



NIXON PEABODY LLP
ATTORNEYS AT LAW

96-45
97-21

Suite 900
401 9th Street, N.W.
Washington, D.C. 20004-2128
(202) 585-8000
Fax: (202) 585-8080
Direct Dial: (202) 585-8321
E-Mail: vahern@nixonpeabody.com

DOCKET FILE COPY ORIGINAL

June 7, 2006

RECEIVED

JUN - 7 2006

Federal Communications Commission
Office of Secretary

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Equant Inc. Petition for Review
Filer ID # 818102

Dear Ms. Dortch:

Attached for filing is an original and four copies of a "Petition for Review of USAC Decision or Alternative Relief" by Equant Inc. We are today providing members of the Commission staff with copies of this document.

Please stamp and return the enclosed "Stamp and Return copy."

Respectfully submitted,

Veronica M. Ahern

Enclosure:

cc w/enclosure: Mark Reger, Office of Managing Director
Marvin Washington, Office of Managing Director
Mark Stephens, Office of Managing Director
Regina Dorsey, Office of Managing Director
Richard Lerner, Office of Managing Director
Stephen Steckler, Wireline Competition Bureau

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

RECEIVED

JUN - 7 2006

Federal Communications Commission
Office of Secretary

In the Matter of

EQUANT INC.

Filer ID# 818102
Petition for Review of a
Decision by the Universal Service
Administrative Company or for
Alternative Relief

**PETITION FOR REVIEW OF USAC DECISION
OR ALTERNATIVE RELIEF**

Equant Inc., ("Equant") by its attorneys, and pursuant to Section 54.719 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §54.719, hereby requests review of the January 24, 2006 decision of the Universal Service Administrative Company ("USAC") which rejected revisions to Equant's Fiscal Year 2000 Form 499-A as untimely filed. The January decision erred because it failed to adequately recognize the unique factual circumstances surrounding this matter and because USAC's failure to accept a revised Form 499-A may result in the assessment of regulatory fees in contravention of Section 9 of the Communications Act. In the alternative, Equant requests that the Commission accept the amount of \$71,628.71 as payment in full of Equant's FY2000 Regulatory Fees, notwithstanding USAC's decision.

I. BACKGROUND

Equant Inc. is the successor in interest to Equant Network Services Inc. ("ENS"), which, in 2000, was a private interstate telecommunications provider offering services only on a non-common carrier basis.¹ In April 2000, ENS filed a Telecommunications Reporting Worksheet (Form 499-A) that included on Line 412 approximately \$129 million of off-shore revenue, that is revenue derived from calls that both originate and terminate in foreign points and *do not transit* the U.S. That revenue should have been recorded on Line 418 (non-telecom service revenue) since it was for non-U.S.-based

¹ On December 31, 2001 ENS was merged with Equant Inc., the surviving entity.

revenues. However, the instruction sheet for the 2000 Form 499-A was, at best, ambiguous on this point, a fact implicitly recognized by the Commission when it subsequently clarified the instructions.²

*ENS has paid its universal service contribution and cost recovery payment based on the revenues shown on the incorrect Form 499-A. However, ENS did not pay regulatory fees because it operated only as a private carrier not subject to Title II regulation. ENS believed that private carriers were exempt from regulatory fees.*³

In June 2003, over three years after having filed the incorrect Form 499-A, Equant received a “demand” letter from a Private Collection Agency, seeking \$350,006.15 in regulatory fees and penalties based on the FY2000 Form 499-A. Equant investigated the matter and realized the error made on the FY2000 Form 499-A. On August 25, 2003 Equant filed a revised Form 499-A. This revised Form reclassified the \$129 million from Line 412 to Line 418 and, as a result, significantly reduced the amount of owed regulatory fees.⁴ On August 26, 2003, representatives of Equant met with staff from the Office of Managing Director and the Wireline Bureau to discuss how to correct this matter and end further collection efforts. On August 27, 2003, USAC rejected the revised Form 499-A because it was not filed within one year of the original submission.

On September 11, 2003, following the instructions of the FCC staff, Equant paid regulatory fees amounting to \$57,302.97 and penalties of \$14,325.74 for a total of \$71,628.71. These amounts reflected regulatory fees and penalties owed, based on the Form 499-A that USAC rejected, but that correctly reflected those revenues subject to the FCC’s regulatory fee.

On September 25, 2003, Equant filed two requests with the FCC. First, Equant requested review of the USAC decision to reject the corrected Form 499-A.⁵ This letter was directed to the attention of the Wireline Bureau. Second, Equant requested that the Office of Managing Director accept the amount of \$71,628.71 as payment in full of the owed FY2000 regulatory fees, regardless of

² See 2003 Form 499-A, Instructions, p.22. The instructions for Form 499 now read “Line 418 should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e. a carrier licensed in that county.

³ There is no dispute concerning any aspect of the universal contribution or cost recovery payments. Equant is not now seeking, and never has sought, a refund of any portion of those amounts. Rather, Equant is only seeking a determination of the proper amount of its FY2000 Regulatory Fees.

⁴ Equant is attaching hereto corporate financial records that show the amount of revenue derived from non-U.S. traffic in FY2000. See Attachment A.

⁵ See Attachment B.

whether the Request for Review of the USAC decision is granted. This letter was directed to the Office of the Managing Director.⁶

On September 30, 2003, the Chief Financial Officer of the Office of Managing Director acknowledged receipt of the September 25, 2003 letter.⁷ That September 30 letter promised resolution within 30 days or a letter within that period informing of when a resolution could be expected. Equant has not received either as of this date.

Meanwhile, Equant worked with staff in the Office of Managing Director to address a related issue. Specifically, as part of the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701 et seq., federal agencies refer eligible debts to the Department of Treasury, Financial Management Service which conducts the Treasury Offset Program, which uses a federal payment due a debtor to “off-set” the debt owed. Prior to September 2003, that “off-set” program had been applied to payments owed to Equant by the federal government to an amount totaling \$21,471.02. Thus Equant requested a refund of that amount in its letter to the Managing Director. Numerous emails were exchanged and promises of action given.⁸ Nevertheless, to date, Equant has received no response to its September 25, 2003 letter to the Office of Managing Director requesting that the amount of \$71,628.71 (less off-set refund) be accepted as payment in full of Equant’s FY2000 regulatory fees.

On November 19, 2004, the Wireline Bureau adopted an order granting the Equant request for review of the USAC rejection of the corrected Form 499-A.⁹ This Order clarified the Commission’s intention not to accept any revised Form 499-A not submitted within 12 months of the due date of the original filing. The Commission’s reasons for adhering to a firm deadline all involved the stability and sufficiency of the federal universal service fund. The Commission noted that the Order would have a minimum impact on the payment of regulatory fees because most entities become aware of the need to

⁶ See Attachment C.

⁷ Attachment D.

⁸ See Attachment E.

⁹ *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*, 20 FCC Rcd 1012 (2004) (*Reporting Requirements Order*).

file revisions at the time of payment, which is only a few months after submission of the Form 499-A.¹⁰

The Reporting Requirements Order also remanded to USAC pending requests for review of prior USAC decisions not to accept untimely revised Form 499-As. Specifically, USAC was directed to revise “universal service contribution obligations” as appropriate, if the petitioner has demonstrated good cause and has provided an explanation, including corporate financial records.¹¹

Thus, as of November 2004, Equant received a response to its request of the Wireline Bureau for review of the August 27, 2003 USAC rejection of its revised FY2000 Form 499-A. That response was a remand to USAC. As of that date, and as of this date, Equant has received no response to its request of the Office of Managing Director that payment of \$71,628.71 be accepted, *regardless of the outcome of the USAC review*.

On January 24, 2006, USAC acted on the Commission’s remand of Equant’s request for review of the August 2003 decision.¹² USAC rejected Equant’s request because Equant “failed to establish good cause” for acceptance of the revised Form 499-A outside of the one-year revision window. Specifically the Administrator found that although Equant had submitted an “explanation of the cause for the change,” it failed to provide “documentation showing how the revised figures derive from corporate financial records.”¹³

However, USAC essentially punted back to the FCC. Recognizing the critical fact that Equant is not requesting a change in any of its universal service contributions, the Administrator suggested that the matter was really up to the FCC:

Because solely regulatory fees are at issue here, only the FCC can decide whether Equant should be permitted to provide supporting financial documentation to USAC outside of the Open Period or, alternatively, whether a limited exception to the supporting documentation requirements is appropriate.¹⁴

¹⁰ *Reporting Requirements Order* at ¶ 11.

¹¹ *Id.* at ¶ 13.

¹² See Attachment F.

¹³ USAC January 24, 2006 Letter at p.4.

¹⁴ *Id.*

The purpose of this appeal is to request that the Commission accept the documentation included in this appeal, overrule the USAC January 2006 decision and allow the submission of the Equant revised Form 499-A, which will then be used to compute the appropriate FY2000 regulatory fee.

Alternatively, we ask that the Commission disregard the USAC rejection of the Form 499-A entirely because only FCC regulatory fees, not universal service contributions, are involved. In that case, Equant asks that the Commission grant Equant's long standing request for acceptance of \$71,628.71 as payment in full of the FY2000 Equant Regulatory Fees.

II. ARGUMENT

A. EQUANT'S PRAYER FOR RELIEF IN THE ALTERNATIVE SHOULD BE ACCEPTED.

As an initial matter, Equant notes that its prayer for relief in this case is two-fold: first we ask the Commission to overturn the USAC decision not to accept the corrected Form 499-A, which would allow Equant to rely on that corrected Form 499-A for calculation of its FY2000 regulatory fees. Second, and alternatively, we ask the Commission to base its calculation of the FY2000 regulatory fee on the correct Form 499-A, notwithstanding USAC's decisions.

At its heart, this is not a matter that should involve USAC at all. No universal service contribution is at stake here. The only issue is the amount of regulatory fees to be paid, a matter Congress has left to the Commission, not to USAC. The Commission has chosen, for the sake of administrative convenience, to allow both universal service contributions and regulatory fees to be calculated using the Form 499-A, but the rejection of the Form for one purpose need not prejudice acceptance of the Form for the other. This is particularly true when the result of rejection would be to charge regulatory fees based on demonstrably incorrect amounts, amounts which are not at all related to the costs of providing regulatory activities. If the touchstone of the Commission's authority to collect regulatory fees is "to recover the costs of ... regulatory activities", then it is inexcusable to assess fees where no regulatory activities have been performed.¹⁵ Basing regulatory fees on incorrect Form 499-A revenue statements, when the revenue is derived from traffic over which the FCC has no jurisdiction and performed no regulatory activities, and when the Commission is aware of the error, is absurd.

¹⁵ See 47 U.S.C. §159(a).

For this reason, we ask the Commission to consider our prayer for relief in the alternative.

B. THE COMMISSION SHOULD OVERTURN USAC'S DECISION NOT TO ACCEPT EQUANT'S REVISED FORM 499-A.

1. The Commission should waive the filing deadlines in Section 54.720.

Section 54.719(c) of the Commission's rules establishes the right of parties to seek review of decisions made by the Universal Service Administrative Company. Section 54.720(a) requires that such an affected party shall file a request for review within 60 days of the issuance of the USAC decision. This Petition for Review of a January 24, 2006 USAC decision is thus not timely filed. Consequently, Equant asks the Commission to waive the deadline so as to permit consideration of this Petition.

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity or more effective implementation of overall policy when considering a waiver request.¹⁷

Failure to waive the filing deadline would represent a serious inequity in this case. Equant did not file a timely request for review because it believed that this matter was under active consideration, without regard to the USAC decision.¹⁸ Indeed during the early months of 2006, before and after the USAC decision, a member of the Wireline Bureau staff was working with Equant to prepare a recommendation regarding the disposition of this matter.¹⁹ Under these circumstances, Equant believed that a request for reconsideration of the USAC decision was unnecessary.

This belief was confirmed when USAC reached its decision and itself clearly recognized that the particular facts of this case take it out of the ordinary. In fact, while USAC rejected the Form 499-A, it left the door open to consideration of the Equant predicament anyway:

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ *WAIT Radio v. FCC*, 418 F.2d. 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 *S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ Again, we note that the Equant September 25, 2003 letter to the Office of Managing Director is still pending.

¹⁹ See Attachment G.

Because solely regulatory fees are at issue here, only the FCC can decide whether Equant should be permitted to provide supporting financial documentation to USAC outside of the Open Period or alternatively, whether a limited exception to the supporting documentation requirement is appropriate.²⁰

With this, USAC referred these issues back to the FCC:

To the extent the FCC Appeal raised issues other than USAC's acceptance of an untimely filed Worksheet, those issues remain pending with the FCC.²¹

Equant's review of this language, coupled with its discussions with the Wireline Bureau, led it to conclude that a request for review of the January 24, 2006 USAC decision was unnecessary.

However, it now appears, after further discussions with the Office of Managing Director, that appeal of the USAC decision is appropriate. Therefore, Equant asks that the Commission take into account the particular facts of this case, as well as considerations of equity and fairness, and waive the filing deadline so as to allow consideration of this Petition.

2. The USAC Decision, if allowed to stand, would result in an assessment of regulatory fees in contravention of Section 9 of the Communications Act.

We now address the merits of our request for review of the USAC decision. First, that decision to reject the corrected Form 499-A as having been filed outside of the one-year window is an unnecessarily rigid application of that requirement. Equant certainly recognizes that firm deadlines for filing revisions to the Form 499-A have a beneficial purpose. Indeed, in establishing the one-year filing period, the Commission made clear that such a deadline would "help ensure the stability and sufficiency of the federal universal service fund."²² Indeed the Commission found that

a firm deadline for revised worksheets will improve the integrity of the universal service contribution methodology and promote efficiency in administration of support mechanisms for universal service, interstate Telecommunications Relay Service, the North American Numbering Plan and Local Number Portability, consistent with the Commission's rules and polices.²³

²⁰ *USAC Letter* at p.4.

²¹ *Id* at p.5.

²² *Reporting Requirements Order* at ¶2.

²³ *Id.*

It bears repeating that the Equant request involved regulatory fees, not universal service, TRS, NANP or LNP. Allowing calculation of regulatory fees based on the corrected Form 499-A will have *absolutely no impact on any of those programs. In other words, relaxing the firm deadline in this case will not affect the purpose for which the firm deadline is established.*

Second, it would not have been possible for Equant to file a revised Form 499-A within the one-year deadline because over three years had elapsed before Equant realized its error. That realization came because of an “offset payment” notice received by Equant on May 19, 2003, three years and one month from the original filing date. Previous notices to Equant had been sent to an incorrect address. Although Equant had updated its address, both in the Form 499-A and in the Commission’s Registration System (CORES) in 2001, communications from the Commission on this matter continued to be directed to the outdated address. Thus, not only did Equant not know it owed regulatory fees, it did not know it was delinquent until three years had passed.²⁴

Third and most importantly, failure to accept the revised Form 499-A would result in assessment of regulatory fees in contravention of Section 9 of the Communications Act. That portion of the Act requires the Commission to

assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.²⁵

It is clear that the Commission is authorized only to assess fees to cover the costs of regulation. There are simply no costs of regulation for traffic that does not originate, terminate or transit the United States. Yet the regulatory fees originally assessed by the FCC would cover exactly this traffic.

To recap, in the original Form 499-A filed in April of 2000, Equant included about \$129 million in revenue for non-U.S. traffic in Line 412. The Commission included this revenue in the calculation of the 2000 regulatory fee of \$208,467.00. After three years, the Commission’s “demand” letters reached Equant, which recognized the error and recalculated the owed regulatory fee and paid fees of \$57,302.97 and penalties of \$14,325.74 on September 11, 2003.

²⁴ Equant believes that the question of whether a non-common carrier is obligated to pay common carrier regulatory fees remains unsettled. However, Equant is willing to pay those fees and, indeed, paid the fee as soon as it determined the correct amount based on the revised Form 499-A.

²⁵ 47 U.S.C. §159(a).

The difference between \$208,467 and \$57,302.97 is attributable to the \$129 million in revenue from traffic that *never entered the United States and was never under the jurisdiction of the FCC*. There were no regulatory activities associated with that traffic and no costs to be recovered. The Commission is not authorized to collect regulatory fees that are not for the purpose of recovering costs. It is a contravention of Section 9 for the Commission to assess fees where there has been no regulatory activity.

For this reason, the Commission should overturn the decision of USAC and allow the acceptance of the revised Form 499-A for the limited purpose of recalculating regulatory fees.

C. IN THE ALTERNATIVE, THE COMMISSION SHOULD BASE ITS ASSESSMENT OF REGULATORY FEES ON THE CORRECTED FORM 499-A, NOTWITHSTANDING THE USAC DECISION.

As explained above, use of Form 499-A for the assessment of regulatory fees is an administrative convenience, allowing universal service fund contributions and regulatory fees to be calculated on the same worksheet. But the use of the data on the Form 499-A for regulatory fees is separate from the use of the data for universal service contributions. Therefore, even if the Commission decides not to overturn the USAC decision, there is no reason why it should not rely upon the corrected data for assessment of the regulatory fee. Of course, to do otherwise – to rely on data known to be incorrect – would be arbitrary and capricious.

Section 9(a) of the Communications Act provides the Commission with the authority needed to “assess and collect” regulatory fees. The approval of USAC is not in any way needed. Further, Section 9(d) provides the Commission with authority to

waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.²⁶

Once again, the approval of USAC is not needed. USAC, at least implicitly, recognizes this when it refers back to the Commission its consideration of the Equant request “because solely regulatory fees are at issue here.”²⁷

²⁶ 47 U.S.C. §9(d).

²⁷ USAC January 24, 2006 Letter at p.4.

In short, the Commission has the authority, notwithstanding USAC, or its rejection of the Form 499-A, to calculate the appropriate regulatory fee for FY2000 for Equant. This entire matter is about which data to use to make that calculation, good data or bad data. The Commission should not let a filing deadline established for an unrelated purpose (the security of the universal service fund) dictate the use of bad data.

Consequently, if for some reason the Commission decides to not to overturn the USAC decision, we ask that the Commission base its calculation on the corrected Form 499-A anyway. This is the same request Equant made on September 25, 2003 and on which the Commission has been silent for almost three years. We ask that the Commission determine that Equant's FY2000 regulatory fees be assessed at \$57,302.97, with penalties of \$14,325.74, for a total of \$71,628.71. To the extent necessary and given the unusual facts of this case, we also ask that the Commission waive any additional interest and costs.

III. CONCLUSION

In this Petition for Review or Alternative Relief, Equant asks that the Commission overturn the January 24, 2006 decision of the Universal Service Administrative Company rejecting corrected FY2000 Form 499-A data. Overturning this decision would allow use of that corrected data for calculation of Equant's FY2000 regulatory fees.

In the alternative, the Commission should calculate the fees based on the correct data, notwithstanding the USAC January 24, 2006 data. To calculate regulatory fees based on data known to be incorrect would be arbitrary and capricious.

Respectfully submitted,



Equant Inc.

By: Veronica M. Ahern, Esq.
Nixon Peabody LLP
401 Ninth Street, N.W.
Suite 900
Washington, D.C. 200004
(202) 585-8321

June 7, 2006

ATTACHMENT A

Financial Records

ATTACHMENT A

The following represents a compilation, by country, of CY1999 Equant revenues derived from traffic that did not originate, terminate or transit the United States. This compilation is derived from more detailed corporate financial records which were provided by email to the Commission staff on May 23, 2006. Those voluminous records can be provided in a zip file upon request to the undersigned attorney for Equant.



Veronica M. Ahern, Esq.
Nixon Peabody LLP
401 Ninth Street, N.W.
Suite 900
Washington, D.C. 200004
(202) 585-8321
Email: vahern@nixonpeabody.com

custcode	(All)
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Sum of USD	
Country Description	Total
Albania	\$ 23,410.63
Algeria	\$ 34,689.97
American Samoa	\$ 22,929.77
Anguilla	\$ 1,673.24
Antigua and Barbuda	\$ 10,253.00
Argentina	\$ 2,654,920.88
Aruba	\$ 276,010.49
Australia	\$ 5,613,149.19
Austria	\$ 688,671.58
Azerbaijan	\$ 8,313.09
Bahamas	\$ 150,946.01
Bahrain	\$ 291,325.68
Bangladesh	\$ 180,992.55
Barbados	\$ 199,006.36
Belarus	\$ 22,956.00
Belgium	\$ 1,616,765.14
Belize	\$ 9,261.99
Benin	\$ 45,497.66
Bermuda	\$ 41,375.51
Bolivia	\$ 213,588.85
Bosnia Hercegovina	\$ 20,849.46
Botswana	\$ 72,536.00
Brasil	\$ 5,097,442.45
Brunei Darussalam	\$ 64,031.16
Bulgaria	\$ 239,803.45
Cambodia	\$ 3,300.00
Canada	\$ 4,553,488.28
Cayman Islands	\$ 9,225.00
Central African Republic	\$ 2,376.17
Chile	\$ 1,633,116.96
China	\$ 1,408,827.00
Colombia	\$ 1,280,011.88
Congo	\$ 11,979.50
Costa Rica	\$ 1,017,622.78
Cote D'Ivoire	\$ 66,111.57
Croatia	\$ 620,752.84
Cyprus	\$ 1,423.00
Czech Republic	\$ 1,192,633.47
Democratic People's Republic Of Korea	\$ 58,596.75
Denmark	\$ 395,782.62
Dominican Republic	\$ 833,349.18
Ecuador	\$ 373,020.30
Egypt	\$ 1,003,878.51
El Salvador	\$ 102,930.30
Ethiopia	\$ 608.00
Federal Republic Of Germany	\$ 7,144,463.22
Fiji	\$ 211,410.93
Finland	\$ 171,688.02

Foreign	\$	914,242.88
France	\$	9,344,519.63
French Polynesia	\$	1.66
<i>Georgia</i>	\$	155,314.14
Ghana	\$	85,599.06
Gibraltar	\$	50,184.00
Greece	\$	450,642.76
Guadeloupe	\$	10,732.73
Guam	\$	347,947.73
Guatemala	\$	520,610.39
Guinea	\$	23,370.17
Guyana	\$	479.71
Haiti	\$	49,047.46
Honduras	\$	391,910.07
Hong Kong Sar China	\$	5,456,780.24
Hungary	\$	1,191,550.86
Iceland	\$	82,451.72
India	\$	373,770.77
Indonesia	\$	1,041,588.85
Israel	\$	694,818.79
Italy	\$	3,012,676.31
Jamaica	\$	14,267.60
Japan	\$	7,022,218.22
Jordan	\$	262,188.95
Kazakhstan	\$	95,160.77
Kenya	\$	280,317.90
Kingdom Of Saudi Arabia	\$	72,178.96
Kuwait	\$	97,786.50
Latvia	\$	219,392.07
Lebanon	\$	227,998.79
Libyan Arab Jamahiriya	\$	440.00
Lithuania	\$	75,059.90
Luxembourg	\$	637,004.43
Macau	\$	132,821.00
Macedonia	\$	25,176.00
Madagascar	\$	608.00
Malaysia	\$	1,432,802.82
Maldives	\$	1,200.00
Mali	\$	(4,870.59)
Malta	\$	118,020.18
Martinique	\$	14,428.19
Mauritius	\$	440.00
Mexico	\$	2,645,037.02
Morocco	\$	77,906.04
Nepal	\$	19,996.23
Netherlands Antilles	\$	235,145.36
New Zealand	\$	853,849.88
Nicaragua	\$	172,868.55
Niger	\$	62,691.76
Nigeria	\$	204,034.05
Northern Mariana Islands	\$	3,907.08
Norway	\$	302,358.27

Oman	\$	105,458.86
Pakistan	\$	474,418.38
Panama	\$	330,617.46
Papua New Guinea	\$	3,781.44
Paraguay	\$	64,979.93
Peru	\$	856,940.55
Philippines	\$	830,809.38
Poland	\$	1,283,556.36
Portugal	\$	385,581.57
Puerto Rico	\$	392,445.96
Qatar	\$	5,974.38
Republic Of Cameroon	\$	4,055.00
Republic Of Estonia	\$	68,733.91
Republic Of Ireland	\$	1,660,597.32
Republic Of Korea	\$	2,023,333.47
Republic Of Moldova	\$	33,816.00
Romania	\$	404,700.27
Russian Federation	\$	2,918,092.10
Senegal	\$	18,472.17
Sierra Leone	\$	29,685.00
Singapore	\$	5,625,209.86
Slovakia	\$	582,396.53
Slovenia	\$	532,094.27
South Africa	\$	1,491,880.12
Spain	\$	1,702,159.07
Sri Lanka	\$	91,106.75
Sudan	\$	600.00
Sweden	\$	617,585.23
Switzerland	\$	1,882,718.66
Taiwan	\$	2,592,723.98
Tanzania	\$	37,534.21
Thailand	\$	428,693.39
The Gambia	\$	14,485.00
The Netherlands	\$	2,841,004.40
Togo	\$	18,706.28
Trinidad and Tobago	\$	103,068.26
Tunisia	\$	1,008.00
Turkey	\$	593,778.37
Turkmenistan	\$	23,676.00
Turks and Caicos Islands	\$	5,693.65
U.S. Virgin Islands	\$	150,037.74
Uganda	\$	36,227.79
Ukraine	\$	181,658.35
United Arab Emirates	\$	227,576.50
United Kingdom	\$	16,076,826.36
United States Minor Outlying Islands	\$	44,887.87
Uruguay	\$	71,281.27
Uzbekistan	\$	38,282.00
Vanuatu	\$	0.04
Venezuela	\$	1,605,174.65
Viet Nam	\$	6,698.56
Western Samoa	\$	7,885.00

Yemen	\$	9,154.32
Yugoslavia	\$	126,778.14
Zambia	\$	48,330.97
Zimbabwe	\$	198,060.68
Grand Total	\$	129,108,702.01

ATTACHMENT B



NIXON PEABODY LLP

ATTORNEYS AT LAW

Suite 900
401 9th Street, N.W.
Washington, D.C. 20004-2128
(202) 585-8000
Fax: (202) 585-8080

STAMP & RETURN

RECEIVED

SEP 25 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
Mail: vahern@nixonpeabody.com

Veronica M. Ahern
Direct Dial: (202) 585-8321

September 25, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Docket Nos. 96-45 and 97-21
Request for Review of USAC Decision
Filer 499ID:818102
Att: Wireline Bureau

Dear Ms. Dortch:

Equant Inc. ("Equant"), by its attorneys, hereby requests review of the decision of the Universal Service Administrative Company ("USAC") rejecting Equant's revision of a FCC Form 499-A for the period January 1-December 31, 1999 (See Attachment A). This Form 499-A was originally filed in April 2000 by Equant's predecessor in interest, Equant Network Services, Inc. ("ENS").¹ USAC rejects the revision because it was not filed within one year of the original submission. Equant herein appeals USAC's rejection directly to the Federal Communications Commission ("FCC" or "Commission") pursuant to Section 54.722 of the Commission's rules.²

Background

In 2000, Equant Network Services was a private interstate telecommunications provider offering services only on a non-common carrier basis. In April 2000, ENS filed a Telecommunications Reporting Worksheet (Form 499-A) that included on Line 412

¹ On December 31, 2001, ENS was merged with Equant Inc.

² 47 C.F.R. § 54.722.

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approximately \$129 million of off-shore revenue, that is, revenue derived from calls that both originate and terminate in foreign points and do not transit the U.S. That revenue should have been recorded on Line 418 (non-telecom service revenue) since it was for non-U.S.-based revenues. In other words, ENS made a \$129 million mistake.

In June 2003, Equant, ENS's successor in interest, received a "demand" letter from a Private Collection Agency, seeking \$350,006.15 in regulatory fees and penalties based upon the April 2000 Form 499-A. Equant investigated the matter and determined that the 2000 Form 499-A was incorrect in that it included approximately \$129 million of foreign revenue that should not have been included, and that was used to calculate the regulatory fee. On August 25, 2003, Equant, on behalf of ENS, filed a revised Form 499-A for the year 2000. On August 27, 2003 USAC rejected the revised Form 499-A because it was not filed within one year of the original submission.³

Request for Review

Equant requests FCC review of the USAC rejection pursuant to Section 54.722 of the Commission's rules for two reasons. First, the mistake made by ENS was understandable, given the lack of clear direction in the 2000 Form 499-A. Telecommunications carriers were directed to include "international calls that both originate and terminate in foreign points" in revenues reported on Line 412. No distinction is made, on the Form or in the instructions, between traffic that does not transit the United States and traffic that does. ENS followed the directions on the Form and included over \$129 million in international revenues on Line 412, revenues that had been derived from traffic that did not transit the U.S. This revenue should have been included in Line 418, but there were no directions or instructions that would have led a reasonable person to think so. This lack of clarity was the cause of ENS error.

Moreover, the unclear nature of the Form is evidenced by a subsequent specific correction. Now, the instructions for Form 499-A clearly state:

Line 418 should include revenues from the telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e. a carrier licensed in that country.⁴

³ Simultaneous with this request for review of the USAC rejection, Equant has paid regulatory fees and penalties based upon the correct Form 499-A amount and has requested that the Office of the Managing Director accept these amounts as full payment of the ENS Year 2000 regulatory fees, subject to adjustment for overpayment. (See Attachment B).

⁴ 2003 Form 499-A, Instructions, p.22.

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Thus, the Commission has recognized that its previous instructions were imperfect and could reasonably have been construed as they were by ENS. This reason is alone sufficient to allow Equant, on behalf of ENS, to revise its incorrect Form 499-A.

A second reason to grant review of the USAC decision is that a summary rejection based upon an arbitrary schedule is, in these circumstances, patently unfair and egregious. USAC summarily dismissed the revised Form 499-A for failure to file a correction within one year. However, Equant was unaware within one year of the submission that the error had been made. Only more than three years after the filing was it brought to Equant's attention (through a "demand" for regulatory fees), that the April 2000 filing was incorrect.⁵ We appreciate that administrative convenience warrants adherence to a schedule in order to assure that universal service contributions and cost recovery payments do not have to be recalculated over and over again. However, administrative convenience must bow to fairness in this limited circumstance when the error was unknown for three years and when the error itself was as a result of unclear instructions. Moreover, there will be no impact on the administration of the universal service support mechanisms. There will be no need to recalculate the contribution to universal service, because that amount is not calculated based on non-U.S. revenues. There may be some recalculation of cost recovery payments, but this is a minimal inconvenience and not worthy of summary rejection.

For these reasons, Equant urges the Commission to review the decision of the Universal Service Administrative Company and allow Equant, on behalf of its predecessor company, ENS, to revise its Form 499-A for the period January 1 to December 31, 1999.

Respectfully submitted,

Equant Inc.

By: 
Veronica M. Ahern
Its Attorney

Attachment A: USAC Letter
Attachment B: Equant Fee Letter

⁵ Apparently, despite Equant's having updated both its CORES filing and its subsequent Form 499-As, correspondence with ENS was repeatedly sent to an outdated address.

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cc: Lisa Tubbs, USAC
Claudette Pride, OMD
Jim Lande, WTB

Attachment A



Universal Service Administrative Company

August 27, 2003

Equant Network Services, Inc.
12490 Sunrise Valley Dr,
Reston, VA 20196

Filer 499 ID: 818102

Attn: Monique R. Crawford, Regulatory Affairs

RE: 2000 Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by Equant Network Services, Inc. for the period January 1 – December 31, 1999. 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 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-A 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-A 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-A 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