

September 23, 2013

Acting Chairwoman Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Request for Review by ABS-CBN Telecom North America, Incorporated of Decision of Universal Service Administrator*, et al.

Dear Chairwoman and Commissioners:

By this letter, ABS-CBN Telecom North America, Inc. ("ABS-CBN") requests that the Commission take prompt action to reconsider the March 14, 2007 decision of the Wireline Competition Bureau (the "Bureau") rejecting ABS-CBN's Request for Review ("Petition").¹ Consistent with the Bureau's recent decisions concerning Ascent Media Group, Inc. ("Ascent Media"), and American Broadband & Telecommunications ("American Broadband") – which both addressed very similar facts – the Commission should reverse the September 13, 2004 decision of the Universal Service Administrative Company ("USAC")², and direct USAC to accept ABS-CBN's revised FCC Form 499-Q for the 4th Quarter of 2003 submitted on January 29, 2004.

ABS-CBN

ABS-CBN timely filed its FCC Form 499-Q for the 4th Quarter of 2003.³ However, a scrivener's error resulted in the misplacement of a decimal point in the interstate revenue projection, thus causing ABS-CBN's reported interstate revenue figure to be ten times the actual projected revenue. As a result of this error, ABS-CBN lost its eligibility for the limited international revenue exemption ("LIRE") and was billed \$193,000.00 in USF contributions for the 1st Quarter of 2004, which was vastly greater than the company's normal contribution level of approximately \$6,000.00 for an average three-month period.⁴

ABS-CBN received no notice from USAC regarding the loss of its LIRE status nor was it provided any notification of the material difference in its interstate revenue reporting, as compared to prior quarters and years. Instead, ABS-CBN discovered its error only after receipt of USAC's invoice containing the inflated contribution amount, which provided no time to file a revised 499-Q

¹ See generally, Request for Review by ABS-CBN Telecom North America, Incorporated, CC Docket No. 96-45 (filed Nov. 12, 2004); available at <http://apps.fcc.gov/ecfs/document/view?id=6516882235> [hereinafter *ABS-CBN Request for Review*].

² *Id.* at Exhibit C.

³ *Id.* at 3.

⁴ *Id.*

within the 45-day revision window. Instead, ABS-CBN filed a revised FCC Form 499-Q for the 4th Quarter of 2003 on January 29, 2004, as soon after its receipt of the inflated invoice as the Company could file a revision. ABS-CBN also timely paid the full amount of the erroneous invoice.

Despite these efforts to correct the scrivener's error, USAC twice rejected ABS-CBN's attempt to file a revised Form 499-Q on the grounds that it was submitted outside of the 45-day revision window. ABS-CBN appealed USAC's initial decision, which USAC denied on September 13, 2004.⁵ ABS-CBN then filed a request for review of USAC's decision with the Bureau on November 12, 2004.⁶ The Bureau rejected the *ABS-CBN Request for Review* on the grounds that ABS-CBN offered "no explanation for its failure to" file its revised FCC Form 499-Q "in a timely manner."⁷

Ascent Media

Ascent Media timely filed its FCC Form 499-Q for the 3rd Quarter of 2007.⁸ However, Ascent Media mistakenly reported its total projected company revenues instead of its end-user interstate and international telecommunications revenues. As a result, the erroneous invoice, at \$717,000.00, was roughly ten times the normal monthly amount of \$60,000.00.⁹ Once Ascent Media discovered the error, they filed a revised Form 499-Q, and opted to pay the erroneous invoice as well.¹⁰ On January 2008, USAC denied Ascent Media's revised Form 499-Q because it was filed outside of the 45-day revision window.¹¹ USAC denied Ascent Media's appeal January 2008.¹² Ascent Media appealed USAC's decision to the Bureau in February 2008, which the Bureau dismissed as moot in December 2008.¹³ Ascent Media filed a petition for reconsideration of the Bureau's decision on January 19, 2009.¹⁴ The Bureau granted Ascent Media's appeal on May 3, 2013 reasoning that "[1] the timely payment of the sizeable October 2007 invoice – [2] a payment that far exceeded Ascent Media's total adjusted contribution obligation for the fourth quarter of that year -- and [3] the prompt filing of the appeal with USAC" demonstrated good cause for waiving the 45-day revision window.¹⁵

⁵ *Id.*

⁶ *ABS-CBN Request for Review* at 1.

⁷ Federal-State Joint Board on Universal Service, Request for Review by ABS-CBN Telecom North America, Incorporated of Decision of Universal Service Administrator et al., CC Docket No. 96-45, *Order*, DA 07-1276 at ¶ 9 (2007); available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-1276A1.pdf.

⁸ Ascent Media Group Petition for Reconsideration, WC Docket No. 06-122, 2 (filed Jan. 14, 2009); available at <http://apps.fcc.gov/ecfs/document/view?id=6520193547> [hereinafter *Ascent Media Petition*].

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ Universal Service Contribution Methodology for Waiver of Decisions of the Universal Service Administrator Achieve Telecom Network of Massachusetts, LLC, et al., WC Docket No. 06-122, *Order*, DA 08-269 at ¶ 8 (2008); available at http://hraunfoss.fcc.gov/edocs_public/Query.do?mode=advance&rpt=cond.

¹⁴ See generally, *Ascent Media Petition*.

¹⁵ Universal Service Contribution Methodology, Petition for Reconsideration by Ascent Media Group, Inc., *Order on Reconsideration*, WC Docket No. 06-122, DA 13-966 at ¶ 11 (2013); available at

American Broadband

American Broadband timely filed its FCC Form 499-Q for the 2nd Quarter of 2010.¹⁶ However, American Broadband made a significant typographical error by adding an extra zero to the reported number caused the reported figure to be ten times the actual projection.¹⁷ On July 27, 2010, American Broadband filed both a revised Form 499-Q, and a request for waiver of the 45-day revision window. However, American Broadband did not make timely payments of the erroneous invoice. USAC subsequently rejected both filings on November 5 and 22, 2010.¹⁸ American Broadband appealed USAC's decision to the Bureau on December 3, 2010. The Bureau granted American Broadband's appeal on July 22, 2013.¹⁹ The Bureau reasoned that "[g]iven the clerical nature and the magnitude of the error, we find that good cause exists to waive the filing deadline for the revised May 2010 FCC Form 499-Q."²⁰

Analysis

ABS-CBN's situation is very similar to the Ascent Media and American Broadband cases discussed above, and thus deserves equal treatment by the Bureau. Following the more stringent factors used by the Bureau in the *Ascent Media Order*, ABS-CBN: (1) timely paid the erroneous invoice for the 1st Quarter of 2004; (2) paid \$193,000.00 to USAC as a result of the clerical error – a payment that was roughly ten times greater than its normal contribution level of \$6,000.00; and (3) promptly requested that USAC reconsider their initial decision. Furthermore, ABS-CBN's situation meets the less stringent factors used by the Bureau in the *American Broadband Order* – ABS-CBN's typographical error resulted in an invoice that was roughly ten times greater than its normal contribution level.

Conclusion

Thus, in light of the Bureau's recent action with respect to both Ascent Media and American Broadband, the Commission must also reverse the September 13, 2004 decision of USAC with respect to ABS-CBN, and direct USAC to accept ABS-CBN's revised FCC Form 499-Q for the 4th Quarter of 2003 submitted on January 29, 2004. Upon acceptance and processing of the revised

http://hraunfoss.fcc.gov/edocs_public/Query.do?mode=advance&rpt=cond [hereinafter *Ascent Media Order*].

¹⁶ See generally, Emergency Request for Review of Universal Service Administrator Decision and DCIA Interest and Penalty Assessment and Request for Waiver of 45-Day Revision Deadline by American Broadband and Telecommunications, WC Docket No. 06-122 (filed Dec. 3, 2010); available at <http://apps.fcc.gov/ecfs/document/view?id=7020922435>.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ See generally, Universal Service Methodology, Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications, WC Docket No. 06-122, *Order*, DA 13-608 (2013); available at http://hraunfoss.fcc.gov/edocs_public/Query.do?mode=advance&rpt=cond [hereinafter *American Broadband Order*].

²⁰ *Id.* at ¶ 15.

499-Q, ABS-CBN requests the issuance of any and all USAC credits and/or refunds to which it may be entitled. By doing so, the Commission will bring an almost ten year dispute to an end, and act consistent with reasoned regulation and equitable, fair treatment of service providers.

Please contact the undersigned with any questions concerning the matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Marashlian', with a long horizontal flourish extending to the right.

Jonathan S. Marashlian, Esq.

cc: Marlene H. Dortch