

WorldxChange Corporation
File ID #821378

USAC Invoice
2003

<u>Invoice Date</u>	<u>Current Month Charges (A)</u>
01/23/03	351,904.48
02/25/03	351,904.48
03/21/03	351,904.48
04/22/03	426,413.58
05/22/03	426,413.58
06/29/03	426,413.58
07/22/03	521,905.97
08/22/03	521,905.97
09/22/03	521,905.97
10/22/03	2,417,475.70

(A) Does not include any credits, interest or adjustments in order to reflect comparable monthly charges.

c

EXHIBIT

C

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TELEPHONE (212) 973-0111
FACSIMILE (212) 891-9590

January 23, 2004

CERTIFIED MAIL #7000 0600 0022 8764 4963
RETURN RECEIPT REQUESTED

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

RE: Letter of Appeal of WorldxChange Corp., Filer 499 ID: 821378

To Whom It May Concern:

WorldxChange Corp. ("WxC" or the "Company"), by its undersigned counsel and in response to the Universal Service Administrative Company's ("USAC") letter of November 26, 2003 (the "November 26 Letter"), submits its Letter of Appeal of the rejection by USAC of a revised 499-Q worksheet filed September 30, 2003 by WxC. This letter is attached as Exhibit A to this appeal. For the reasons detailed below, WxC requests that USAC accept the September 30, 2003 revised filing. In the alternative, WxC requests that USAC reject the worksheet filed July 21, 2003 and recalculate the Fourth Quarter contributions of WxC using an estimate of the Company's revenues.

On or about October 15, 2003, WxC received its first invoice for the fourth quarter universal service fund ("USF") contribution. In responding to the invoice in a November 1, 2003 letter, Mr. Brandifino noted that this billing was grossly out of proportion with previous invoices, as the average monthly billing rose from around \$500,000 to approximately \$2,500,000, an increase of around 500 percent. Because Mr. Brandifino had recently filed a revised 499-Q with revenue numbers that did not support the October invoice, Mr. Brandifino requested that the invoices be reissued to reflect the September 30, 2003 filing.

In response to this letter of November 1, 2003, but without actually referencing or addressing the arguments by Mr. Brandifino, USAC sent a letter, dated November 26, 2003, denying the revision of the August 1, 2003 worksheet filed on September 30, 2003. In rejecting the September 30 filing, USAC relied on the Commission's policy that contributors have 45 days

to revise their revenue projections.¹ This interpretation of the policy as being absolute is incorrect. To wit, USAC can and has exercised discretion in accepting late-filed worksheets. For instance, in a workshop on the Form 499 on June 5, 2003, USAC stated that upward revisions to 499-Q worksheets could be filed at any time, whereas downward revisions could be made only within 45 days of the original filing deadline. Copies of the relevant slides of this presentation are attached as Exhibit B to this appeal.

Nowhere in FCC policy does a distinction between upward and downward revisions exist. USAC is thus interpreting the FCC's policy in an arbitrary and discriminatory way. By applying differing standards depending upon the actual numbers provided to USAC, USAC has not acted in a fair and impartial manner in implementing the FCC's rules.² Rather, USAC has adopted one-sided policies—to accept all late-filed revisions that increase fund contributions and to reject all late-filed revisions that decrease fund contributions—not founded in any FCC rule or policy. As such, the denial of the September 30, 2003 revision was arbitrary, competitively biased, and exceeded USAC's authority as Administrator.³

Additionally, a simple inquiry in this case would have revealed that the worksheet filed July 21 was not accurate. Such an action would have been consistent with USAC's interest in avoiding errors in reporting.

Lastly, equity requires acceptance of the revision. When WxC files its 499-A for 2003, its annual revenue will be approximately equal to the revenue that was inaccurately reported for a single quarter on the 499-Q filed July 21, 2003. This July 21 filing inadvertently reported, as quarterly revenue, figures which were preliminary annual figures of WxC. As such, WxC will be subject to true-up and receive a refund from USAC. However, because USAC does not process annual true-ups until the third quarter, in order to stay current on its invoices, WxC would have to pay nearly \$6 Million to USAC. Assessment based on this reporting thus places an extraordinary burden on the Company, forcing it to effectively loan USAC nearly \$6 Million until the true-up is processed. In an industry with exceedingly thin margins, demanding contribution at a rate that is nearly 40 percent of a company's telecommunications revenue is patently unreasonable, if not commercially impossible. As such, equity demands that USAC permit a revision in this instance.

In the event, however, that USAC does not wish to accept the revised 499-Q worksheet, USAC should instead rely on an estimate, based on the best available information in accordance with the rules.⁴ The Company submits that the best available data would be the revised 499-Q worksheet filed September 30.

¹ *Federal-State Joint Board on Universal Service*, Doc No. 95-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, (rel. Dec. 13, 2002) at ¶ 36.

² 47 C.F.R. § 54.701(a).

³ By creating differing standards for accepting worksheets, USAC is effectively creating policy in contradiction of the FCC's rules.

⁴ 47 C.F.R. § 54.710(d).

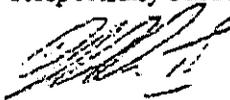
January 23, 2004

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Because of the terrific hardship that the current invoicing could impose on the Company, it is appropriate for USAC to recalculate these bills based either on the September 30 filing or an estimate based on prior, accurate filings. Because the current amount being billed to WxC is approximately 500 percent above the Company's typical level of contribution (\$2.5 Million a month as opposed to \$500,000 a month in contribution), the Company, not surprisingly, is not in a position to pay these excessive charges, and to do so would be a great financial hardship to the Company.

USAC should immediately recalculate these invoices, and issue new invoices to the Company. In addition to removing the excessive contribution amount, late payment fees should also be removed, as it is inappropriate to assess a penalty on an invoiced amount that is subsequently adjusted.

Respectfully submitted,



Tamar E. Finn
Douglas D. Orvis II

cc: Ralph Brandifino
Wilhelm B. Wilhelm, Jr.

EXHIBIT A



Universal Service Administrative Company

November 26, 2003

WorldxChange Corp.
9775 Business Park Ave.
San Diego, CA 92131

Filer 499 ID: 821378

Attn: Ralph T. Brandifino

RE: August 1, 2003 Form 499-Q Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised August 2003 FCC Form 499-Q that you submitted for the purpose of revising historical revenue reported by WorldxChange Corp. for the period April 1 – June 30, 2003 and projected revenue for the period of and October 1 – December 30, 2003. Please note that pursuant to FCC regulation USAC has relied upon revenue information previously provided by WorldxChange Corp. in order to estimate universal service charges for October, November and December. Further, your April 1, 2004 Form 499-A submission reporting January 1 through December 31, 2003 revenue will true-up your company's May 1, 2003, August 1, 2003, November 1, 2003 and February 1, 2004 quarterly Form 499-Q reports. Therefore, USAC is unable to accept the Form 499-Q revision because it was not filed prior to the 45 day September 15th, 2003 revision deadline.

USAC recognizes that you may disagree with our decision. If you wish to file an appeal, your appeal must be postmarked no later than 60 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 499-Q 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 499-Q 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 499-Q 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 60 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 Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4428.

Sincerely,

USAC

EXHIBIT B



FCC Form 499 Telecommunications Reporting Worksheet

Presented by:
Lisa I. Tubbs
CTIA Meeting
Washington, DC
June 5, 2003



Universal Service Administrative Company

What We Will Talk About Today...

- Revenue Data Collection History
- Purpose of the Form 499 Data Collection
- Different types of 499 Worksheets
- How the data collection process works
- Who must file the 499?
- 499-A Worksheet Specifics
- 499-Q Worksheet Specifics
- Obligation to File Revisions

USAC
Universal Service Administrative Company

Certification

Both the 499-A and 499-Q require an officer's signature

- Officer signature must be original and in ink
- Faxed or photocopies are not acceptable
- Signature must be an OFFICER, not a consultant, manager or other staff employee
- If filing online, you must print your submission and follow the above procedures to complete



USAC
Universal Service Administrative Company

Obligation to file a Revised 499 Worksheet

Contributors must file a revised worksheet if they discover an error in the data that they report. Downward revisions must be received per the revision schedule, upward revisions must always be filed.

- Providers should not include (carry back or bring forward) routine out-of-period adjustments to revenue data
- Companies should not file a revised 499 to reflect mergers, acquisitions or sales of operating units (in the event that a contributor that filed a 499-Q no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make payments, if any, for the funding period. All mergers and sales should be reported to the DCA.

D

EXHIBIT

D



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

December 21, 2004

BY FEDERAL EXPRESS

Tamar E. Finn
Douglas D. Orvis II
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Re: WorldxChange Corp. (Filer ID #821378)

Dear Ms. Finn and Mr. Orvis:

By your letter dated January 23, 2004, submitted on behalf of WorldxChange Corp. (WorldxChange), 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 WorldxChange's Request and, for the reasons set forth below, affirms its decisions and denies WorldxChange's Appeal.

Background:

WorldxChange appeals USAC's rejection of an untimely-filed revision to WorldxChange's quarterly Telecommunications Reporting Worksheet (Form 499-Q or Worksheet) and imposition of late payment fees assessed on charges that were based on revenue reported by WorldxChange on its original submission of the Worksheet.¹ Federal Communications Commission (FCC) regulations in effect 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 August 1, 2003, and a September 15, 2003, deadline for revision. WorldxChange submitted the original Form 499-Q on July 23, 2003, that, among other things, reported projected revenue and resulted in charges posting to WorldxChange's October, November, and December 2003

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).

Tamar E. Finn
Douglas D. Orvis II
Swidler Berlin Shereff Friedman, LLP
December 21, 2004
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invoices. WorldxChange submitted a revision to its Form 499-Q on October 9, 2003. Because the revised Form 499-Q was filed after the closing of the 45-day revision window, USAC rejected the form.²

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 Annual Worksheets after the original due date.³ 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 revenues that result in decreased contributions, 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 reduced the window for revisions to Quarterly Worksheets to 45-days.⁴ Thus, the Form 499-Q at issue here was due August 1, 2003, and the deadline for revisions was 45 days later, or September 15, 2003.

² The Appeal also raises questions concerning USAC policy, USAC's interpretation of FCC policy and certain jurisdictional arguments. These issues must be directed to the FCC. USAC, as the neutral administrator of the Universal Service Fund, may not make policy or interpret unclear provisions of the statute or rules. See 47 C.F.R. 54.702(c). Accordingly, we limit our discussion herein to whether USAC erred in rejecting the Form 499-Q at issue.

³ See *Minutes of July 27, 1999, USAC Board of Directors Meeting*; see also 47 U.S.C. § 254(b)(5).

⁴ 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.

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Swidler Berlin Shereff Friedman, LLP
December 21, 2004
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Late Payment Fees

FCC regulations permit USAC to collect carriers' contribution obligations and to assess appropriate late payment fees when payments are not received.⁵

Discussion:

The Form 499-Q at issue had a due date of August 1, 2003, with an FCC-established revision window of 45 days, or September 15, 2003. WorldxChange submitted its revised Form 499-Q on October 9, 2003. Because WorldxChange submitted the revised Form 499-Q after the due date and outside of the FCC-established revision window, USAC did not err in rejecting the form.

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".

USAC relies on revenue as reported by contributors in order to calculate universal service charges. FCC regulations provide contributors with a remedy to correct errors in reported revenue through submission of timely revisions and further through an annual reconciliation process. While contributors wait for revisions to charges through one of these methods all charges are due as invoiced. Because WorldxChange failed to remit payment in full USAC did not err in assessing late payment fees on any unpaid balance.

Remedy:

Although WorldxChange missed the window for submission of the Form 499-Q, WorldxChange, USAC's annual reconciliation process provides WorldxChange with a remedy in this instance. WorldxChange was required to file a 2004 FCC Form 499-A reporting 2003 annual revenue. The annual true-up compares WorldxChange's reported actual 2003 revenue and reconciles it with the reported 2003 projected collected revenue from the Forms 499-Q. USAC has verified that WorldxChange submitted a 2004 Form 499-A on March 25, 2004 and that corresponding credits were posted to WorldxChange's account and reflected on its July, August, and September 2004 invoices.

⁵ See 47 C.F.R. § 54.713 (The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an untruthful or *inaccurate* Telecommunications Reporting Worksheet, failure to file the Telecommunications Reporting Worksheet, or late payment of contributions.) (emphasis added).

Tamar E. Finn
Douglas D. Orvis II
Swidler Berlin Shereff Friedman, LLP
December 21, 2004
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Explanation of Decision:

Because WorldxChange's submission was received on October 9, 2003, after the due date and after the closing of the 45-day revision window established by the FCC, USAC did not err in rejecting the form as untimely. Accordingly, WorldxChange's Appeal is denied.

Decision on Appeal: Denied.

With respect to WorldxChange's request for acceptance of its late-filed Form 499-Q revision, USAC hereby denies WorldxChange's Appeal. With respect to WorldxChange's request that USAC remove late payment fees, USAC hereby denies WorldxChange'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)

Tamar E. Finn
Douglas D. Orvis II
Swidler Berlin Shereff Friedman, LLP
December 21, 2004
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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: Tom Putnam, and Regina Dorsey, FCC Office of Managing Director
Cathy Carpino, FCC Wireline Competition Bureau
Hillary DeNigro and Eric Bash, FCC Enforcement Bureau