

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Emergency Request for Review by Peak	)	WC Docket No. 96-45
Communications, Inc. of a Decision of the	)	
Universal Service Administrator and Request for	)	WC Docket No. 06-122
Waiver of Deadline for Filing Revisions to FCC	)	
Form 499-Q.	)	

**ORDER**

**Adopted: August 12, 2014**

**Released: August 12, 2014**

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent,<sup>1</sup> we grant a request filed by Peak Communications, Inc. (Peak) to reverse a decision by the Universal Service Administrative Company (USAC).<sup>2</sup> USAC rejected Peak's revised November 2013 FCC Form 499-Q because it was filed outside the 45-day deadline for filing such revisions.<sup>3</sup> USAC instead calculated Peak's universal service contribution obligation based on incorrect revenues inadvertently reported by Peak, resulting in a monthly contribution assessment greatly exceeding what it would have been had USAC accepted the revised form.<sup>4</sup> Peak requests that the Commission waive the 45-day deadline for revising its November 2013 FCC Form 499-Q, direct USAC to accept the revised form as if timely filed, and reverse any associated interest, fees, and penalties.<sup>5</sup>

2. Our review of the record indicates that Peak made an inadvertent clerical error on its November 2013 FCC Form 499-Q that significantly overstated its assessable telecommunications revenue, and the company did not discover the error until the revision deadline had passed.<sup>6</sup> Because of

<sup>1</sup> *Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 6150 (Wireline Comp. Bur. 2013) (*Ascent Media Group*); *Universal Service Contribution 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, 28 FCC Rcd 10358 (Wireline Comp. Bur. 2013) (*American Broadband*).

<sup>2</sup> Emergency Request for Review by Peak Communications, Inc. of Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q, WC Docket 96-45 (filed July 15, 2014) (Peak Petition).

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> Because we direct USAC to accept Peak's revised November 2013 filing as if timely filed, Peak's request to avoid having the true-up differential applied to revenues erroneously reported on its initial November 2013 filing is moot.

<sup>6</sup> *Id.* at 4. Peak states that it mistakenly reported on Line 120 of its Form 499-Q its total projected revenue, including non-assessable intrastate and non-telecommunications revenue, instead of its projected end-user interstate and international telecommunications revenue. *Id.* Peak states that USAC did not notify Peak of this error, and the company did not discover the error until January 2014, after the revision deadline had passed, when USAC sent an invoice to Peak reflecting the inflated projected revenues. *Id.*

this clerical error, USAC invoiced Peak for an amount substantially more than what it would typically pay in a given month, and greater than what Peak's contribution obligation would likely be for all of 2014.<sup>7</sup> Peak states that it has already paid the amounts that it would be obligated to contribute had the November 2013 FCC Form 499-Q been filed correctly.<sup>8</sup>

3. We find that Peak has demonstrated good cause for granting a waiver of the 45-day revision deadline for its November 2013 FCC Form 499-Q.<sup>9</sup> We conclude that strict enforcement of the filing deadline and the imposition of the associated interest and penalties in this case would disproportionately penalize Peak. We therefore direct USAC to accept Peak's revised November 2013 FCC Form 499-Q as if timely filed and corrected, and to process it accordingly.

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722, that the request for review and waiver filed by Peak Communications, Inc. IS GRANTED.

5. IT IS FURTHER ORDERED that, pursuant to section 1.102 of the Commission's rules, 47 C.F.R. § 1.102, this Order SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 2. Since the filing of its petition, Peak has taken steps to improve its internal reporting processes, to ensure a similar error is avoided in the future. *Id.*

<sup>9</sup> See generally *Ascent Media Group*, 28 FCC Rcd at 6154-55, paras. 9-11; *American Broadband*, 28 FCC Rcd at 10362-64, paras. 9-15. The Commission may waive any provision of its rules for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 875 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.