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September 12, 2008

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Secretary Dortch:

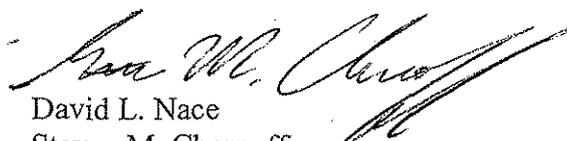
On behalf of Progress International LLC (Filer ID 825928) ("Progress", "the Company"), please find attached a redacted, public version of Progress's Emergency Request for Review and Request for Waiver of USAC 45-Day Revision Deadline ("Emergency Request"). The attached Emergency Request has been marked "**REDACTED – FOR PUBLIC INSPECTION.**"

Progress is also submitting, under separate cover, a confidential version of this Emergency Request. The confidential version is marked "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.**"

An original and four (4) copies of this Emergency Request are enclosed. An additional copy has been provided, which you are requested to date-stamp and return in the envelope provided.

Please contact the undersigned at 703-584-8670 if any questions arise concerning the above-referenced enclosures or if you require any additional information.

Sincerely,



David L. Nace
Steven M. Chernoff
Attorneys for Progress International LLC

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

In the Matter of)	
)	
Federal-State Joint Board)	
On Universal Service)	
)	
Progress International LLC)	CC Docket No. 96-45
Form 499 Filer ID: 825928)	
Request for Review of USAC Rejection Letter)	
And Request for Waiver of 45-Day Revision)	
Deadline)	
)	

**EMERGENCY REQUEST FOR REVIEW AND
REQUEST FOR WAIVER OF USAC 45-DAY REVISION DEADLINE**

Progress International LLC (“Progress”, “the Company”), by its undersigned counsel and pursuant to § 54.722 of the Commission’s rules, 47 C.F.R. § 54.722, respectfully requests that the Commission reverse a recent decision by the Universal Service Administrative Company (“USAC) to reject a revision to Progress’s Form 499-Q originally filed on or before November 1, 2008, and to require USAC to base all further calculations of Progress’s Universal Service Fund (“USF”) contribution on the correct revenue data.¹ Progress also respectfully requests that the Commission hold in abeyance all purported collection actions and/or attempts to transfer debt for collection pending full and final resolution of this matter. Progress respectfully requests that the Commission take such action on an expedited basis so that Progress is not required to make incorrect and extremely burdensome USF contributions, which USAC will not credit back to

¹ The Commission has found that requests of this nature are tantamount to a request for waiver of USAC’s 45-day revision deadline for Form 499 filings. *Federal-State Board on Universal Service; Request for Review by ABS-CBN Teleco North America, et al*, 22 FCC Rcd 4965, ¶ 8 (2007) (“ABS-CBN Order”).

Progress until the annual true-up process in mid-2009.

As detailed herein, there is good cause to provide the relief requested by Progress – such action would serve the public interest, and would not adversely affect the USF, reduce the level of the USF, or prejudice any party.² In considering whether to waive its rules, the Commission “may take into account considerations of hardship, equity, or more effective implementation of overall policy.”³ Progress posits that all of these considerations compel a grant of its requested relief.

I. BACKGROUND: AN INADVERTENT ERROR BY PROGRESS IN REPORTING REVENUES SUBJECT TO USF HAS RESULTED IN MASSIVE OVERPAYMENTS OF ITS USF OBLIGATIONS

The factual statements in this Section and throughout this document are based on the Declarations of Robert K. Lacy, Chief Executive Officer of Progress, and of Steven M. Chernoff, an associate of the law firm of Lukas, Nace, Gutierrez and Sachs, Chartered, which represents Progress in this matter. The Lacy Declaration is attached to this Request as Exhibit A, and the Chernoff Declaration is attached as Exhibit B. Progress is a wholesale provider of telecommunications services with its corporate headquarters in Houston, Texas, and its center of operations in Monterrey, Mexico. Because 100% of its revenues are international, and, furthermore, are “carrier’s carrier” revenues, Progress is exempt from contribution to the USF.

In 2007, on the 499-Q telecommunications revenue reports due May 1, August 1, and November 1, respectively, Progress incorrectly reported a large proportion of its revenues as being end-user U.S. telecommunications revenues. The invoiced contributions resulting from the errors initially totaled nearly [BEGIN CONFIDENTIAL]\$ [END CONFIDENTIAL]

² Progress accompanies this Request with a Motion to Waive Public Notice, in order to allow the Commission to provide relief on an expedited basis.

³ *ABS-CBN Order*, 22 FCC Rcd at ¶ 8(citing *WAIT Radio v. FCC*, 418 F. 2d. 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

Because the company has no assessable telecommunications revenues, Progress is not a contributor to the USF. As a non-contributor, Progress had no expectation of receiving USF contribution invoices from USAC. Because it was not expecting contributor invoices, and because it was not equipped to process payment for such invoices in the ordinary course, Progress did not initially take notice of the invoices it received bearing the contribution amounts that were based on its filing errors. Moreover, although the company contact information on the Form 499s in question was up to date, USAC apparently sent several invoices to an outdated company address. This misaddressing of critical correspondence resulted in additional delays before the company discovered the erroneous nature of its filings and the USF contribution amounts that were based on those errors.

Upon discovery of the errors, Progress immediately submitted revised Form 499-Qs for each of the three periods, explaining in a letter that Progress had been billed for USF contributions due to errors in its reporting and requesting that USAC accept the late-filed revisions because of considerations of hardship.⁴ In the letter accompanying its revisions, Progress explained to USAC that, as a wholesale provider of telecommunications services, it operates on very slim profit margins and therefore does not have large reserves of cash available to cover debts of this size. Progress also explained that, while some of the amounts in question would be credited back to Progress in the 2007 true-up process during the summer of 2008, the remaining amounts would still be far in excess of what Progress was able to pay.

As set forth in the Chernoff Declaration attached as Exhibit B, counsel for Progress held multiple conversations with USAC's 499 billing and collection staff prior to submitting its revisions, and staff was advised of the upcoming filings. Progress's attorneys received a date-stamped copy indicating that the letter and Form 499-Q revisions were received by the proper

⁴ See Letter dated April 8, 2008, from Steven Chernoff to Ken Fiscus, attached hereto as Exhibit C.

USAC office. Nonetheless, more than three months passed before USAC made a decision. At no point did USAC attempt to contact Progress or its attorneys to indicate that it had not received the promised revisions. After repeated inquiries with USAC staff, and only after staff was provided with the date-stamped copy documenting USAC's receipt of the revisions on April 8, 2008, Progress's attorneys were told on July 14, 2008, that the revisions had been misplaced by USAC and could not be located.⁵ Despite the emphasis in the letter on Progress's inability to pay the invoiced amounts, USAC advised Progress that the revisions would be rejected and that letters would be sent to Progress immediately.⁶

On July 24, 2008, Progress received an e-mailed notification from USAC stating that, based on the actual 2007 revenues reported on its Form 499-A submitted on or before April 1, 2008, Progress was found to be a *de minimis* carrier and therefore exempt from paying any USF contributions for revenues reported in 2007. Therefore, USAC stated that the invoiced contributions computed on the basis of the 2007 revenue that had been erroneously reported in the Form 499-Qs filed in May and August of 2007 would be credited back to Progress. In a subsequent e-mail to counsel for Progress, USAC staff explained that, because Progress's November 2007 Form 499-Q reported (incorrect) projected revenues for the first quarter of 2008, the remaining invoiced amounts would not be credited back until the true-up of 2008 revenues in mid-2009. Staff provided the following breakdown of the amounts no longer owed versus the amounts still outstanding:⁷

⁵ See e-mail dated July 14, 2008, from Fred Theobald to Steven Chernoff, attached as Exhibit D.

⁶ See rejection letters attached as Exhibit E.

⁷ See e-mail dated July 15, 2008, from Fred Theobald to Steven Chernoff, attached as Exhibit F.

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Amounts to be credited back to Progress immediately as a result of the 2008 true-up of 2007 revenues and therefore no longer owed:

[BEGIN CONFIDENTIAL]

May 2007 499Q	\$
Aug 2007 499Q	\$
Late Payment	\$
Total	\$

[END CONFIDENTIAL]

Amounts to be credited back to Progress in the 2009 true-up of 2008 revenues:

[BEGIN CONFIDENTIAL]

Nov 2007 499Q	\$
Late Payment	\$
Total	\$

[END CONFIDENTIAL]

Because the majority of its invoiced contributions were credited back as a result of the 2008 true-up, Progress understood that only debt currently outstanding was the roughly \$ corresponding to its erroneous Form 499-Q from November 2007 and associated late payment fees. Moreover, because all of the invoiced amounts and related charges were calculated based on erroneous reporting of revenues that have been erased by this year's true-up, or will be erased in next year's true-up, Progress believed that any collection efforts by USAC or the FCC would be suspended correspondingly.

Nonetheless, on September 5, 2008, Diversified Collection Services, Inc. ("DCS"), a collection agent working on behalf of the U.S. Department of the Treasury ("Treasury Department") contacted Progress and demanded immediate payment of two collection amounts

referred from the FCC: [BEGIN CONFIDENTIAL]\$ and \$ [END CONFIDENTIAL].⁸

Progress, through counsel, responded that it believed it did not owe the stated amounts, but that it desired to cooperate fully with the Treasury Department by proposing a workable payment schedule. Accordingly, on the same day, Progress's counsel sent a letter via fax to DCS proposing a 12-month timetable for paying the named collection amounts until the amounts are credited back to Progress in the 2009 true-up.⁹ Progress's counsel and DCS continue to negotiate the terms of payment.

Notably, neither of these collection amounts appears to correspond to any of the invoiced amounts issuing from Progress's erroneous Form 499-Qs. Progress is justifiably concerned that the Treasury Department, through DCS, might be attempting to collect debts that are no longer valid or outstanding, and that Progress might be subject to additional collection actions even after paying off the amounts named by DCS. As detailed in the Chernoff Declaration, on Saturday, September 6, 2008, Progress, through counsel, requested that the Treasury Department or DCS provide documentation allowing Progress to verify that the requested amount does not correspond to any of the invoiced contributions that have been erased by the 2008 true-up. Progress's attorney reiterated his request in telephone conversations with DCS on Monday, September 8, 2008, and Wednesday, September 10, 2008, and in a letter that was e-mailed to DCS on Wednesday, September 10, 2008 ("Sept. 10 Letter").¹⁰ To date, neither the Treasury Department nor DCS has provided any information in response to counsel's repeated requests.

Also, as detailed in the Chernoff Declaration, in an attempt to confirm the validity of the

⁸ See faxed documents dated September 5, 2008, from Donna Tesi to Steven Chernoff, attached hereto as Exhibit G.

⁹ See Letter dated September 5, 2008, from Steven Chernoff to Donna Tesi, attached hereto as Exhibit H.

¹⁰ See Letter dated September 10, 2008, from Steven Chernoff to Donna Tesi, attached hereto as Exhibit I. Although the fax did not go through until the following morning, the letter was sent via e-mail on the afternoon of September 10, 2008.

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collection amounts, counsel for Progress contacted several individuals at USAC, the FCC’s Office of the Managing Director (“OMD”), and the FCC’s Office of the Chief Financial Officer (“CFO”). To date, these efforts have not yielded sufficient information to allow Progress to trace the named collection amounts to any of the contribution amounts invoiced by USAC. The most detailed information Progress received was the following list of eight “outstanding” debts, all except two of which have already been transferred to the Treasury Department for collection:

1. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including administrative fees. Transferred to Treasury 6/19/08.
2. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Transferred 6/19/08.
3. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Transferred 7/31/08. Case Number 08US002849.
4. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Transferred 7/31/08. Case # 08US002850.
5. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Transferred 7/31/08. Case # 08US003101.
6. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Transferred 7/31/08. Case # 08US003102.
7. Original amount [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Billed 7/10/08. Not yet transferred to Treasury.
8. Original amount of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] including interest and fees. Billed 7/10/08. Not yet transferred to Treasury.

The total amount of these “outstanding” invoices is [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], of which [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] has already been transferred to the Treasury Department for collection. Of this amount, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] was transferred to the Treasury Department on July 31, a full week *after* USAC issued its decision to credit back

more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] as a result of the 2008 true-up. Clearly, therefore, the FCC transferred several large collection amounts to the Treasury Department that USAC no longer considered to be payable by Progress. At this point, it is impossible for Progress to determine whether the amounts Treasury is currently attempting to collect actually represent amounts that are still owed. Indeed, because the first two amounts that were transferred by the FCC appear to correspond to the collection amounts currently sought by DCS, it is likely that Progress is being asked to pay sums it no longer owes. While it awaits documentation from DCS and continues its own efforts to gain clarification from USAC and the FCC (also detailed in the Chernoff Declaration), Progress is disputing the collection amounts named by DCS.¹¹

II. GOOD CAUSE EXISTS TO REVERSE THE USAC REJECTION LETTER ON REVIEW

The issue at hand involves a simple filing error for which Progress is being severely penalized. As discussed below, there is substantial good cause to grant Progress the relief it seeks, and such relief would greatly serve the public interest.

A. USAC's Refusal to Allow Progress to Correct Its Reported Revenue Imposes Severe and Continuing Harm on the Carrier.

Progress is a *de minimis* carrier with zero end-user telecommunications revenues. It will be severely harmed by the continuing efforts by the FCC and the Treasury Department to collect invoiced amounts that it should not be required to pay. Under USAC's procedures, Progress is not able to correct the erroneous information until its next FCC Form 499-A is due, which will not be until April 1, 2009. Because Progress's mistake occurred for projected revenues for the first quarter of 2008, it will not be until mid-2009 that USAC would redress this costly mistake.

¹¹ See Exhibit I.

In the meantime, Progress is fully cooperating with the Treasury Department in negotiating the payment of all collection amounts corresponding to the November 2007 Form 499-Q.

It is simply not possible for Progress to pay the amounts corresponding to its incorrectly-filed Form 499-Q from November 2007. As a wholesale service provider, the Company operates on very slim margins and does not have sufficient cash reserves to pay the invoiced amounts in the short term while it awaits the 2009 USAC true-up.¹²

Progress is therefore requesting that the Commission immediately direct USAC to accept the late-filed 499-Q and to immediately halt all collection efforts related to the Company's incorrectly reported revenue.

C. Grant of Progress's Requested Relief Will Not Adversely Affect the Universal Service Fund, and Will Otherwise Serve the Public Interest.

This relief requested herein will not in any way reduce the amount of USF funding received by USAC. Under the FCC's rules, Progress was not required to file Form 499-Qs, because it is a *de minimis* carrier and is therefore exempt from making USF contributions. As discussed above, Progress is cooperating with the collection efforts of the Treasury Department and is negotiating a schedule for paying in full the contributions, interest, and penalties corresponding to its incorrectly-filed November Form 499-Q. If USAC is directed to accept the Company's revision to its November 2007 Form 499-Q, then the company will be credited back the same amount that it would eventually be credited by true-up in 2009. By directing USAC to accept the revision and credit back all associated USF contributions, interest charges, and penalties, the Commission would restore the Company's contribution balance to zero, where it properly belongs. Moreover, a grant of the Company's request for Commission notification to the Treasury Department to halt collection efforts, the Company would be spared the unfair

¹² See Lacy Declaration attached as Exhibit A.

punishment of having to loan hundreds of thousands of dollars to the federal government, interest-free. Granting Progress the relief it seeks would not adversely affect the level of the USF.

D. There Has Been No Noncompliance By Progress, Just a Simple Reporting Mistake for Which Progress Should Not Be Penalized.

As discussed in the Background section above, no issue of noncompliance is raised by this matter. Progress has consciously complied with all of its filing and USF payment obligations from its inception – there has never been a non-payment or underpayment of required USF amounts. Rather, the issue at hand is the correction of a simple and plainly evident mistake in filling out its Form 499-Q. Progress took corrective action as soon as it became aware of its error. After waiting months for a USAC decision because of USAC’s misplacement of the revised Form 499-Qs, Progress was unfairly prejudiced by a delayed decision and is now beset by several collection actions, some of which are being actively pursued by the Treasury Department. Progress is cooperating with those collection efforts and intends to make regularly scheduled payments until the Commission grants the requested relief or until the amount is paid in full, whichever occurs first. Progress is simply asking for Commission action to prevent it from continuing to be severely penalized for its reporting mistake. Because Progress has been fully compliant with all of its filing obligations, no party will be prejudiced by a grant of the relief Progress seeks.

The public interest would be served by granting the waiver. Denying the requested relief would unduly punish a company that has not violated any rules but simply committed errors and acted promptly to correct them upon discovery. The Commission has granted requests for relief where “strict enforcement of the filing deadline would disproportionately penalize (the carrier)

when considered in light of its actions to remedy the error.”¹³ This case is directly analogous to the Commission’s recent grant of a request for review of USAC’s decision to reject a revision to Aventure Communication Technology, LLC’s (“Aventure”) FCC Form 499-Q.¹⁴ In the present case, as was the case with Aventure, Progress made a simple oversight and as a result was billed large amounts of USF contributions it should not be required to pay. As with Aventure, Progress has taken prompt and extensive measures to remedy its mistake, immediately contacting USAC in an attempt to correct the error and cooperating fully with the collection efforts by the Treasury Department. Therefore, it is in the public interest to grant Progress’s petition for waiver and to accept the corrections made in Progress’s revised November 2007 FCC Form 499-Q.

E. Progress Has Taken Measures to Ensure Correct Filings In the Future.

Progress has put in place measures specifically designed to prevent such filing errors from occurring in the future.¹⁵ Specifically, Progress has placed two officer-level employees in charge of revenue reporting. These officers have set a strict deadline so that all filings – including Form 499-Q – are prepared well in advance of deadline, and available for internal review. Moreover, all forms will be reviewed by a minimum of two Progress personnel before filings will be made. By taking these steps, Progress believes it is taking proactive steps to ensure correct and timely filings on a going-forward basis.

III. CONCLUSION

¹³ *Federal-State Joint Board on Universal Service, Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules, Order*, 21 FCC Rcd 10155, ¶ 7 (2006) (granting Verizon’s petition for waiver of the line count information when Verizon filed two days late due to internal reorganization) (“*Verizon Petition for Waiver*”).

¹⁴ *Federal-State Joint Board on Universal Service, 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*, CC Docket No. 96-45, WC Docket No. 06-122, DA 08-1514 (WCB rel. June 26, 2008).

¹⁵ See Lacy Declaration attached as Exhibit A hereto.

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For the foregoing reasons, Progress respectfully requests that the Commission grant this Request for Review of the USAC Rejection Letter, and an effective waiver of the USAC 45-day revision deadline, on an expedited basis. In addition, Progress requests that the Commission instruct USAC to credit back to Progress all USF contributions, interest charges, and penalties issuing from the incorrectly filed November 2007 Form 499-Q. Finally, Progress requests that the Commission notify the U.S. Treasury Department to cease efforts to collect amounts that Progress does not lawfully owe after correction of its November 2007 Form 499-Q is accepted.

Respectfully submitted,



David L. Nace
Steven M. Chernoff
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Attorneys for Progress International LLC

Dated: September 12, 2008

CERTIFICATE OF SERVICE

I, Donna Brown, a secretary with the law firm of Lukas, Nace, Guitierrez & Sachs, Chtd., hereby certify that I have caused, this 12th day of September, 2008, the attached Emergency Request for Review and Request for Waiver of USAC 45-Day Revision Deadline to be sent, via overnight delivery, to the following:

Letter of Appeal
USAC
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

Regina Dorsey*
Deputy Chief Financial Officer
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Donna Tesi
Diversified Collection Services, Inc.
333 North Canyons Parkway
Suite 100
Livermore, CA 94551

Rita Bratcher
Assistant Commissioner, Debt Mgmt. Services
Financial Management Service
United States Department of the Treasury
401 14th Street, S.W.
Washington, D.C. 20227

* Via hand delivery


Donna Brown