

on January 22, 2013 (83 days after the Form 499-Q filing date). Conexions immediately noticed that the amount of its contributions had increased more than ten-fold from their normal levels. Conexions immediately attempted to file a revised Form 499-Q but the filing was rejected based on the 45-Day Rule. Conexions hereby appeals USAC's rejection of its revised Form 499-Q and USAC's invoice based on the incorrect, inflated revenue report, and seeks waiver of the 45-Day Rule.

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 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 Waivers may be granted where, "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁶

Good cause exists to grant Conexions a waiver of the 45-Day Rule in this case. As a result of the erroneous projected revenue information in the original Form 499-Q, USAC has invoiced Conexions for nearly ten times the amount of Conexions' actual USF contribution liability for January 2013, and will continue to invoice Conexions for a comparably inflated amount for each of the three months of first quarter 2013. Conexions cannot simply wait to true

³ 47 C.F.R. §§ 1.3; *see also* 47 C.F.R. § 1.925(b)(3).

⁴ *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also* 47 C.F.R. § 1.925(b)(3)(i).

⁵ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("WAIT Radio"). *See also Request for Review of the Decision of the Universal Service Administrator by Tekoa Academy of Accelerated Studies*, Order, 23 FCC Rcd 15456, 15458 ¶ 5 (WCB 2008).

⁶ 47 C.F.R. § 1.925(b)(3)(ii).

up its first-quarter 2013 revenue reporting in the Form 499-A it will file in April 2014 because paying these overstated invoices would cause the company financial hardship.

The error in Conexions' original Form 499-Q filing occurred because Conexions recently began preparing its universal service regulatory filings using in-house personnel rather than outside contractors in order to assert greater control and oversight over its USF filings. The subject Form 499-Q filing was the first such filing made by Conexions' in-house personnel. Conexions was unaware of the error until it received its first invoice from USAC for first quarter 2013. That invoice came, however, 83 days after Conexions' Form 499-Q submission – well after the 45-day deadline. As soon as Conexions received the inflated invoice, it contacted USAC, ascertained the error, and immediately attempted to revise its revenue information. Because of the 45-Day Rule, however, USAC's system rejected Conexions' attempt to change its revenue projections.

The Wireline Competition Bureau ("Bureau") has "found that there is good cause" to waive universal service filing deadlines where "the missed deadlines were the result of minor ministerial, clerical, or procedural errors,"³ as was the case here. In particular, some of these grants specifically involved filing deadlines that were missed as a result of errors or misunderstandings on the part of the personnel responsible for making the filing which did not

³ *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various High-Cost Universal Service Filing Deadlines*, WC Docket No. 08-71, Public Notice, 27 FCC Rcd 13507 (WCB TAPD 2012) ("Nov. 5 Waiver PN"); *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various High-Cost Universal Service Filing Deadlines*, WC Docket No. 08-71, Public Notice, 27 FCC Rcd 2191 (WCB TAPD 2012) ("Feb. 29 Waiver PN"); *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various High-Cost Universal Service Filing Deadlines*, WC Docket No. 08-71, Public Notice, 27 FCC Rcd 229 (WCB TAPD 2012) ("Jan. 11 Waiver PN").

become apparent until the filer was notified by USAC,⁴ as in Conexions' case. Because Conexions has made a showing of good cause equivalent to these petitioners' showings, it too should be granted a waiver.

The Commission also has found good cause to waive universal service filing deadlines where the missed filing deadline would cause the filer financial hardship.⁵ As noted above, paying the inflated USF assessments resulting from the revenue overstatement on its Form 499-Q would cause the company financial hardship. Consistent with precedent, the Commission should find that this represents good cause justifying a waiver.

Conexions' circumstances are markedly different from those of the petitioners in the *Airband Order* in which the Bureau declined to find good cause for a waiver.⁶ Significantly, all of the petitioners in the *Airband Order* had missed the one-year filing deadline for downward

⁴ See, e.g., Petition for Waiver of Hargray Tel. Co. and Bluffton Tel. Co., WC Docket No. 08-71 (filed Feb. 17, 2012) ("Hargray Petition") (deadline missed due to clerical error by cost consultant; filer unaware of error until contacted by USAC), *granted in Nov. 6 Waiver PN*; Letter Request from Ed Corr, Cinergy MetroNet, Inc., WC Docket No. 08-71 (filed Feb. 1, 2012) (deadline missed due to change in personnel responsibility for the filing), *granted in Nov. 6 Waiver PN*; Letter Request from Chris Bond, Citizens Tel. Coop, WC Docket No. 08-71 (filed Nov. 23, 2011) (deadline missed due to personnel error; filer unaware of error until contacted by USAC), *granted in Feb. 29 Waiver PN*; Petition for Waiver of Cross Wireless LLC, WC Docket No. 08-71 (filed Dec. 6, 2010) ("Cross Wireless Petition") (deadline missed due to consultant's error; filer unaware of error until notified by USAC), *granted in Feb. 29 Waiver PN*; Petition for Waiver of Telenational Communications, WC Docket No. 08-71 (filed Aug. 30, 2011), *granted in Jan. 11 Waiver PN*; Petition of Windstream Communications, Inc. for Waiver, WC Docket No. 08-71 (filed April 13, 2011) ("Windstream Petition") (missed deadline due to inadvertent error by employee; filer unaware of error until notified by USAC), *granted in Jan. 11 Waiver PN*.

⁵ See, e.g., Hargray Petition at 3-4; Cross Wireless Petition at 2; Windstream Petition at 3; Twin Valley Telephone Petition for Waiver, WC Docket No. 08-71 (filed Aug. 9, 2010) at 2, *granted in Jan. 11 Waiver PN*.

⁶ *Requests for Review of Decisions of Universal Service Administrator by Airband Communications Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FC Rcd 10861 (WCB 2010) ("*Airband Order*").

revisions to the revenues reported on their Forms 499-A.⁷ Conexions did miss a Form 499-A filing deadline and is not seeking waiver of the one-year downward revision rule. The Form 499-A filing deadline principally at issue in the *Airband Order* is related to filers' *final* annual reports of revenues for the year; thus, such revisions have a bottom-line impact on the revenue that USAC will receive for the entire funding year. In contrast, USAC is well aware that filers are at liberty to revise their Forms 499-Q to correct inflated revenue projections at year-end in the Form 499-A.⁸ As a result, the Commission and USAC have a greater interest in finality with respect to Form 499-A revisions than with respect to Form 499-Q revisions.

In addition, none of the "numerous safeguards for filers that miss a filing deadline" that the Bureau cited in the *Airband Order* are applicable to Conexions here.⁹ Conexions could not avail itself of the 45-day window to correct its Form 499-Q because it had no notice of its error until USAC's inflated bill was sent on January 11, 2013, well after the 45-day deadline had lapsed. Conexions believes that USAC should have noted the ten-fold spike in Conexions' revenue projections and informed Conexions, within the deadline period, of the obvious error, but USAC failed to do so. Conexions also is not helped by the opportunity to true up its filing on its Form 499-A in April 2014 because doing so would require it to wait for a refund until mid-

⁷ Only one of the ten filers discussed in the *Airband Order* – Via Talk – had also missed a filing deadline for revising its Form 499-Q, but Via Talk also had missed the related deadline to revise its Forms 499-A.

⁸ As noted above, this opportunity is of no benefit to Conexions because making the inflated payments pending its true-up opportunity in April 2014 would cause Conexions financial hardship.

⁹ *Airband Order*, 25 FCC Rcd at 10865 ¶ 9.

year 2014, over one year from now, and doing so would cause Conexions financial hardship, given the significantly inflated contribution amounts that result from the erroneous filing.¹⁰

For the foregoing reasons, good cause exists to grant Conexions a waiver of the 45-Day Rule. Conexions respectfully requests that the Bureau grant the requested waiver, and direct USAC to accept Conexions' revised Form 499-Q with the correct revenue information and issue corrected invoices immediately.

Respectfully submitted,

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¹⁰ The *Airband Order* also notes the one-year deadline for downward revisions to Form 499-A, *id.*, which is irrelevant to Conexions, which has not misstated its revenue on a Form 499-A.

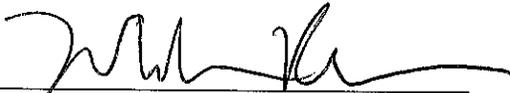
Declaration of Mike Roberson

I declare under penalty of perjury that:

I am Compliance Manager for Conexions LLC dba Conexion Wireless.

I have reviewed the foregoing "Appeal of Decision of the Universal Service Administrator and Request for Waiver" and the facts stated therein are true and correct.

Executed on February 21, 2013.



Mike Roberson

