

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Airband Communications Inc.
Form 499 Filer ID No. 825978
Emergency Petition for Review and
Request For Waiver Of USAC
Administrator's June 24, 2008 Decision

CC Docket No. 96-45
WC Docket No. 06-122

MOTION OF AIRBAND COMMUNICATIONS INC.
FOR WAIVER OF PUBLIC NOTICE

Airband Communications, Inc. ("Airband") respectfully requests that the Commission waive public notice of Airband's Emergency Petition for Review and Request For Waiver Of The USAC Administrator's June 24, 2008 Decision, which is being filed concurrently with this Motion.¹ For the reasons below, Airband's Emergency Petition for Review and Request For Waiver presents a compelling case that the Commission can and should resolve expeditiously without public notice.

First, USAC is improperly holding Airband liable for hundreds of thousands of dollars in payments based on data that USAC knows or should know is incorrect. Airband incorrectly reported assessable revenues for the fourth quarter of 2006 of approximately \$4.9 million, and a

¹ The FCC, or Wireline Competition Bureau acting under delegated authority, may waive any provision of the Commission's rules for good cause shown. *See* 47 C.F.R. § 1.3. The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

Section 1.412(c) of the FCC rules permits the agency to adopt rules "without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary and contrary to the public interest." 47 C.F.R. § 1.412(c).

universal service contribution level of approximately \$500,000 because the carrier mistakenly included all 4Q2006 revenues in its original 2007 Form 499-A, including non-telecommunications service revenues. Airband's corrected 2007 Form 499-A, which USAC rejected as untimely filed, establishes that it had assessable interconnected VoIP revenue of less than \$2500 for the fourth quarter of 2006, and thus qualifies for the *de minimis* exemption. Even USAC's website explains that: "When the 499-A is filed showing the actual revenue that had been projected quarterly, a true up will confirm the *de minimis* status for the year and reverse any charges that occurred for a company that is found to have been *de minimis*."² Expedited review of the USAC decision is needed because the ongoing payment obligation constitutes a crushing burden on Airband that is impacting its ability to expand its wireless broadband network and serve new customers.

Second, USAC's rejection of Airband's corrected filing on the grounds that it was untimely because it was postmarked but not received on March 31, 2008, effectively prevents Airband from ever correcting its earlier misstatement of revenue. USAC's failure to cure this error based on an uncodified procedural technicality is legally untenable,³ is contrary to FCC rules governing universal service fund contributions, and leads to absurd results. There is no harm to the universal service fund because Airband does not lawfully owe the fund any money.

Third, because the facts here demonstrate that there is no issue of non-compliance with any Commission regulation and no underpayment of USF, no party will be prejudiced by waiver of public notice in this case. The mistake that Airband is correcting affects only Airband.

² See De Minimis Exemption on USAC website available at <http://www.usac.org/fund-administration/contributors/who-must-contribute/de-minimis-exemption.aspx> (underlining in original).

³ See generally Airband Communications Inc. Form 499 Filer ID No. 825978 Emergency Petition for Review and Request For Waiver Of USAC Administrator's June 24, 2008 Decision.

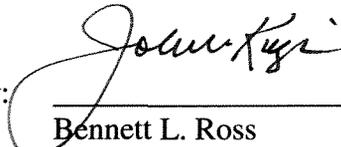
Fourth, Airband's request for waiver of the public notice requirement is consistent with Commission precedent. In fact, the Wireline Competition Bureau recently granted a motion for waiver of public notice when it granted a waiver to accept a late-filed revised Form 499-Q that corrected an earlier reporting error that resulted in the carrier improperly owing a several hundred thousand dollar universal service contribution.⁴

The USAC Decision should be reversed because it contradicts FCC rules, is unfair and unduly burdensome to Airband, and is contrary to the public interest.⁵ Airband is thus requesting emergency relief and expedited Commission action on today's Emergency Petition for Review and Request for Waiver. In accordance with that relief, Airband respectfully requests that the Commission also grant this Motion for Waiver of Public Notice.

Respectfully submitted,

AIRBAND COMMUNICATIONS, INC.

By:



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July 23, 2008

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⁴ See *Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline; Order, DA 08-1514 (WCB June 26, 2008) (the "Aventure Order")*.

⁵ See generally Airband's Emergency Appeal and Request For Waiver Of The USAC Administrator's June 24, 2008 Decision.

SERVICE LIST

On the date below, the foregoing Motion of Airband Communications Inc For Waiver Of Public Notice was filed in CC Docket No. 96-45 and WC Docket No. 06-122 and sent to the following individuals as indicated below:

USAC Administrator
2000 L Street, NW, Suite 200
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Via First Class Mail

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Jeremy Marcus
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Jennifer McKee
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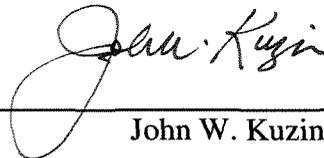
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