

ORIGINAL
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OCT 31 2011

Federal Communications Commission
Office of the Secretary

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

In the Matter of)
)
Request for Review of Decision of the)
Universal Service Administrator by) WCB Docket No. 06-122
Bestel USA, Inc.)

REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATOR BY BESTEL USA, INC.

Bestel USA, Inc., Filer ID # 819522 (“Bestel USA”), hereby appeals the decision of the Universal Service Fund Administrator dated August 31, 2011. Specifically, Bestel USA appeals the imposition of late charges on invoices not timely received by Bestel USA, due to the Universal Service Administrative Company’s (“USAC”) unwillingness to change Bestel USA’s billing address despite multiple requests to do so. On August 31, 2011, through an email from the Director of Financial Operations, USAC denied a request of Bestel USA to reverse certain late payment penalties caused by USAC’s intransigence and resistance to a simple administrative request.¹ Because Bestel USA did not receive its invoices until months after the original due date, Bestel USA incurred approximately \$27,000 in late fees and administrative assessments and never had an opportunity to pay these debt in a timely fashion. Bestel USA appeals USAC’s decision not to reverse these fees and to not honor its request to change the billing address.

Since 2010, when Bestel USA ceased to be an international-only non contributor to the Fund, USAC has been mailing invoices to a non-functioning address in Mexico City, Mexico. Upon receiving its first invoice nearly two months after the original due date,² Bestel USA contacted USAC customer service and was informed that the company was not getting the

¹ The correspondence is attached hereto as Exhibit A. (“USAC Letter Decision”)
² Given the slowness of mail service in Mexico, it generally takes several weeks for a first class letter sent from the United States to arrive to its destination in Mexico.

invoices because the address registered with USAC was a non-working address in Mexico. Bestel USA was advised by USAC's personnel to change its corporate address to an address in the United States (a requirement that is not present in the Commission's rules). The company attempted to make this change over the phone, to ensure that invoices would be mailed to a working address as quickly as possible. USAC staff, however, refused to change the address, and instead demanded that the company send a revised Form 499-A to make the change. USAC's actions are contrary to the public interest, not required by Commission rules, and harm the integrity of the Fund.

Bestel USA originally became a telecommunications provider in 1996 and listed an address in Laredo, Texas as the corporate headquarters (in the U.S.), and an address in Mexico City, Mexico as the address for the billing.³ Eventually, the company changed the corporate headquarters address to the same Mexico City address as well. In late 2009, the company's headquarters relocated. The company's 499-A in 2010 (filed on March 29, 2010) reflected that change by changing the addresses to a new address in Mexico City.⁴ It should be noted that prior to this time, the company was an international only non-contributor to the Fund. As such, errors with mailing were of minor consequence. But, during 2010, Bestel USA became a direct contributor to the Fund, and thus the mailing address became significant.

When it became apparent that USAC was not sending invoices to the new address in Mexico City, Bestel USA called USAC customer service and requested that USAC change the address to the correct Mexico City address because the company was not getting bills in a timely fashion. USAC customer service told Bestel USA representatives that they should change their address to a U.S. address. Beginning with the May 2010 Form 499-Q, the company changed its

³ See *e.g.*, 2005 Form 499-A, attached as Exhibit B (registration pages only, revenue sheets excluded).

⁴ See 2010 Form 499-A, attached as Exhibit C (registration pages only, revenue sheets excluded).

primary address to one in San Antonio, Texas.⁵ This change has been replicated on all Forms since then and is the only address Bestel USA has used on the Forms since 2010. It should be noted that no FCC rule requires a company to have a U.S. address, aside for an agent of service of process. Thus, by requesting Bestel USA to change its address to a U.S. address, USAC customer service was making policy, by creating a regulation that does not exist, in violation of Commission regulations prohibiting USAC from establishing policy.⁶ Requiring carriers to submit formal revisions to a Form 499 when not required by the Commission's rules is ostensibly making policy - a policy where even the most minor change must be processed using a formal filing rather than - as the name "customer service" implies, by performing minor changes via a phone call, or failing that, arrange for invoices to be sent, immediately, to the contributor at the address of its request.

When Bestel USA became aware that invoices were continuing to be mailed to the incorrect address, Bestel USA again contacted USAC customer service. This time, USAC customer service again refused to update the address for the billing address. In April 2011, Bestel USA again filed a Form 499-A with only the San Antonio, Texas address. And yet again, USAC continued to send the invoices to the wrong address. As a result, Bestel USA continued to get invoices far after the due date without an opportunity to remit payment timely. The result is that the Fund has been deprived the contributions that Bestel USA wishes to make, solely because USAC cannot send the invoices to an accurate address in a timely fashion. When Bestel USA received the invoices, often months late, they were promptly paid. As of today, Bestel USA has paid all invoices it has received, including all late charges abusively assessed by USAC.

⁵ See Form 499-Q, May 2010, Attached as Exhibit D (revenue figures redacted).
⁶ 47 C.F.R. § 54.702(c).

Bestel USA asked USAC to reverse the late charges on the grounds that USAC failed to properly honor the request to change the address, and that it had been told, incorrectly, that FCC regulations required that the company have a mailing address in the U.S. for USAC. (In addition to being incorrect, it is ironic that these problems occurred because USAC continued to mail the invoices to an address in Mexico.) In denying this request, USAC responded that because Bestel USA had not checked a box on line 207 of the Form 499-A to link the corporate address to the billing address and thus refused to process the address change. And, while it is true that this box was not checked on the forms submitted by Bestel USA, the company's affirmative request to change the address should have been honored. By literally putting form over function, USAC's doctrinaire approach to something as simple as an address change has created a situation that harms the integrity of the Fund by delaying payments from a carrier who is willing and able to make its payments in a timely fashion, but cannot receive the invoices in a manner that makes such payments possible.

In its denial of Bestel USA's request, USAC noted that it was "Bestel USA's responsibility" to ensure that its registration was correct.⁷ And, while that is correct in part, USAC is under no obligation to require carriers to submit an entire Form in order to process a simple address change. Moreover, given that USAC's normal operating procedure is to only process filings for the quarter after which they were filed,⁸ USAC's requirement ensures that bills will continue to be sent to a non-functioning address long after a carrier has requested that the bills be sent to a different address, rather than simply responding to a carrier request to send bills immediately to an address that will ensure that they will be actually received.

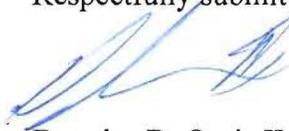
⁷ *USAC Letter Decision, Exhibit A.*

⁸ *Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, et al*, WCB 06-122, *Order*, DA 10-187, (Jan. 29, 2010), at para 7. (approving USAC's procedure of processing forms only in the quarter following their submission.) In this instance, such processing would be insufficient for it would result in continued inaccurate billing.

The root of the problem has been the string of USAC's inconsistent and incorrect customer service information given to Bestel USA, including that the address must be in the U.S., plus an unwillingness to rectify a billing error.

Bestel USA wishes to pay its invoices in a timely fashion. To do so requires that Bestel USA asks simply that it receive the invoices, a task that USAC has difficulty in completing. Had USAC provided Bestel USA with correct information and simply sent the invoices to the addresses that the company requested, Bestel USA would not have incurred late charges on its invoices. As such, Bestel USA believes it is appropriate for these late charges and interest to be reversed.

Respectfully submitted,



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Counsel for Bestel USA, Inc.

October 31, 2011

LIST OF EXHIBITS

Exhibit A	USAC Letter Decision
Exhibit B	2005 Form 499-A Registration Pages
Exhibit C	2010 Form 499-A Registration Pages
Exhibit D	May 2010 Form 499-Q (Revenue Figures Redacted)

Exhibit A
USAC Letter Decision

Orvis, Douglas D. II

From: Michelle Garber [mgarber@usac.org]
Sent: Wednesday, August 31, 2011 4:38 PM
To: Orvis, Douglas D. II
Subject: RE: Bestel, 819522
Attachments: Bestel 819522 .zip

Doug,

The FCC Forms 499-A and 499-Q collect various address fields for various purposes. Included in these fields are the Headquarters Address (line 109 of the FCC Form 499-A, and line 107 of the FCC Form 499-Q) and the Billing Address (line 208 of the FCC Form 499-A, and line 112 of the FCC Form 499-Q). The instructions to the 2010 FCC Form 499-A explain that line 208 of the form should be used to “provide a billing contact person name and address for administrators to send billing information for contributions to the [universal service support] mechanisms.”^[1] The instructions to the 2010 FCC Form 499-Q explain that line 112 should be used to “provide a billing contact person name and address for administrators to send billing information for contributions to the universal service fund.”^[2] The 2010 FCC Form 499-A instructions further state that “[c]arriers and other telecommunications providers must update registration information within one week of a material change....Registration information includes information reported in Blocks 1, 2-A, 2-B, and 2-C of [the] FCC Form 499-A.”^[3] Businesses associated with the Commission have a responsibility to familiarize themselves with the rules and regulations that are relevant to their business.^[4]

Bestel last reported its Billing Address to USAC on its 2005 FCC Form 499-A. From that point forward, the Billing Address has been left blank on all forms filed by Bestel and, therefore, USAC has made no change to that field in its system. Beginning with the May 2010 FCC Form 499-Q, Bestel updated its Headquarters Address on line 107 from an address in Mexico to an address in San Antonio, TX. From that point forward Bestel continued to use the San Antonio address as its Headquarters Address on line 107 of the FCC Forms 499-Q and line 109 of the FCC Forms 499-A. Bestel continued, however, to leave the Billing Address blank on line 208 of the FCC Forms 499-A and line 112 of the FCC Forms 499-Q. As a result, USAC continued to use the Mexico address for purposes of sending invoices and letters associated with Bestel’s universal service support mechanism contribution obligations.

According to your email, USAC staff appropriately instructed Bestel in mid-2010 to update its billing address by filing an update to the registration information reported on its 2010 FCC Form 499-A. The responsibility lies with Bestel to update its registration information in a timely manner by using the appropriate lines on the FCC Form 499-A. As evidenced by the 2010 FCC Form 499-A instructions, USAC properly relied on the billing lines of Bestel’s 2010 FCC Forms 499-A and 499-Q for sending the company its universal service support mechanism billing/invoicing information. Because Bestel failed to properly complete its FCC Form 499-A, and because there was no error on USAC’s part, USAC will not reverse the DCIA transfers or late payment penalties on these unpaid invoices.

I have attached Bestel’s invoices and Forms 499 for your records. Should you require additional information to reconcile the account, please let me know. Please be advised that, at this point, the company must update its billing address by revising its 2011 FCC Form 499-A and filling the form out completely; most importantly, it must complete line 208. The company should contact the FCC for information on how best to pay off amounts that have been transferred through the DCIA process. The company should pay its August 2011 invoice balance in full as soon as possible to USAC. If it fails to do so, it will continue to accrue interest and penalties.

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The FCC, in its *Comprehensive Review Order*, directed USAC to assess late payment fees on all unpaid balances.^[5] Failure to pay invoiced amounts when due will result in late charges being assessed on the amount outstanding.^[6] The USAC website explains that late payment penalties will not be waived unless the dispute is determined to be the result of a USAC error.^[7] The FCC has rejected the use of self-help remedies by carriers that disagree with USAC's pay-and-dispute policy, denying carrier requests to reverse late fees, penalties and interest assessed based on non-payment of amounts due.^[8]

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Regards,
Michelle

¹ Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 16 (2010) (2010 Instructions).

² Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-Q, at 13 (Apr. 2010 version).

³ 2010 Instructions at 17.

⁴ 47 C.F.R. § 0.406; *accord In the Matter of Universal Service Contribution Methodology Request for Review of a Decision of the Universal Service Administrator by Manitowoc Public Utilities*, WC Docket No. 06-122, Order, DA 11-566, 26 FCC Rcd 4925, 4926, ¶ 4 (2011).

⁵ *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, et al., Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16379, ¶ 14 (2007).

⁶ 47 C.F.R. § 54.713(b).

⁷ See USAC Website, File an Appeal - Paying USAC Bill During Appeal Process, <http://www.usac.org/fund-administration/contributors/file-appeal/> (last visited Apr. 5, 2011).

⁸ *In the Matter of Universal Service Contribution Methodology Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, et al.*, WC Docket No. 06-122, Order, DA 10-187, 25 FCC Rcd 1115, 1120, ¶ 9 (2010); *In the Matter of Universal Service Contribution Methodology Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, WC Docket No. 06-122, Order, DA 08-2695, 23 FCC Rcd 17903, 17907, ¶ 9 (2008).

From: Orvis, Douglas D. II [mailto:douglas.orvis@bingham.com]
Sent: Tuesday, August 23, 2011 4:51 PM
To: Michelle Garber
Subject: RE: Bestel, 819522

Michelle,

Thank you again for your assistance with this matter. Bestel has for some time asked USAC to change its records and send invoices to an address the company has in San Antonio, Texas. Currently, invoices are sent to a non-working address in Mexico. (As an aside, the company originally had planned to move the billing address to a different address in Mexico, but was advised by USAC customer service that a U.S. address would be preferable.) As a result of invoices being mailed to this non-working address, Bestel would receive the invoices

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months late, if at all.

We note that until some time in mid-2010, Bestel was a 100% international carrier. As such, Bestel did not have any USF liability. When Bestel became a direct contributor to the fund, Bestel called USAC customer service in late 2010 to change the address to the correct address so they would get invoices timely. They were told they could only do this through filing a form Form 499-A, which they did. Yet, invoices continue to go to the wrong address. Even the most recent 499-A lists the Texas address.

As a result of this, the company never received its invoices, never had an opportunity to pay timely and was never given notice that debts were due. Thus, USAC's notices sent to remind the company that it had a balance under the DCIA never made it to the company until months later. For instance, letters from March, June and July to the company were only received last week.

It is our understanding that a portion of this debt has been transferred to the FCC and/or Treasury for collection. Presumably, these debt have incurred additional penalties and interest. We say "presumably" because we have received no notices from the FCC about this debt, most likely because any such notices are also being sent to the wrong address.

Bestel would like to pay its invoices subject to review, and approval. But, it believes that any debt at the FCC (or beyond) should be returned to USAC, any charges placed on by the FCC should be reversed as improper, and any interest reversed. Such relief is appropriate given that the company has tried to fix this issue repeatedly, but was told to file a new form (rather than arrange over the phone to get the bills going to the right location), and even when a form was filed, no such changes were made.

In the interim, Bestel will make the current payments until this is worked out, but won't be paying on past due amounts or interest charges as we are only now finding out about these invoices.

We appreciate your assistance with this matter and would be pleased to provide any additional information USAC may require to straighten out this situation.

Best Regards,

Doug

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You should recognize that responses provided by means of this email are akin to ordinary telephone or face-to-face conversations and do not reflect the level of factual or legal inquiry or analysis which would be applied in the case of a formal legal opinion. A formal opinion could reach a different result. We would, of course, be happy to prepare such a definitive statement or formal opinion if you would like us to.

From: Michelle Garber [mailto:mgarber@usac.org]
Sent: Monday, August 22, 2011 12:16 PM
To: Orvis, Douglas D. II

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Subject: Bestel, 819522

Doug,

I've been pulling our records together here so that we can follow up on your call last week. Would you please put your request in an email to me so that I can ensure I respond completely to your request?

Thank you,

Michelle Garber
Director of Financial Operations
USAC
202-772-5251
mgarber@usac.org
www.usac.org

[1] Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 16 (2010) (2010 Instructions).

[2] Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-Q, at 13 (Apr. 2009 version).

[3] 2010 Instructions at 17.

[4] 47 C.F.R. § 0.406; *accord In the Matter of Universal Service Contribution Methodology Request for Review of a Decision of the Universal Service Administrator by Manitowoc Public Utilities*, WC Docket No. 06-122, Order, DA 11-566, 26 FCC Rcd 4925, 4926, ¶ 4 (2011).

[5] *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, et al., Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16379, ¶ 14 (2007).

[6] 47 C.F.R. § 54.713(b).

[7] See USAC Website, File an Appeal - Paying USAC Bill During Appeal Process, <http://www.usac.org/fund-administration/contributors/file-appeal/> (last visited Apr. 5, 2011).

[8] *In the Matter of Universal Service Contribution Methodology Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, et al.*, WC Docket No. 06-122, Order, DA 10-187, 25 FCC Rcd 1115, 1120, ¶ 9 (2010); *In the Matter of Universal Service Contribution Methodology Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, WC Docket No. 06-122, Order, DA 08-2695, 23 FCC Rcd 17903, 17907, ¶ 9 (2008).

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Exhibit B

2005 Form 499-A Registration Pages