this person	(650) 697-3500
111 E-mail of this person	RCordero@abs-cbni.com
112 Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.]	Wilhlem O. Ick 859 Cowan Road Burlingame, CA 94010

Block 3: Contributor Historical and Projected Revenue Information

113 Year of historical revenue information	2003

114 Indicate which quarterly filing this represents	Filing due	Historical revenues for	Projected revenues for
	February 1	October 1 - December 31 (prior year)	April 1 - June 30
	May 1	January 1 - March 31	July 1 - September 30
	August 1	April 1 - June 30	October 1 - December 31
	November 1	July 1 - September 30	January 1 - March 31 (following calendar year)

Historical billed revenues with no allowance or deductions for uncollectibles. See instructions.	Total Revenues (a)	Interstate Revenues (b)	International Revenues (c)
115 Telecommunications provided to other universal service contributors for resale	$967,744	$0	$967,744
116 End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues	$1,852,246	$40,909	$1,811,337
117 All other goods and services	$557,798	Column (b) and (c) not requested for Lines 117 and 118	
118 Gross-billed revenues from all sources [sum of above]	$3,377,788		
119 Projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues		$40,000	$1,800,000
120 Projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues		$36,000	$1,620,000

Block 4: CERTIFICATION: to be signed by an officer of the reporting entity

121 I certify that the revenue data contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules. ☑

I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.

122 Signature	Wilhelm
123 Printed name of officer	Wilhelm O. Ick
124 Position with reporting entity	Assistant Vice President
125 Date	July 29, 2003
126 This filing is:	☐ Original filing ☒ Revised filing [revisions due within 45 days of original filing deadline]

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o NECA, 80 South Jefferson Road, Whippany, N.J. 07981
For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (973) 560-4460 or via e-mail: Form499@neca.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

For information on filingling electronically go to http://form499.universalservice.org/

EXHIBIT

E

FCC Form 499-Q Telecommunications Reporting Worksheet
Quarterly Filing for Universal Service Contributors >>> Please read instructions before completing <<< Approval by OMB 3060-0855

Block 1: Contributor Identification Information

101	Filer 499 ID		
102	Legal name of reporting entity	ABS-CBN Telecom North America, Inc.	
103	IRS employer identification number	94-3221737	
104	Name telecommunications service provider is doing business as	Sarimanok One	
105	Holding company [All affiliated companies should show same name here.]	N/A	
106	FCC Registration Number (FRN)		
107	Complete mailing address of reporting entity's corporate headquarters	859 Cowan Road Burlingame, CA 94010	

Block 2: Contact Information

108	Person who completed this worksheet	Ricardo S. Cordero
109	Telephone number of this person	(650) 697-3700
110	Fax number of this person	(650) 697-3500
111	E-mail of this person	rcordero@abs-cbni.com
112	Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.]	Wilhelm O. Ick 859 Cowan Road Burlingame, CA 94010

Block 3: Contributor Historical and Projected Revenue Information

113 Year of historical revenue information

114 Indicate which quarterly filing this represents

Filing due	Historical revenues for	Projected revenues for
February 1	October 1 - December 31 (prior year)	April 1 - June 30
May 1	January 1 - March 31	July 1 - September 30
August 1	April 1 - June 30	October 1 - December 31
November 1	July 1 - September 30	January 1 - March 31 (following calendar year)

Historical billed revenues with no allowance or deductions for uncollectibles. See instructions.

		Total Revenues (a)	Interstate Revenues (b)	International Revenues (c)
115	Telecommunications provided to other universal service contributors for resale	$889,508		
116	End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues	$2,276,325	$422,300	$2,234,025
117	All other goods and services	$149,673	Column (b) and (c) not requested for Lines 117 and 118	
118	Gross-billed revenues from all sources [sum of above]	$3,315,506		
119	Projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues		$450,000	$2,500,000
120	Projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues		$400,000	$2,000,000

Block 4: CERTIFICATION: to be signed by an officer of the reporting entity

121 I certify that the revenue data contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.

I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.

122	Signature	Wilhelm
123	Printed name of officer	Wilhelm O. Ick
124	Position with reporting entity	Assistant Vice President
125	Date	28 October 2003
126	This filing is:	☒ Original filing ☐ Revised filing [revisions due within 45 days of original filing deadline]

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For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (973) 560-4460 or via e-mail: Form499@neca.org

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