

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

In the Matter of)
)
Federal-State Joint Board)
On Universal Service)
)
Progress International LLC,)
Form 499 Filer ID: 825928)
Request for Review of USAC Rejection Letter)
And Request for Waiver of 45-Day Correction)
Deadline)
_____)

ORIGINAL

CC Docket No. 96-45

FILED/ACCEPTED

SEP 12 2008

Federal Communications Commission
Office of the Secretary

MOTION OF PROGRESS INTERNATIONAL LLC
FOR WAIVER OF PUBLIC NOTICE

Progress International LLC ("Progress"), by its undersigned counsel and pursuant to § 1.412(c) of the Commission's rules, 47 C.F.R. § 1.412(c), respectfully requests that the Commission waive public notice for Progress's Request for Review of a rejection letter issued by USAC ("Request for Review"). The Progress Request for Review is being filed concurrently with this Motion.

Section 1.412(c) of the Commission's rules provides that rules may "be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest." *E.g., Bendix Aviation Corp. v. FCC*, 272 F.2d 533, (D.C. Cir. 1959), *cert. denied sub nom. Aeronautical Radio, Inc. v. United States*, 361 U.S. 965 (1960).

Progress's Request for Review, along with the declarations attached thereto, provides a compelling set of reasons for waiving public notice of its request. As detailed in that filing, an innocent mistake by Progress's administrative personnel in its Form 499-Q filing has resulted in

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a USF payment obligation. Instead of reporting zero end-user telecommunications revenues, Progress mistakenly reported its carrier's carrier revenues as end-user revenues. As a result of this mistake, instead of qualifying as a *de minimis* carrier exempt from USF contributions, Progress was billed for hundreds of thousands of dollars in USF contributions that it should not have to pay. Because USAC's invoices and other correspondence were sent to an outdated address, and because it never expected to receive invoices from USAC, the Company did not discover its mistake until several months after it submitted its original revenue reporting worksheets.

Only a portion of the invoiced amounts has been credited back to the company in the 2008 true-up of 2007 revenue; the remainder – consisting of more than \$300,000, including interest and late payment fees – is based on Progress's incorrectly stated revenue projection for the first quarter of 2008 and will not be credited back until next year's true-up of 2008 revenues. In the interim, this amount is simply too great a burden for Progress to bear.

Progress has requested emergency, expedited action by the Commission in allowing it to revise its Form 499-Q so that USAC will treat Progress as a *de minimis* carrier exempt from USF contribution obligations and credit back the full amount of the invoiced contributions and associated interest fees and penalties. Progress posits that the following concerns compel a grant of this motion for the Commission to waive notice of its Request for Review:

- Progress has no end-user telecommunications revenues and therefore is exempt from making USF contributions. Yet Progress is now being asked to pay more than \$300,000 in contributions to the USF. This constitutes a crushing burden on the carrier, and would severely impact the Company's ability to conduct its business.

- The normal “true-up” process used by USAC cannot reasonably resolve this problem – by the time Progress makes those filings, it will have paid over a quarter million dollars in USF payments that it should not be required to pay. No amount of credits can prevent critical harm to Progress.
- Progress has not violated any rules; rather, it made a simple but very costly mistake. It took steps to correct its own error as soon as it was discovered.
- Grant of relief to Progress will not harm the Fund or reduce its funding levels; it will merely require USAC to recognize Progress’s status as a *de minimis* carrier and bring Progress’s contribution balance back to zero, where it belongs.
- Because there is no issue of non-compliance with any Commission or USAC rule and no non-payment or underpayment of USF, no party will be prejudiced by not receiving notice of the relief that Progress has requested. Progress is merely asking for a correction of a mistaken entry that affects no entity other than Progress.
- Finally, putting Progress’s Request for Review on public notice would deny Progress the expeditious relief it requires, and would ensure that Progress continues to suffer extensive harm. Because of extended processing delays due to USAC’s misplacement of the Company’s revisions, Progress was correspondingly delayed in its ability to file a request for review. Several invoiced amounts have already been transferred to the United States Department of the Treasury for collection. An expeditious grant of the requested relief, including Commission notification to the Treasury Department that the debts are no longer outstanding, would spare Progress from further actions to collect contribution amounts flowing from its mistakenly completed Form 499-Q.

For the reasons discussed above, "strict enforcement of the filing deadline would disproportionately penalize [the carrier] when considered in light of its actions to remedy the error."¹ Accordingly, Progress requests that the Commission grant this Motion for Waiver of Public Notice of Progress's Request for Review.

Respectfully submitted,



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Dated: September 12, 2008

¹ *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)(internal citations and quotations omitted).*

CERTIFICATE OF SERVICE

I, Donna L. 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 Motion of Progress International LLC for Waiver of Public Notice to be sent, via overnight delivery, to the following:

Letter of Appeal
USAC
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Washington, D.C. 20036

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Deputy Chief Financial Officer
Federal Communications Commission
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Donna Tesi
Diversified Collection Services, Inc.
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Rita Bratcher
Assistant Commissioner, Debt Mgmt. Services
Financial Management Service
United States Department of the Treasury
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Washington, D.C. 20227



Donna Brown

* Via hand delivery