FILED/ACCEPTED
JUN 11 2008
Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Review by Centennial Puerto Rico Operations Corp. (Form 499 Filer ID 811030), and Centennial USVI Operations Corp. (Form 499 Filer ID 822328) of Decision of Universal Service Administrator, and Petition for Waiver of the Deadline for Filing Revisions to Telecommunications Reporting Worksheet (FCC Form 499A);	)	~~CC Docket No. 96-45~~ WC Docket No. 06-122
	)	
Federal-State Joint Board on Universal Service	)	

To: The Wireline Competition Bureau

REQUEST FOR REVIEW OF A DECISION BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY AND PETITION FOR WAIVER OF CENTENNIAL PUERTO RICO OPERATIONS CORP. AND CENTENNIAL USVI OPERATIONS CORP.

Centennial Puerto Rico Operations Corp. (Form 499 Filer ID 811030) and Centennial USVI Operations Corp. (Form 499 Filer ID 822328), through their parent company Centennial Communications Corp. (collectively, "Centennial") seek review of decisions by the Universal Service Administrative Company ("USAC") rejecting revised Forms 499-A filings for reporting year 2004 as untimely filed.[1] Centennial also seeks a limited waiver of the requirement that revisions to FCC Form 499-A that result in a decreased contribution amount be filed by March

[1] Centennial was informed that its revised Forms 499-A for the filing year 2004 had been rejected by letters from USAC dated May 31, 2006. This appeal and petition for waiver is therefore timely pursuant to 47 C.F.R. § 54.720(a). Because Centennial seeks a waiver of existing FCC rules as part of its relief, it has exercised its right to seek review by the Commission per 47 C.F.R. § 54.719(c). *See* 47 C.F.R. § 54.702(c).

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31 of the subsequent year[2] to enable USAC to accept the revisions to Centennial's Forms 499-A for reporting year 2004, which were received by USAC one week after the due date.

I. FACTUAL BACKGROUND

In the spring of 2006, administrative personnel for Centennial's Caribbean properties were preparing revised Forms 499-A for the reporting year 2004 to account for overpayments of universal service contributions in the amount of $751,019. The individual responsible for making the filing called USAC to inquire regarding the filing deadline, because April 1, 2006, fell on a Saturday. Although Centennial's employee made clear that the inquiry was regarding *revised* Form 499-A filings, the USAC representative stated that, because April 1 fell on a Saturday, the filing was due the following Monday, April 3. Centennial thus postmarked and mailed the revised Forms 499-A on Monday, April 3, 2006, and they were received at USAC's offices on April 10, 2006.

On May 31, 2006, USAC sent Centennial notices that it was "unable to accept the revision [to Centennial's Forms 499-A] because it was not filed within one year of the original submission."

II. REQUEST FOR WAIVER

The Commission may waive its rules for "good cause shown."[3] A waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve

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[2] *See Federal-State Joint Board on Universal Service, et al.,* CC Docket No. 96-45 et al., Order, 20 FCC Rcd. 1012, 1016 (2004) (amending the instructions to FCC Form 499-A to impose the March 31 deadline); 47 C.F.R. § 54.711(a) (stating that contributions shall be computed based on data filed on the Form 499-A).

[3] 47 C.F.R. § 1.3.

the public interest."[4] In considering waiver requests, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.[5]

Good cause exists for a waiver in this case. As discussed in more detail below, Centennial believed that it was filing on time by mailing the revised forms postmarked by the due date. The Commission has never made clear that the deadline for revised Forms 499-A is based on receipt rather than mailing, and Centennial received incorrect information from USAC. If precluded from revising its forms, Centennial will contribute more than its equitable share of USF obligations. Centennial has taken steps to ensure that all future filings will be received timely. It would be inequitable and impose a hardship on Centennial to preclude it from correcting its revenue information under these circumstances. The Commission has waived universal service filing deadlines in similar cases.

A. Centennial's Personnel Reasonably Believed the Revised Filings Were Timely

FCC Form 499-A must be submitted by April 1 of each year, and reports data for the prior calendar year.[6] Filers may submit revisions to the form, but the Commission has imposed a "twelve-month deadline" for revisions to the Form 499-A that will result in a decreased contribution obligation.[7] According to the Instructions, filers must "submit" such revisions by March 31 of the following year.[8]

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

[5] *WAIT Radio v. FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972).

[6] FCC Form 499-A Instructions at 9.

[7] *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 Mechanism; Changes to the Board of Directors of the National*
(continued on next page)

USAC contributed to Centennial's misunderstanding of the filing deadline here by providing incorrect information in response to Centennial's inquiry. Prior to making the subject filings, Centennial's employee called USAC specifically to inquire regarding the filing deadline for the revised Forms 499-A. The USAC representative told Centennial's employee that the filing was due on Monday, April 3, because April 1 was a Saturday. In this conversation, the USAC representative both cited the incorrect due date for the filing (April 1 instead of March 31) and failed to make clear that the revised form had to be received by (rather than postmarked by) the deadline.

Centennial's personnel have always interpreted the Form 499 filing deadline dates as "postmark" deadlines by which the form must be mailed to USAC, and has submitted its filings accordingly. Until the rejection of the forms at issue here, USAC never informed Centennial that its submissions were not considered timely, or imposed late fees, as a result of Centennial's mailing the forms on the due date rather than prior to such date.[9] USAC representatives have stated to Centennial that USAC mailed notice to filers that forms must be received by the due date, and provided email notice to filers, but have not been able to provide Centennial with copies of any such notice,[10] and Centennial has no record of having received any such notice. In addition, USAC's website does not clearly state that forms must be received by, rather than

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Exchange Carrier Association, Inc., CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012, 1016 (2004), applications for review pending *("Form 499-A Revisions Order")*.

[8] FCC Form 499-A Instructions at 11.

[9] Centennial was assessed a late fee for its Fourth Quarter 2005 Forms 499-Q, but as a result of a clerical error those forms were not postmarked until after the deadline.

[10] USAC provided Centennial a copy of a notification it sent regarding the deadline for officer certification for November 1, 2005 Forms 499-Q that were filed online. There can be no argument that this notice speaks in any way to the deadline for a revised Form 499-A filed by

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postmarked by, the due date.[11] It is not uncommon for filing dates for government forms to be "postmark" deadlines – federal tax forms are a notable example.

In Centennial's discussions with USAC regarding the rejection of the revised Forms 499-A, USAC has cited the *Atlantic Digital*[12] case for the proposition that Forms 499-A must be *received by* USAC by the due date, but that case does not support the rejection of Centennial's revised forms here. First, the Bureau in *Atlantic Digital* concluded that the Instructions to the form clearly indicated "where and when to file," and noted that the Instructions had been amended after April 2002 to state that "'the form must be received by the agent by the due date.'"[13] No such warning, however, appears in the 2005 or 2006 versions of the Instructions to Form 499-A.[14] Further, *Atlantic Digital* addressed the applicability of late fees for a Form 499 filing that was mailed on, rather than received by, the due date. It bears emphasis that, unlike Centennial, Atlantic Digital's form was accepted by USAC; the petitioner merely challenged the assessment of late fees.[15] While the assessment of late fees is a mere administrative penalty, the rejection of the revised form is a fundamentally different and more substantive penalty that is not

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mail. USAC has not provided a copy of the email notification they assert was sent, despite repeated requests.

[11] USAC's website states that revenue reports must be "filed by" the stated deadlines. *See* http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx. It does not define "filing" in terms of either receipt or mailing. It further states that revisions that reduce the filers contribution obligation will be rejected if they are "submitted" outside of a "one-year filing window." *See* http://www.universalservice.org/fund-administration/contributors/revenue-reporting/revising-revenue-worksheets.aspx.

[12] *Request for Review by Atlantic Digital, Inc., of Decision of Universal Service Administrator,* CC Docket No. 96-45, Order, 20 FCC Rcd 4224 (WCB 2005) *("Atlantic Digital").*

[13] *Atlantic Digital* at ¶ 5.

[14] *See* FCC Form 499-A Instructions (2005); FCC Form 499-A Instructions (2006). This admonition is similarly absent from the current instructions to FCC Form 499-Q.

[15] *See Atlantic Digital.*

addressed in *Atlantic Digital*.[16] For all these reasons, *Atlantic Digital* does not support the rejection of Centennial's Form 499-A revisions.

Centennial recognizes that USF filers must undertake reasonable diligence to understand the relevant deadlines. In light of its prior filing practice, which USAC has never contested, the specific incorrect information that USAC provided to Centennial's employee, and the lack of clear direction in the Instructions to the Form or on USAC's website, however, it was reasonable for Centennial to believe that its revised forms were timely filed.

B. Centennial's Request Is Consistent With Other Universal Service Filing Deadline Waivers

In the universal service context, the Bureau has found that "strict enforcement of the rules is not in the public interest" where filers believed the relevant due date was a "postmark" date.[17] The Bureau noted that the filings were received shortly after the due date, the administration of the universal service fund was not impaired, and the filers had taken steps to ensure that future filings would be timely.[18] For the same reasons, the public interest would not be served by strict enforcement of the rules in this case. Like Highland and NTT, Centennial "believed that [it was] filing on time."[19] Centennial's form was received barely a week after the filing deadline, and the

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[16] The Bureau in *Atlantic Digital* also noted that Section 1.7 of the Rules states that documents filed *with the Commission* are deemed filed upon receipt. *Atlantic Digital* at ¶ 5 (citing 47 U.S.C. § 1.7). Form 499 revenue reports, however, may not be filed with the Commission; they must be filed with USAC. Section 1.7 does not address USAC filings. *See* 47 U.S.C. § 1.7.

[17] *Federal-State Joint Board on Universal Service; Benton/Linn Wireless, LLC et al.*, CC Docket No. 96-45, Order, 20 FCC Rcd 19212 (WCB 2005) ("Highland and NTT assert that they believed that these rules were satisfied if the filings were postmarked by the due date."). Centennial, too, reasonably believed its filings were timely. *See supra* section II.A.

[18] *Id.* at ¶ 12.

[19] *Id.*

amount in question is so small that the overall administration of the USF will not be affected.[20] Also, like Highland and NTT, Centennial has taken steps to ensure that its future filings will be timely. The Finance team responsible for preparation of the form has implemented a calendar system to ensure that there is no confusion regarding the filing dates. This calendar system clearly specifies that the forms must be *received by* the due dates. The Company also has implemented a policy calling for the transmission of the forms by overnight courier in all cases, both between the personnel in the mainland United States that prepare them and the signing officers in Puerto Rico and the Virgin Islands, and when they are actually filed with USAC. The new company policy also calls for email communication between the regulatory team on the mainland that prepares the form and the certifying officers in Puerto Rico and the Virgin Islands to ensure that the forms are ready for filing on time, and a requirement that the filing officers confirm timely filing with the regulatory group on the mainland.

In another case, the Commission found special circumstances justifying waiver of a universal service filing deadline where an applicant failed to apprehend that its circumstances made it necessary for it to file two identical certifications only three months apart and immediately corrected the omission.[21] Like Smith Bagley, Centennial had a reasonable misunderstanding of the filing requirement, and has taken remedial steps immediately upon leaning of the discrepancy. Thus, special circumstances also are present here.

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[20] Although the $751,019 at issue here is not even rounding error in the administration of the fund, it is a significant amount of money for a carrier of Centennial's size.

[21] *Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commissions' Rules and Regulations,* CC Docket No. 96-45, Order, 16 FCC Rcd 15275 at ¶ 6 (WCB 2001).

Similarly, the Commission has granted waivers to permit revisions of Forms 499 to avoid situations where the carriers would be forced to contribute more than their equitable share.[22] Rejection of the Centennial's Forms 499-A will deny it the ability to recover $751,019 in overpayments to the Fund, thereby forcing it to pay more than its equitable share into the USF.

A waiver is also consistent with other cases where the Bureau has granted waivers to allow late filing of revised Forms 499 where special circumstances are present and "application of the deadline would impose a significant hardship on applicants."[23] As noted above, although the amount in question here is insignificant in the administration of the fund, it means a great deal to a carrier of Centennial's size.

III. REQUEST FOR REVIEW OF USAC DECISION TO REJECT REVISED FORMS 499-A AS UNTIMELY

Upon grant of the waiver requested herein, Centennial requests that the Commission reverse USAC's decision to reject the revised Forms 499-A as untimely filed, in light of the waiver grant, and direct USAC to process Centennial's revised forms pursuant to the Rules.

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[22] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Order, 17 FCC Rcd 14699 at ¶ 4 (WCB 2005).

[23] *See, e.g., Request for Review by ABC Cellular Corporation,* CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 25192 (WCB 2002) at ¶ 11.

CONCLUSION

For the foregoing reasons, Centennial requests that the Commission waive the filing deadline for Centennial's revisions to its Forms 499-A for filing year 2004, and direct USAC to accept the revised forms.

Respectfully submitted,

CENTENNIAL PUERTO RICO OPERATIONS CORP. AND CENTENNIAL USVI OPERATIONS CORP.

By: /s/

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July 13, 2006

DECLARATION

I, William L. Roughton, Jr., hereby declare under penalty of perjury as follows:

I am Vice President, Legal and Regulatory Affairs for Centennial Communications Corp., parent company of Centennial Puerto Rico Operations Corp. (Form 499 Filer ID 811030) and Centennial USVI Operations Corp. (Form 499 Filer ID 822328) (collectively, "Centennial").

I have reviewed the foregoing Petition for Waiver and Request for Review of a Decision of the Universal Service Administrator, and certify that the facts stated therein are true and correct to the best of my personal knowledge.

NAME William L. Roughton, Jr.
TITLE Vice President, Legal & Regulatory Affairs

Dated: July 13, 2006

CERTIFICATE OF SERVICE

I, Marc D. Knox, do hereby certify that the foregoing REQUEST FOR REVIEW OF A DECISION BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY AND PETITION FOR WAIVER OF CENTENNIAL PUERTO RICO OPERATIONS CORP. AND CENTENNIAL USVI OPERATIONS CORP. was sent on this date to the following:

First-class mail, postage prepaid:

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Marc D. Knox