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May 20, 2008

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Ascent Media Group, Inc. (499 Filer ID 823142)  
Appeal of Decision of the Universal Service Administrative Company,  
WC Docket No. 06-122

Dear Ms. Dortch:

Pursuant to the FCC's Public Notice in this proceeding,<sup>1</sup> Ascent Media Group, Inc. ("Ascent"), through its attorney, hereby submits this reply in support of its request for review of the January 11, 2008 Administrator's Decision.<sup>2</sup> To the best of Ascent's knowledge, no comments were filed on Ascent's Appeal. For the reasons explained in the Appeal, Ascent urges the Commission to act quickly to reverse the Administrator's Decision. Alternatively, Ascent requests that the Commission waive the 45-day revision deadline in this instance and instruct USAC to waive all late fees, penalties and interest charges attributable to invoices issued to Ascent during the 4<sup>th</sup> quarter of 2007.

<sup>1</sup> Comment Sought on Ascent Media Group's Request for Review of a Decision by the Universal Service Administrative Company, DA 08-1010 (rel. April 29, 2008).

<sup>2</sup> See Letter from Donna Cote, Ascent Media Group, to Secretary, Federal Communications Commission, , CC Docket No. 96-45, February 6, 2008 ("Appeal"). Ascent seeks review of an Administrator's Decision issued January 11, 2008 ("Administrator's Decision"), which is attached as an exhibit to its Appeal.

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### **Background**

Ascent Media Group provides systems integration, consulting, network origination and content distribution services for media content producers worldwide. Ascent has registered with USAC and reported its telecommunications service revenues on FCC Form 499 since April 2003. On August 1, 2007, Ascent filed the 499-Q revenue report due on that day. As a result of an administrative error, Ascent mistakenly reported projected revenue in lines 119 and 120 of the 499-Q. Ascent inadvertently reported all projected revenues instead of only projected *telecommunications* revenues of the company. Ascent did not realize this error until it received the October 22, 2007 invoice from USAC.

The October 22 invoice assessed USF charges of \$717,207.25, instead of the monthly contribution of \$66,724.87 that Ascent owed based on its telecommunications revenue. Ascent paid the October 22 invoice in full and filed an appeal of the invoice with USAC. USAC denied Ascent's appeal in a decision dated January 11, 2008.<sup>3</sup> Ascent disputed the November 2007 and December 2007 invoices. For the year (and as a result of the October 22 invoice), Ascent overpaid its USF contribution obligation by \$517,032.64.

On or before April 1, 2008, Ascent filed a 499-A as required by Commission rules. In the 499-A, Ascent corrected the error in its 4<sup>th</sup> quarter revenues and reported its total telecommunications revenues for 2007. USAC confirmed its receipt of the revised revenue information, but has not issued any credits or refunds to Ascent. We expect USAC will issue a credit to Ascent based on the revised revenue information filed in the 499-A. We understand that USAC will not refund the overpayment to Ascent, however, until much later in the year. In addition, USAC told counsel that Ascent would remain liable for late fees, penalties and interest attributable to the two erroneous invoices not paid by Ascent.

### **Request for Waiver**

Section 1.3 of the Commission's rules permits the Commission, or the Bureau acting on delegated authority, to waive any provision of its rules for "good cause shown."<sup>4</sup> The Commission has explained that good cause exists "where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question."<sup>5</sup> The Commission

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<sup>3</sup> Administrator's Decision at 1.

<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, 20 FCC Rcd 7709, 7714-15 (¶ 9) (2005); see *Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (D.C. Cir. 1990).

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has routinely granted waivers of USF filing deadlines where this standard is met; for example, it has granted waivers to newly designated ETCs of filing deadlines occurring before the Commission acted on the designation request.<sup>6</sup>

Good cause exists for a waiver in this instance. Rigid adherence to the 45-day revision deadline would be inconsistent with the public interest. It is clear that Ascent does not owe USF in the amounts invoiced. The erroneous invoices were based on Ascent's total revenues, not solely the telecommunications revenues that are subject to USF. Although Ascent caused the error, this inadvertent action was a one-time mistake. Indeed, Ascent has successfully filed USF forms for five years.

Nor is there a question as to Ascent's motives. Ascent paid the October 22 invoice in good faith, even though paying that one invoice caused it to overpay its entire quarterly assessment by more than \$500,000. Finally, Ascent acted promptly to protect its rights and correct the error by filing an appeal with USAC. Under these circumstances, it is inequitable and contrary to the public interest to require Ascent to pay USF charges that it does not owe under the statute. Similarly, it is inequitable to require Ascent to pay late fees, penalties or interest attributable to charges that it does not owe. *Cf. Onondaga County Department of Emergency Communications Request for Waiver of Section 101.81 of the Commission's Rules, Order, 17 FCC Rcd 6350 (2002) (waiver granted where application of the rule would be inequitable).*

Further, grant of a waiver would not undermine the policy objective of the rule. When the Commission adopted the 45-day revision deadline, it identified two objectives for the rule. First, the rule would "eliminate incentives for contributors to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations."<sup>7</sup> Second, the rule would "otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter."<sup>8</sup> Neither rationale is implicated in granting Ascent a waiver.

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<sup>6</sup> See, e.g., *Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations, Order, 19 FCC Rcd 15580, 15584-85 (Telecom. Access Policy Div. 2004); West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers, 17 FCC Rcd 24387 (WCB 2002).*

<sup>7</sup> *Federal-State Joint Board on Universal Service, Report And Order And Second Further Notice Of Proposed Rulemaking, 17 FCC Rcd 24952, 24976 (¶ 36) (2002) (Interim Contribution Methodology Order).*

<sup>8</sup> *Id.*

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Plainly, Ascent is not attempting to avoid lawful contribution obligations. Ascent paid \$500,000 more than it owed for the quarter, and did so in a good faith attempt to resolve the erroneous invoice. *Cf. Approach Learning and Assessment Center, et al.*, 22 FCC Rcd 5296 (2007) (waiver granted where there was no evidence of waste, fraud or abuse, misuse of funds or failure to adhere to the core program requirements). Further, granting a waiver does not create a risk of a shortfall in the Universal Service Fund for the quarter. The Fund received more than it was entitled to under the statute. The fact that the Fund did not receive two additional payments that it would have been required to refund anyway does not threaten the viability of the universal service program. Similarly, a waiver of late fees, penalties and interest on contributions that are not owed does not threaten the viability of the Fund. *Cf. Request for Review of a Decision of the Universal Service Administrator by Franklin-McKinley School District San Jose, California*, Order, ¶ 4, CC Docket 02-6, DA 08-319 (Feb. 8, 2008) (waiver granted where action would have a minimal impact on the Universal Service Fund).

Therefore, the Commission should grant Ascent's request for waiver of the 45 day revision deadline. It should instruct USAC to cancel the November and December 2007 invoices, to refund the \$517,032.64 in overpayments promptly and to reverse all late payment, penalties and interest charges assessed on Ascent's account.

Sincerely,



Steven A. Augustino

SAA:pab

cc: Greg Guice, FCC  
Cindy Spiers, FCC  
David Duarte, FCC  
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