

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

In the Matter of
Requests for Review of Decisions of the Universal
Service Administrator by Achilles Networks, Inc.,
et al.
WC Docket No. 06-122

ORDER

Adopted: April 29, 2010

Released: April 29, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny thirteen requests for reversal of late fees associated with the untimely filing of the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q). We find that the petitioners have failed to demonstrate that good cause exists to grant the requests, as more fully discussed below. We further direct the Universal Service Administrative Company (USAC) to continue efforts to collect any late payment fees that have been assessed on the petitioners listed in the attached Appendix.

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms

1 Letter from Charles Penachio, Jr., Achilles Networks, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed June 8, 2009) (Achilles Letter); Letter from Paul Vingiello, Bayou Internet, to Secretary, FCC, WC Docket No. 06-122 (filed Jan. 25, 2010) (Bayou Letter); Letter from Larry Scott, Cal Tel Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Jan. 8, 2009) (Cal Tel Letter); Letter from Larry Scott, CalTel Inc. of North Carolina, to Secretary, FCC, WC Docket No. 06-122 (filed Jan. 8, 2009) (Cal Tel North Carolina Letter); Letter from Cherie Chen, China Unicom USA Corp., to Secretary, FCC, WC Docket No. 06-122 (filed Aug. 14, 2008) (China Letter); Letter from Linh Nguyen, HereUAre Communications, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Aug. 12, 2008) (HereUAre Letter); Letter from Suraz Ibrahim, Kouso Communications, LLC, to Secretary, FCC, WC Docket No. 06-122 (filed Mar. 13, 2009) (Kouso Letter); Letter from Vern Larsen, Larsen Communications, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Aug. 26, 2008) (Larsen Letter); Letter from Sol Pitchon, Lugus Technologies Ltd. Co., to Secretary, FCC, WC Docket No. 06-122 (filed Mar. 24, 2010) (Lugus Technologies Letter); Letter from Romauldus Dauksa, Phone Mex, to Secretary, FCC, WC Docket No. 06-122 (filed Mar. 31, 2010) (Phone Mex); Letter from Scott Boone, Salina-Spavinaw Telephone Company, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Aug. 2, 2007) (Salina-Spavinaw Letter); Letter from Larry Scott, South Bell Payphones, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Jan. 8, 2009) (South Bell Letter); Letter from Kathleen J. Gerke, 10D Telecom, Inc., to Secretary, FCC, WC Docket No. 06-122 (filed Nov. 24, 2008) (10D Letter) (collectively, the petitioners). A full list of petitioners is contained in the Appendix. The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to consider requests for review of decisions by USAC. 47 C.F.R. § 54.722(a).

2 See Appendix.

established by the Commission to preserve and advance universal service.<sup>3</sup> To this end, the Commission has determined that any entity that provides interstate telecommunications services to the public for a fee must contribute to the universal service fund.<sup>4</sup> The Commission further directed that contributions should be based on contributors' interstate and international end-user telecommunications revenues.<sup>5</sup>

3. In the *Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use in computing their universal service contributions.<sup>6</sup> The Commission also designated USAC as the entity responsible for administering the universal service support mechanisms.<sup>7</sup> Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets with USAC.<sup>8</sup> USAC reviews these filings and verifies the information provided by the contributors.<sup>9</sup> USAC also bills contributors for their universal service contributions.<sup>10</sup> Contributors report historical revenue on the annual Telecommunications Reporting Worksheet (FCC Form 499-A), which is generally filed on April 1 each year.<sup>11</sup> Contributors project future quarters' revenue on the quarterly Telecommunications Reporting Worksheets (FCC Forms 499-Q), which are generally filed on February 1, May 1, August 1, and November 1.<sup>12</sup> The projected revenue information provided on the FCC Form 499-Q determines each contributor's obligation to the universal service fund on a quarterly basis and USAC bills carriers each month based on this obligation.<sup>13</sup>

4. The Commission's rules establish a contributor's obligation to file the FCC Form 499-Q and FCC Form 499-A.<sup>14</sup> A contributor's timely filing of these forms is an essential administrative requirement that serves the public interest. The failure of carriers to abide by the federal filing obligations has a direct and profound impact on the Commission's universal service program, by removing from the

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<sup>3</sup> 47 U.S.C. § 254(d).

<sup>4</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund. See, e.g., *Universal Service Contribution Methodology*, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol (VoIP) providers to contribute to the universal service fund because they are providers of interstate telecommunications).

<sup>5</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 787; see 47 C.F.R. § 54.706.

<sup>6</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

<sup>7</sup> *Id.* at 18415, para. 25.

<sup>8</sup> 47 C.F.R. § 54.711(a) (setting forth reporting requirements in accordance with Commission announcements in the Federal Register).

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 54.702(b).

<sup>11</sup> See Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Apr.22, 2010) (USAC Form 499 Filing Schedule).

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 54.711(a).

<sup>14</sup> See 47 C.F.R. §§ 54.706, 54.711, and 54.713 (requiring all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to file the annual Telecommunications Reporting Worksheet (FCC Form 499-A) and the quarterly Telecommunications Reporting Worksheets (FCC Form 499-Q)).

actual or projected contribution base revenues that otherwise should be included. Failing to file timely also shifts to compliant carriers a disproportionate financial burden.<sup>15</sup> One way to encourage providers to file their FCC Forms 499-A and 499-Q timely is to impose late filing fees.<sup>16</sup>

5. The petitioners seek reversal of late fees imposed by USAC for their failure to timely file the FCC Form 499-A and Form 499-Q.<sup>17</sup> Petitioners contend, *inter alia*, that they were unaware of their obligation to file the forms,<sup>18</sup> ignorant of the process for electronically filing the forms,<sup>19</sup> or had otherwise failed to file the forms.<sup>20</sup> For example, Bayou Internet, Cal Tel, Inc., and China Telecom each argue that they filed their FCC Forms 499-A via U.S. mail and then resubmitted the forms when they realized that USAC had not received them.<sup>21</sup> Kouso Communications, Inc., Larsen Communications, and Salina-Spavinaw state that their respective late filings were the result of forgetting to file their certifications online.<sup>22</sup>

### III. DISCUSSION

6. We conclude that the petitioners have failed to demonstrate that good cause exists to grant the requests for reversal of the fees assessed for late filing of the FCC Forms 499-A and FCC Forms 499-Q.<sup>23</sup> We therefore find that USAC correctly assessed the late filing fees at issue in accordance with Commission rules and requirements.<sup>24</sup>

7. The Commission's rules clearly establish a contributor's obligation to file the Telecommunications Reporting Worksheets.<sup>25</sup> A contributor's timely filing of these forms is an essential

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<sup>15</sup> See, e.g., *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9979, para. 14 (2006) (*Local Phone Services*); *Globcom, Inc, d/b/a Globcom Global Communications.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896, para. 6 (2003) (*Globcom*).

<sup>16</sup> See *Request for Review by Atlantic Digital, Inc. of the Decision of the Universal Service Administrator*, CC Docket No. 96-45, Order, 20 FCC Rcd 4224, 4225, para. 3 (Wireline Comp. Bur. 2005) (*Atlantic Digital*).

<sup>17</sup> See *supra* n.1.

<sup>18</sup> See e.g., Achilles Letter at 1; HereUAre Letter at 1.

<sup>19</sup> See, e.g., Kouso Letter at 1; Larsen Letter at 1; Salina-Spavinaw Letter at 1.

<sup>20</sup> See, e.g., Bayou Internet Letter at 1; Cal Tel Letter at 1; Cal Tel of North Carolina Letter at 1; China Letter at 1; Lugus Technologies Letter at 1; Phone Mex Letter at 1; South Bell Letter at 1; 10D Letter at 2.

<sup>21</sup> See, e.g., Bayou Internet Letter at 1; Cal Tel Letter at 1; China Letter at 1; South Bell Letter at 1.

<sup>22</sup> See, e.g., Kouso Letter at 1; Larsen Communications Letter at 1; Salina-Spavinaw Letter at 1.

<sup>23</sup> The Commission may waive any provision of its rules on its own motion and 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*, 897 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, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver). Although some of the petitioners have requested that the Bureau review USAC's decision under section 54.723 of the Commission's rules, we find the appropriate procedural relief is a request to waive the filing deadline. Compare 47 C.F.R. §§1.3 with 54.723(a).

<sup>24</sup> See 47 C.F.R. § 54.713.

<sup>25</sup> See 47 C.F.R. §§ 54.706, 54.711, and 54.713 (requiring all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate service to file the annual FCC Form 499-A and

administrative requirement that serves the public interest. The filing of an FCC Form 499-A or Q prompts an accurate determination of liability for, and subsequent billing and collection of, universal service contribution payments by USAC. The Commission has held that the failure of a carrier to abide by its federal filing obligations has a direct and profound impact on the Commission's regulatory programs, by removing from the base of these programs revenues that otherwise should be included, thereby shifting to compliant carriers disproportionate economic burdens associated with the universal service support mechanisms.<sup>26</sup> One way to ensure that carriers file the required revenue data on the FCC Form 499-A and FCC Form 499-Q on a timely basis is for USAC to impose late filing fees.<sup>27</sup>

8. We find that USAC correctly enforced the late filing fee. Although the petitioners provide several arguments explaining the reasons for their late filings, we do not find that good cause exists to reverse the assessments for petitioners, particularly when viewed in the context of the important regulatory goals thwarted by the petitioners' failure to timely file the forms, as discussed above.<sup>28</sup> We direct USAC to continue efforts to collect any late fees associated with these entities' late filing of the forms.

9. We also take this opportunity to remind all filers of the importance of timely filing their FCC Forms 499-A and FCC Forms 499-Q. The due dates for filing the forms are listed above and can be found on USAC's website.<sup>29</sup> We also remind filers that filings can be made electronically through USAC's website and that the FCC Forms 499-A and FCC Forms 499-Q can be submitted in advance of the filing deadlines.<sup>30</sup> We caution filers that the submission of the form is considered timely based upon the date on which USAC receives the form and not on the date of the postmark.<sup>31</sup>

#### IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, 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 pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the requests for refund of late filing fees for filers listed in the Appendix IS DENIED.

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the quarterly FCC Forms 499-Q four times a year. See Telecommunications Reporting Worksheet Instructions, FCC Form 499-A (2010).

<sup>26</sup> See, e.g., *Local Phone Services*, 21 FCC Rcd at 9979, para. 14; *Globcom*, 18 FCC Rcd at 19896, para. 5.

<sup>27</sup> See *Atlantic Digital*, 20 FCC Rcd at 4225, para. 3.

<sup>28</sup> See *supra* para. 4.

<sup>29</sup> See *supra* para. 3; USAC Form 499 Filing Schedule.

<sup>30</sup> See <http://www.usac.org/fund-administration/forms/> (last visited Apr. 29, 2010).

<sup>31</sup> *Atlantic Digital*, 20 FCC Rcd at 4225-26, paras. 3, 5.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

## APPENDIX A

<b>Company Name</b>	<b>Filer ID</b>	<b>Date Request for Review Filed</b>
Achilles Networks, Inc.	827493	June 8, 2009
Bayou Internet	825997	Jan. 25, 2010
Cal Tel. Inc.	820292	Jan. 8, 2009
Cal Tel Inc. of North Carolina	812867	Jan. 8, 2009
China Unicom USA Corp.	924402	Aug. 14, 2008
HereUAre Communications, Inc.	826119	Aug. 12, 2008
Kouso Communications, LLC	821626	Mar. 13, 2009
Larsen Communications	822924	Aug. 26, 2008
Lugus Technologies Ltd. Co.	823350	Mar. 24, 2010
Phone Mex	812974	Mar. 31, 2010
Salina-Spavinaw Telephone Company, Inc.	808796	Aug. 2, 2007
South Bell Payphones, Inc.	825294	Jan. 8, 2009
10D Telecom, Inc.	826389	Nov. 24, 2008