USAC **Universal Service Administrative Company**

Administrator's Decision on Remand

April 24, 2006

BY REGISTERED U.S. MAIL

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Re: Eureka Broadband Corp., successor-in-interest to Gillette Global Network, Inc. (Filer ID #820387)

Gentlemen:

On May 12, 2004, Eureka Broadband Corporation (Eureka) filed with the Universal Service Administrative Company (USAC) certain annual Telecommunications Reporting Worksheets (Worksheets or FCC Form 499-As[1]) for the years 1999 through 2004 (reporting revenue for the years 1998 through 2003). On June 10, 2004, USAC rejected the 2000 and 2001 Worksheets (reporting revenue for 1999 and 2000, respectively) because they were submitted more than one year after the initial form due dates and resulted in the downward revision of previously billed federal universal service fund (USF) obligations. On September 30, 2004, Eureka sought review from the Federal Communications Commission (FCC) of, among other things, USAC's rejection of the 2000 and 2001 Worksheets (FCC Appeal).

Pursuant to the *Form 499-A Revision Order* issued in December 2004 by the FCC's Wireline Competition Bureau (WCB), the 2000 and 2001 Worksheets were remanded to USAC for reconsideration in light of the requirements set forth therein.[2] Having reviewed materials previously submitted to USAC and materials submitted to the FCC as part of Eureka's FCC Appeal, for reasons explained further below, USAC rejects the 2000 and 2001 Worksheets because Eureka has failed to provide adequate supporting documentation as required in the *Form 499-A Revision Order.*

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[1] Including FCC Form 457, the predecessor to Form 499-A.

[2] *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; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd. 1012 (2004) (*Form 499-A Revision Order*).

Finally, to ensure companies had an adequate opportunity to establish good cause, the *Form 499-A Revision Order* permitted companies with pending or remanded revisions to supplement the record during the Open Period.[8]

Relevant Forms, Filing Deadlines, and Billing Periods

Worksheet	Filing Due Date	Associated USF Charges	Revenue Reported
2000 Form 499-A	April 3, 2000	July to December 2000	January to December 1999
2000 Form 499-S	September 1, 2000	January to June 2001	January to June 2000
2001 Form 499-A	April 2, 2001	July to December 2001	January to December 2000

Procedural Background

On September 5, 2000, a Eureka predecessor entity, Gillette Global Network, Inc. (GGN), filed its first Worksheet, the 2000 FCC Form 499-S, which had been due September 1, 2000. On September 21, 2000, GGN filed the 2000 Form 499-A, which had been due April 3, 2000. In November 2000, GGN began to receive invoices from USAC which, initially, reflected USF contribution obligations retroactive to July 2000. In December 2000, Eureka acquired GGN.[9]

In a letter dated April 27, 2001, David Ellen, General Counsel for "Eureka-GGN" submitted a revised 2000 Form 499-A to USAC. Mr. Ellen acknowledged late-filing of the revised form but requested the form be accepted "in light of a gross error" in the original filing. Other than Mr. Ellen's letter, Eureka-GGN included no supporting documentation in the April 27, 2001, submission. On August 1, 2001, USAC rejected the revised 2000 Form 499-A submitted by Eureka-GGN for failure to submit within one year of the original filing due date.

GGN failed to file a 2001 Worksheet, which was due April 2, 2001. Therefore, beginning in July 2001, USAC was required to estimate GGN's USF obligations for the period covering July to December 2001 based upon "relevant data ... available" – in this case, GGN's original 2000 Form 499-A filed in September 2000.[10]

Eureka-GGN made no further Worksheet filings until May 2004. Between August 2001 and October 2002, GGN failed to respond to repeated efforts by USAC to contact

[8] *Id.* ("Petitioners are permitted to supplement their filings to USAC as necessary [during the Open Period].").

[9] *See* FCC Appeal at 2.

[10] *See* 47 C.F.R. § 54.711(d) ("If a contributor fails to file a Telecommunications Reporting Worksheet by the date on which it is due, [USAC] *shall* bill that contributor based on whatever relevant data the [USAC] has available ...".) (emphasis added).

Eureka-GGN regarding delinquent obligations and missed filings.[11] USAC continued to bill Eureka-GGN until, on October 1, 2002, after Eureka-GGN's continued non-responsiveness, USAC concluded Eureka-GGN had been sold or had gone out of business, closed Eureka-GGN's USAC account, and stopped all account activity, including billing and further assessment of late payment fees.

In April 2004, Eureka contacted the FCC regarding its USF filing and contribution obligations and, on May 12, 2004, Eureka filed Worksheets with USAC on behalf of itself and predecessor GGN for years 1999 through 2004. On June 10, 2004, USAC rejected the 2000 and 2001 Worksheets because they were received more than one year after their initial filing due date and would downwardly revise Eureka-GGN's previously billed USF contribution obligations.

On September 30, 2004, Eureka sought FCC review of USAC's June 10, 2004, rejection of the 2000 and 2001 Worksheets.[12] Among other things, Eureka explained, when Eureka filed the 2000 and 2001 Worksheets in May 2004, Eureka was unaware GGN had previously filed a 2000 Worksheet. Eureka further explained, "[u]pon review of [GGN's 2000 Form 499-A] filing, Eureka deemed the revenue accounting calculations, utilized as a basis for the [GGN 2000 Form] 499-A, to be completely erroneous."[13] Eureka stated that GGN's initial 2000 Worksheet inadvertently overstated long distance revenue and understated local and enhanced services revenues and Eureka correctly noted USAC relied on GGN's initial 2000 Worksheet (reporting 1999 revenue) to determine Eureka's 2000 revenues.[14] On December 9, 2004, the *Form 499-A Revision Order* remanded the 2000 and 2001 Worksheets to USAC for reconsideration.[15]

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[11] Eureka-GGN made no payments toward USF obligations between November 2000, when it received its first USF invoice, and May 2004.

[12] Although WCB has not remanded this question to USAC, Eureka's FCC Appeal was filed on September 30, 2004, more than 60 days after USAC's June 10, 2004, rejection letters, and so may have been untimely. *See* 47 C.F.R. § 54.720 (requests for review of a decision must be filed within 60 days of "issuance"). While Eureka claims it received "absolute confirmation" of USAC's decision rejecting the Revised Worksheets only on September 9, 2004, see FCC Appeal at 6, Eureka does not explain what form such confirmation took and why the June 20, 2004, rejection letters should not constitute "issuance" of USAC's decision for purposes of 47 C.F.R. § 54.720.

[13] *See* FCC Appeal at 3.

[14] *Id.* at 5.

[15] Eureka's FCC Appeal includes two other issues, neither of which was remanded to USAC for reconsideration: (1) USAC's refusal to reimburse Eureka for USF funds Eureka represents it previously remitted to an underlying carrier; and (2) USAC's imposition of late payment fees on Eureka's delinquent balances. *See* n.6, *supra*. Although the issue of late payment fees remains at the FCC, USAC notes the suspension of Eureka's USAC account between September 2002 and June 2004 due to Eureka-GGN's non-responsiveness during 2001 and 2002 caused Eureka to incur no late payment fees during the suspension period. Also, because Eureka failed to first report 1999 revenue until September 2000 and only reported 1998 revenue in May 2004, Eureka incurred no late payment fees on the un-billed USF charges associated with this revenue.

Discussion and Explanation of Decision:

The FCC directed USAC to consider two factors in establishing whether "good cause" exists to revise previously billed USF contribution obligations: (1) the carrier's "explanation of the cause for the change"; and (2) "documentation showing how the revised [revenue] figures derive from corporate financial records."[16] The FCC, in requiring supporting financial documentation, thus established a higher standard of proof than the self-certification which is otherwise sufficient for timely form filings. Moreover, to ensure carriers were not prejudiced by imposition of this higher standard, pending submissions (including the limited *Form 499-A Revision Order* remands) could be supplemented during the Open Period.[17]

USAC must reject Eureka's 2000 and 2001 Worksheets because Eureka failed to submit supporting documentation thus making it impossible for USAC to determine whether good cause exists for their submission. In particular, although Eureka provided an explanation for the revenue changes reflected in the 2000 and 2001 Worksheets, Eureka failed to provide any documentation "showing how [its] revised [revenue] figures derive from corporate financial records."[18] Eureka failed to provide supporting documentation notwithstanding being put on notice by the *Form 499-A Revision Order* of the standards under which USAC was required to evaluate revised Worksheets and notwithstanding having been expressly provided an opportunity to submit such support during the Open Period.[19]

Eureka asserts that the GGN revenue information reported and certified on the 2000 Form 499-A was "completely erroneous" because it overstated long distance revenue and understated local and enhanced revenue. While USAC sees no basis for doubting Eureka's assertions regarding the errors in GGN's 2000 filing, Eureka was required to and failed to submit required documentation illustrating or otherwise supporting the accuracy of the proposed corrected information.[20]

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[16] *Form 499-A Revision Order*, 20 FCC Rcd at 1018, ¶ 13 ("USAC shall only revise contribution obligations to the extent that the carrier has provided accurate and legitimate reasons for filing late and for revising the obligation.").

[17] *See id.* ("Petitioners are permitted to supplement their filings to USAC as necessary [during the Open Period].").

[18] *See id.* (citing 2004 Form 499-A Instructions at 11); *see also* 2000 FCC Form 499-A Instructions at 8 ("Revisions . . . must be accompanied by . . . documentation showing how the revisited figures derive from corporate financial records."); 2001 FCC Form 499-A Instructions at 9 (same).

[19] *See Globcom, Inc. d/b/a Globcom Global Communications*, Order of Forfeiture, FCC 06-49 (rel. Apr. 19, 2006) (relying in part on USAC's rejection of revised Worksheet due to failure to submit supporting documentation during the Open Period).

[20] Eureka submitted a considerable amount of financial information in connection with its application for an installment payment plan to resolve its delinquent USF obligations. Nevertheless, none of this information reached back to 1999 and 2000 or otherwise provided support for the Revised Worksheets.

Eureka emphasizes the 2001 Worksheet is not a "revision" because Eureka-GGN did not previously file a 2001 Worksheet and thus, the "revision" deadline cannot apply. However, as previously explained, when companies fail to file Worksheets, FCC regulations require USAC to bill those companies based upon estimated revenue. Thus, acceptance of the 2001 Worksheet would impermissibly decrease contributions to the USF well after the one year filing deadline established in the *Form 499-A Revision Order*.[21]

More significantly, however, the issue presented is not whether the 2000 Form 499-A filing was erroneous nor whether the 2001 Form 499-A filing was a revision or an "original." Rather, the issue is whether Eureka has provided sufficient documentation to support the proposed corrected revenue information as required by the *Form 499-A Revision Order*. Eureka has provided none.

Decision of the Administrator:

Eureka's request that USAC accept Eureka's revised Worksheets for the years 2000 and 2001, reporting 1999 and 2000 revenue, respectively, is denied.

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.[22] If you disagree with USAC's decision, you may file a further appeal with the FCC. Detailed instructions for filing appeals are available at:

http://www.universalservice.org/fund-administration/contributors/file-appeal

Sincerely,

USAC

Universal Service Administrative Company

cc: Cathy Carpino, FCC Wireline Competition Bureau
Hillary DeNigro, FCC Enforcement Bureau
Regina Dorsey, FCC Office of Managing Director

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[21] Because USAC is required to bill USF contributions based on estimate revenue when companies fail to file Worksheets, estimated revenue effectively becomes filed revenue for purposes of considering whether future filings cause upward or downward departures from previously billed USF obligations. If there were no filing deadline for "original" filings, as Eureka contends, this would create a significant loophole for companies who fail to file Worksheets (as opposed to companies who do file but do so inaccurately). Such late-filed "original" filings could dramatically reduce USF contributions well after the one year filing deadline, thereby degrading administrative efficiency and certainty and undermining stability and sufficiency of the USF – stated purposes for the one year revision deadline. *See id.*, 20 FCC Rcd. at 1016-17, ¶¶ 10-11.

[22] *See id.* (remanding to USAC only the portion of appeals that deal with untimely revised Form 499-A filings).