

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 2055

March 13, 2013

VIA: ECFS: Proceeding 06-122

Subject: FCC Form 499Q **Request for Waiver of Penalty**

Dear Ms. Dortch:

The purpose of this letter is to request a waiver of \$200 in late filing fees billed by USAC in January 2013 for a late November 499Q Filing. Based on the timing of events that occurred in late 2012, we believe it was in the best interest of the FCC and appropriate for NetDiverse to make this "late filing" even though it was not required of NetDiverse to make this filing.

We are filing this WAIVER REQUEST, based on direction from USAC where they state,

"If you agree with USAC that you missed a filing deadline but you think there were extenuating circumstances, USAC cannot waive the deadline. However, you may ask the FCC to waive the rules in your case by filing a request for a waiver with the FCC."

Waiver Request Information:

- NetDiverse, LLC 499 Filer ID:829068
- NetDiverse Contact Information: Gary Nieboer 801-657-5484 gary@netdiverse.com
- Waiver Requested: \$200
- USAC Invoice Date: January 22, 2013
- USAC credit denial Date: February 1, 2013

Waiver Request Justification:

By the end of 3rd Quarter 2012, NetDiverse was and fully expected to continue our de minimis USF status through at least Q1 2013. In late October, NetDiverse began working on an IPVPN project, which was not solidified until mid-November. On November 21st, we sent an email to USAC customer service requesting clarification regarding whether IPVPN was considered a USF applicable product for contribution. The response we received on November 27 was not clear. NetDiverse had to make a decision as some carriers pay USF for IPVPN, and others do not. In early December, we decided that we would pay USF for the IPVPN services we would soon provide.

When we decided that we would pay USF for IPVPN services, we then realized we would no longer be de minimis for USF contributions as early as First Quarter 2013.

Rather than waiting until February for the next 499Q, we decided to file a new November 499Q by December 15th. Unfortunately, we were then billed a \$200 late filing fee on the January 22, 2013 invoice.

We believe we did what was in the best interest of the FCC and USF program. Although we were not required to file the November 499Q, we did so and have now been penalized for filing late.

We request the FCC waives this \$200 late fee as it was in the best interest of the public and FCC for us to file late rather than not at all.

Feel free to call or email us with any questions.

Cordially,

Submitted by ECFS on March 13, 2013

/s/ electronically signed

Gary Nieboer
Managing Member
NetDiverse, LLC