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

In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

1998 Biennial Regulatory Review –
Streamlined Contributor Reporting
Requirements Associated with Administration of
Telecommunications Relay Service, North
American Numbering Plan, Local Number
Portability, and Universal Service Support
Mechanisms

CC Docket No. 98-171

Changes to the Board of Directors of the
National Exchange Carrier Associations, Inc.

CC Docket No. 97-21

ORDER

Adopted: November 19, 2004

Released: December 9, 2004

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) modifies the deadline for filing revisions to the annual Telecommunications Reporting Worksheet (Worksheet or Form 499-A). In addition, we update the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (Instructions), to clarify our intention to reject as untimely any Form 499-A revised filing not submitted within twelve months of the due date of the original filing in question, if the revision would decrease regulatory fees or contributions to support mechanisms for universal service, interstate Telecommunications Relay Service, number administration, or local number portability. With regard to universal service contributions, several parties (Petitioners) have filed requests for review of decisions by the Universal Service Administrative Company (USAC) rejecting revised Worksheet filings as untimely under USAC's processing guidelines.¹ We grant such requests and remand them to USAC for consideration as provided in this Order. We also direct USAC to consider, as provided in this Order, any revised Form 499-A filings that are pending before it on the release date of this Order, or that it receives between the release date of this Order and the effective date of this Order.

¹ A list of these requests for review is provided in Appendix A to this Order.

2. Adoption of a firm deadline for filing revisions to the Worksheet will help ensure the stability and sufficiency of the federal universal service fund, as contemplated in section 254(d) of the Communications Act of 1934, as amended (the Act).² We also find that a firm deadline for revised Worksheets will improve the integrity of the universal service contribution methodology and promote efficiency in administration of support mechanisms for universal service, interstate Telecommunications Relay Service, the North American Numbering Plan and Local Number Portability, consistent with the Commission's rules and policies.

II. BACKGROUND

3. The Form 499-A collects information that is used to assess regulatory fees and contributions to federal universal service, interstate Telecommunications Relay Service (TRS), administration of the North American Numbering Plan (NANP), and shared costs of local number portability (LNP).³ In addition, all telecommunications carriers providing interstate telecommunications service must register using the Form 499-A, and all common carriers use the Form 499-A to designate agents in the District of Columbia for service of process.⁴

A. Universal Service

4. Pursuant to section 254 of the Act, all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications are required to contribute to the federal universal service support mechanisms.⁵ Currently, contributions to universal service are based on a percentage of contributor-provided projections of collected interstate and international end-user telecommunications revenues.⁶ This percentage is called the contribution factor.

²47 U.S.C. § 254(d). The Communications Act of 1934 was amended by the Telecommunications Act of 1996. See Pub. L. No. 104-104, 110 Stat. 56.

³See 47 C.F.R. §§ 64.604(c)(5)(iii)(B), 52.17(b), 52.32(b). See also *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 99-175 (rel. July 14, 1999), at para. 1 (*Form Consolidation Order*).

⁴See 47 C.F.R. §§ 64.1195(a), 1.47.

⁵47 U.S.C. § 254(d). See 47 C.F.R. § 54.706(b).

⁶See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 17 FCC Rcd 24952, 24970 (2002) (*Contribution Methodology Order and NPRM*); see also 47 C.F.R. § 54.706(b).

The Commission determines the contribution factor each quarter.⁷

5. The Commission has designated USAC as the neutral entity responsible for administering the universal service support mechanisms, including billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.⁸ Consistent with section 54.711 of the Commission's rules, contributions are calculated and filed in accordance with the Worksheet, which sets forth information that the contributor must submit to USAC on a quarterly and annual basis.⁹ Contributors must file a Form 499-A on April 1 of each year to report their annual revenues from the previous year and file a Form 499-Q on a quarterly basis, on the first day of February, May, August, and November, to report their revenues from the prior quarter and their projections of revenues for the upcoming quarter.¹⁰ Prior to 2003,¹¹ contributors used the Form 499-Q only to report their revenues from the prior quarter.¹² The Form 499-Q is only used for universal service contribution purposes. Any entities that have universal service contributions totaling less than \$10,000 within a particular year are not required to submit universal service contributions, although they may still have to file Worksheets for purposes other than universal service.¹³

6. If a contributor discovers errors in a Form 499-Q, the contributor may file a revised Form 499-Q. As of April 2003, revised Form 499-Q filings are due within 45 days of the original filing date.¹⁴ Prior to April 2003, revised Form 499-Q filings had to be submitted by the filing date for the next Form 499-Q filing.¹⁵ The contributor may also true-up errors from Form 499-Qs when it files the Form 499-A the following year.¹⁶ If a contributor discovers errors in a Form 499-A, however, the contributor must

⁷See 47 C.F.R. § 54.709(a).

⁸See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration*, CC Docket Nos. 96-45, 97-21, 12 FCC Rcd 18400, 18423-24, para. 41 (1997) (*Second Order on Reconsideration*). See also 47 C.F.R. § 54.701.

⁹47 C.F.R. § 54.711(a).

¹⁰See Form 499-A Instructions at 9; Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms at 8 (Form 499-Q Instructions). Unless otherwise indicated, all references are to the 2003 version of the Form 499-Q Instructions.

¹¹The requirement in the *Contribution Methodology Order and NPRM* for contributors to report projected revenues in the Form 499-Q became effective January 29, 2003. See 67 Fed. Reg. 79525 (2002).

¹²*Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752 (2001) (*Form 499-Q Order*).

¹³See 47 C.F.R. § 54.708; 499-A Instructions at 5. As explained below, the Worksheet also collects information for assessing regulatory fees and for contributions to interstate telecommunications relay services, administration of the North American Numbering Plan, and shared costs of local number portability administration. See *infra* para. 8. See also 499-A Instructions at 3.

¹⁴See Form 499-Q Instructions at 9.

¹⁵See *Form 499-Q Order*, 16 FCC Rcd at 5753, n.22; see also 2002 Form 499-Q Instructions at 9.

¹⁶See *Form 499-Q Order*, 16 FCC Rcd at 5752-5753, para. 12.

submit a revised Form 499-A by December 1 of the same filing year.¹⁷ If there is good cause to go beyond the December 1 deadline, a carrier may file a revision late if the revision is accompanied by an explanation of the cause for the change, along with complete documentation showing how the revised figures derive from corporate financial records.¹⁸

7. To improve the accuracy of the revenues reported, the USAC Board of Directors authorized USAC to allow contributors to file new or revised Form 499-As after the original due date for a period of up to twelve months, *i.e.*, March 31 of the subsequent year.¹⁹ According to its processing guidelines, USAC will not accept a revised Form 499-A beyond one year after the original filing deadline if the revision would reduce a contributor's universal service obligation.

B. TRS, NANP, LNP, and Regulatory Fees

8. Contributions to support the interstate TRS fund are calculated using interstate end-user telecommunications revenue for the prior year multiplied by a contribution factor determined annually by the Commission.²⁰ The minimum annual contribution to the interstate TRS fund is \$25.00.²¹ Contributions to numbering administration are a product of a contributor's end-user telecommunications revenues for the prior year multiplied by a contribution factor determined annually by the Commission.²² The minimum annual contribution to the NANP is \$25.00.²³ The shared costs of LNP are funded by contributions from all telecommunications carriers providing telecommunications service in areas served by a particular regional database.²⁴ Part of these LNP contributions come from assessments on intrastate, interstate, or international revenue earned from providing telecommunications service in areas served by a particular regional database.²⁵ Finally, interstate telecommunications providers are required to pay annual regulatory fees based on interstate and international end-user revenues multiplied by a fee factor. If the regulatory fee amount is less than \$10, the entity is exempt from payment of these fees.²⁶ In all the above cases, relevant revenues are reported on the Form 499-A.²⁷

¹⁷See Form 499-A Instructions at 11.

¹⁸See *id.*

¹⁹See Universal Service Administrative Company, Board of Directors Meeting, July 27, 1999 Minutes. <http://www.universalservice.org/board/minutes/board/072799.asp>.

²⁰See 47 C.F.R. § 64.604(c)(5)(iii)(B).

²¹See *id.*

²²See 47 C.F.R. § 52.17(a).

²³See *id.*

²⁴See 47 C.F.R. § 52.32(a).

²⁵See 47 C.F.R. § 52.32(a)(2)(i).

²⁶See 47 C.F.R. § 1.1154; *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, MD Docket No. 04-73, 19 FCC Rcd. 11662, 11714, para. 136 (2004).

²⁷See 47 U.S.C. §§ 64.604(c)(5)(iii)(B), 52.17(b), 52.32(b).

C. Delegated Authority

9. In the *Second Order on Reconsideration*, the Commission delegated authority to the Bureau to waive, reduce, or eliminate the contributor reporting requirements associated with the universal service support mechanisms.²⁸ In a subsequent order, the Commission clarified that this delegation also authorizes the Bureau to “modify” contributor reporting requirements for the TRS, NANP, and LNP funds and to make future changes to the Telecommunications Reporting Worksheet.²⁹ Accordingly, the Commission amended section 54.711(c) to allow the Bureau to “waive, reduce, modify, or eliminate reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.” The Commission reaffirmed that this delegation extends only to making changes to the administrative aspects of the reporting requirements, such as “where and when worksheets are filed,” and not to the substance of the underlying programs.³⁰

III. DISCUSSION

10. In this Order, we modify the Form 499-A Instructions by changing the deadline for contributors to file revised Form 499-As that would result in decreased contribution amounts.³¹ We adopt a twelve-month deadline for filing revisions to the Form 499-A which would result in a decreased contribution amount.³² Accordingly, any revised 499-A that would result in decreased contributions must be submitted by March 31 of the year after the original filing due date. The prior Instructions required revisions within nine months and contemplated the potential for revisions beyond that time period if there was good cause for the delay in filing and an explanation justifying the change. For the reasons described below, however, we now find that a firm twelve-month deadline for revisions that would result in reduced contributions will improve administrative efficiency and certainty for the contribution systems for universal service, TRS, NANP, and LNP. We conclude that adoption of a firm deadline for filing such revisions to the Worksheet will help ensure the stability and sufficiency of the federal universal service

²⁸See *Second Order on Reconsideration*, 12 FCC Rcd at 18442. See also 47 C.F.R. § 54.711(c). At the time of the delegation, this Bureau was known as the Common Carrier Bureau.

²⁹See *Form Consolidation Order*, FCC 99-175, at para. 40.

³⁰*Id.* at para. 39.

³¹These changes to the Form 499-A Instructions are procedural, non-substantive changes to the administrative aspects of the reporting requirements. See *JEM Broadcasting Company, Inc. v. Federal Communications Commission*, 22 F.3d 320 (1994) (holding that the Commission’s “hard look” rules, permitting amendments to broadcast license applications only during a 30-day window, were procedural and thus, notice and comment was not mandated by the Administrative Procedure Act). Because the changes here are “rules of agency organization, procedure, or practice,” we are not required to follow the general procedures for notice and comment of section 553 of the Administrative Procedure Act. See 5 U.S.C. § 553(b)(3)(A). For the same reason, the Commission will not send a copy of this Order to Congress and the General Accounting Office pursuant to the Congressional Review Act. See 5 U.S.C. § 801(a)(1)(A).

³²We note that the Form 499-A replaced Forms 431 (TRS), 457 (universal service), 487 (number portability), 496 (number administration), and that the Form 499-Q replaced the Form 499-S. See *Form Consolidation Order*, FCC 99-175, at para. 6; *Contribution Methodology Order and NPRM*, 17 FCC Rcd at 24952, para. 1. This deadline applies to all prior revenue reporting worksheets, including the Forms 431, 457, 487, 496, and 499-S.

fund, as contemplated in section 254(d) of the Act, as well as the funds for TRS, NANP, and LNP.³³ In addition, we find that a firm deadline for revised Worksheets will improve the integrity of the universal service contribution methodology and promote efficiency in administration of the universal service support mechanisms, consistent with the Commission's rules and policies. Our actions today will allow USAC and other fund administrators to reduce substantially the need for adjustments regarding a given contribution year, providing certainty to contributors and their customers.

11. In our experience, twelve months is a sufficient period of time for contributors to revise their 499-A filings for the purpose of reducing their contribution obligations. With regard to universal service contributions, as discussed above, the quarterly-filed 499-Q contains information about both projected revenue for the upcoming quarter and actual revenue for the past quarter. Each 499-Q filing provides an opportunity to report actual revenue information from the prior quarter. On April 1 of each year, carriers file revenue information for the prior year, which helps to determine whether the revenue information in the prior year's 499-Qs was correct. As a result, the 499-A is an opportunity to correct previously-filed revenue information.³⁴ With the new deadline for filing revisions to the Form 499-A, carriers will have a window of one entire year in which to determine whether revenues reported and contribution amounts paid the prior year was too high. Thus, any revised 499-A that is filed by the new deadline represents a third opportunity for carriers to review and file revenue information for the prior year. With regard to TRS, NANP, and LNP contributions, contributors still have two opportunities to review and file revenue information (*i.e.*, in the original 499-A filing and the revised 499-A filing). We find that twelve months is ample time for a diligent filer to determine what revenues it earned the prior year. Setting a twelve-month deadline for filing revisions to the 499-A as described herein gives contributors adequate time to discover errors, while providing incentive to submit accurate revenue information in a timely manner. We note that this Order will have minimal impact on the payment of regulatory fees because entities pay regulatory fees within four months of the original April 1 Form 499-A submission, and most entities become aware of any need to file revisions at the time of payment.

12. Form 499-As that are filed after the effective date of this Order will be subject to the twelve-month deadline. Thus, contributors will be required to submit revisions to the Form 499-A within twelve months of the original filing deadline, *i.e.*, March 31 of the subsequent year.³⁵ Revised Form 499-As that are submitted after the revision deadline will be rejected by USAC as untimely. Because this Order will become effective after the filing deadline for the 2004 Form 499-A (which was April 1, 2004), contributors will be permitted to submit revisions to the 2004 Form 499-A up to twelve months following the effective date of this Order.

13. As explained above, several Petitioners have filed requests for review of decisions by the Universal Service Administrative Company (USAC) rejecting revised Worksheet filings as untimely under USAC's processing guidelines.³⁶ Because the decision we adopt today does not take effect until thirty days after publication in the Federal Register, these requests (and any other pending requests filed before the effective date of this Order) are subject to the standard currently in effect. Although this Order adopts USAC's one-year deadline for the above-stated reasons, we grant the pending requests for review

³³47 U.S.C. § 254(d).

³⁴*See, e.g., Contribution Methodology Order and NPRM*, 17 FCC Rcd 24952, 24970, 24973, paras. 32, 36.

³⁵Corresponding revisions regarding filing deadlines will be included in the instructions for the 2005 Form 499-A.

³⁶ *See* Appendix A.

to allow USAC to consider if there was good cause to allow revisions beyond the deadline contained in the Instructions. We remand these requests to USAC and direct USAC to revise universal service contribution obligations as appropriate provided that: (1) the Petitioner has demonstrated good cause for submitting the revision beyond the one-year revision window; and (2) the Petitioner has provided “an explanation of the cause for the change along with complete documentation showing how the revised figures derive from corporate financial records.”³⁷ That is, USAC shall only revise contribution obligations to the extent that the carrier has provided accurate and legitimate reasons for filing late and for revising the obligation, in accordance with the existing Worksheet Instructions. The Petitioners are permitted to supplement their filings to USAC as necessary between the release date of this Order and the effective date of this Order. To the extent that a request for review encompasses issues in addition to revised 499-A issues, we remand to USAC only the portion of the request that deals with revised 499-A filings, and retain the remainder of the request for disposition by the Bureau or Commission.

14. In addition, we direct USAC to consider any similarly-situated revised 499-A filings that it receives between the release date of this Order and the effective date of this Order and to revise universal service contribution obligations in accordance with the above guidelines. In the event that there are pending similarly-situated 499-A revisions that were filed with USAC prior to the release date of this Order, we direct USAC also to consider such filings in accordance with the above guidelines. These filers are permitted to supplement their filings to USAC as necessary between the release date of this Order and the effective date of this Order. All filings that are made to USAC in connection with this Order should be captioned, “ATTN: Form 499-A Revision Order” and sent to the Universal Service Administrative Company, 2000 L Street, N.W., Suite 200, Washington, DC 20036.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and the authority delegated under sections 0.91, 0.291, 1.3, and 54.711 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.711, this Order SHALL BE EFFECTIVE thirty days after publication in the Federal Register.

16. IT IS FURTHER ORDERED that, pursuant to authority contained in sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and the authority delegated under sections 0.91, 0.291, 1.3, and 54.711 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.711, the requests for review of decisions by the Universal Service Administrative Company listed in Appendix A are REMANDED to the Universal Service Administrative Company for further review.

³⁷See Form 499-A Instructions at 11.

17. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Chief
Wireline Competition Bureau

APPENDIX A

Requests for Review of USAC Decisions Rejecting Revised Form 499-As

<u>Petitioner</u>	<u>Date Filed</u>
Access One, Inc.	November 23, 2004
Airnex Communications, Inc.	December 4, 2003
Alliance Group Services	October 31, 2001
ARC Networks, Inc.	November 20, 2001
Bright Personal Communications Services, LLC	February 10, 2003
Business Discount Plan, Inc.	March 3, 2003
Cooperative Communications, Inc.	October 3, 2002
Crown Communication, Inc.	July 23, 2002
Dial-Thru, Inc.	February 17, 2004
Eagle Communications, Inc.	November 26, 2003
Equant Inc.	September 25, 2003
Eureka Networks f/k/a Eureka Broadband Corporation	September 30, 2004
GE Business Productivity Solutions, Inc.	July 3, 2002
Griggs County Telephone Company	April 22, 2002
Morris Communications, Inc.	July 12, 2002
New Hope Telephone Company	July 3, 2002
SBC Communications, Inc.	November 9, 2004
SES Americom, Inc.	October 27, 2003
Total Communications Services, Inc.	September 8, 2003