

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 10-90
)	
Request for Review of Decision of the Universal)	WC Docket No. 06-122
Service Administrator by Mark Twain Telephone)	
Company)	

Mark Twain Rural Telephone Company

PETITION FOR RECONSIDERATION AND REQUEST FOR WAIVER

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Summary

Mark Twain Rural Telephone Company (“Mark Twain”) is a rural incumbent local exchange carrier (“ILEC”) that serves northeast Missouri. As a provider of interstate communications, Mark Twain is required to file FCC Form 499-A annually, and Mark Twain timely filed its FCC Forms 499-A from 2018 - 2022. Since Mark Twain elected not to assess an end user Subscriber Line Charge (“SLC”) for the benefit of its subscribers, it reported \$0 of interstate revenue on Line 405, as per the Form 499-A instructions. The Universal Service Administrative Company (“USAC”) ultimately rejected Mark Twain’s filings for 2018 and 2019 on the basis that ILECs must recover a portion of the local loop through a flat-rate SLC assessed on the end-user customer. After appealing USAC’s decision to the Wireline Competition Bureau (“Bureau”), the Bureau issued an Order holding that Mark Twain was not required to charge its end user customers an itemized SLC, but that Mark Twain was required to report interstate loop revenue on Line 404 of its Form 499-A submissions, and ordered Mark Twain to file corrections to its Forms 499-A from 2018 – 2022.

Mark Twain should not be responsible for retroactive contributions and petitions the Bureau to reconsider its holding on that issue, or alternatively, grant a waiver of the reporting requirements for Mark Twain’s Form 499-A 2018 – 2022 filings. The Bureau itself has acknowledged that the instructions for Form 499-A lack guidance on how to report and calculate interstate revenues, and that relevant language was erroneously deleted from the instructions. Indeed, on the same day it issued its Order, the Bureau also published a *Notice of Proposed Rulemaking* (“NPRM”) seeking comment on proposed changes to the Form 499-A instructions that would clarify that ILECs should identify interstate revenues on Line 404. Had Mark Twain been on notice of the guidance promulgated in the Bureau’s Order or proposed in the *NPRM* it

would have collected additional revenue (whether through a SLC or other line item on subscribers' bills) from its customers and reported interstate revenue on its filings during the previous years. However, Mark Twain cannot now charge its customers retroactively, and as such, fairness dictates that Mark should not be liable for retroactive contributions.

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PETITION FOR RECONSIDERATION AND REQUEST FOR WAIVER

Mark Twain Rural Telephone Company (“Mark Twain” or “Company”), by its attorneys, and pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ hereby petitions the Wireline Competition Bureau (“Bureau”) to reconsider its order in the above-captioned proceeding (“Order”), which directed Mark Twain to file corrections to its 2018-2019 Forms 499-A (and subsequent years)² to reflect either a Subscriber Line Charge (“SLC”) or the interstate portion of its revenue associated with its local exchange service, for the purpose of computing contributions to the Universal Service Fund (“USF” or “Fund”).³ While the Bureau reversed a Universal Service Administrative Company (“USAC”) decision that Mark Twain was required to charge its end-user customers an itemized SLC, the Bureau also clarified

¹ 47 CFR § 1.106; *see also* 47 U.S. Code § 405.

² The filings impacted by the Commission’s Order are the Forms 499-A for the years 2018-2022, for revenue for calendar years 2017 - 2021 respectively.

³ To the extent necessary, Mark Twain also requests a waiver of Section 1.7 of the FCC’s rules to allow receipt of the confidential paper filing at the FCC’s Annapolis, MD facility. Pursuant to Section 1.3 of the FCC’s rules, good cause of this waiver exists. Mark Twain filed the final redacted version via ECFS and e-mailed a copy of the final password protected confidential version to FCC staff prior to the filing deadline. Because the Annapolis facility is no longer accepting courier or in person deliveries due to the COVID-19 pandemic, Mark Twain mailed the final confidential version via overnight delivery to be received the following business day. Since both the redacted and unredacted versions were submitted to the FCC and staff prior to the deadline, no harm will come from a grant of this limited waiver request, and FCC review of this Petition is in the public interest.

its instructions on Form 499-A and held that end user revenues attributable to the interstate jurisdiction for contribution purposes must be reported on Form 499-A as revenue on Line 404.⁴ However, this Bureau clarification was neither clear nor available to Mark Twain or any other reporting entity previously. Notably, the Bureau itself acknowledges that “the Form 499-A instructions currently lack express language about how to report and calculate these revenues.”⁵ Accordingly, the rules regarding the contributions were vague and unclear for situations where the SLC charge was zero. Indeed, the Bureau concedes that the instructions for Form 499-A regarding Line 404 were “perhaps erroneously deleted” from the form in 2013 and that the Bureau “intends to revise” them in the future to direct incumbent local exchange carriers (“ILECs”) to identify the interstate portion of fixed local exchange service revenues on line 404.⁶

Further, the little guidance Mark Twain received from USAC regarding amending its Forms 499-A was also inaccurate and subsequently invalidated by the Order’s holding that the Commission’s rules do not require ILECs to charge their customers an itemized SLC. While Mark Twain will in good faith, in filings going forward, follow the new guidance set out by the Bureau, Mark Twain should not be responsible for retroactive contributions and petitions the Bureau to overturn its holding on that issue. The Bureau should also order USAC to restore funding of the principal that USAC has been withholding from Mark Twain for [REDACTED] plus interest accrued consistent with federal court procedures.⁷

Alternatively, if the Bureau denies this Petition for Reconsideration, Mark Twain requests that the Bureau grant a waiver, pursuant to Section 1.3 of the Commission’s rules, of the

⁴ See *Universal Service Contribution Methodology, Request for Review of Decision of the Universal Service Administrator by Mark Twain Telephone Company*, WC Docket No. 10-90, WC Docket No. 06-122, Order (Rel. July 15, 2022) (“Order”) at ¶ 18.

⁵ Order at ¶ 23.

⁶ Order at n. 62.

⁷ See 28 U.S.C. § 1961(a).

requirement to report interstate contributions for the years 2017- 2021. The Bureau should also restore funding of [REDACTED] plus accrued interest because Mark Twain had no prior notice of the clarification released in the Order and the absence of any indication to this effort in the instructions following their deletion nearly a decade ago.

I. BACKGROUND

Mark Twain is a rural ILEC headquartered in Hurdland, Missouri, that serves a large study area in the northeast part of Missouri. Mark Twain is a Model Carrier since it was authorized for A-CAM I support in 2017.⁸ As a provider of interstate communications, Mark Twain is required to file FCC Form 499-A annually, and Mark Twain timely filed its FCC Form 499-A from 2018- 2022. Consistent with Section 69.104(q) and Section 69.104(s) of the FCC's rules, Mark Twain elected not to assess an end user SLC for the benefit of its subscribers and did not record such a charge on the end user's bill.⁹ As such, it reported \$0 interstate revenue on Line 405 of its 2018 and 2019 Form 499-A filings, as per the Form 499-A instructions.¹⁰ This action resulted in a reduction in interstate revenues reported to USAC on Line 405 compared to the Company's prior Form 499-A submissions (before it had elected to participate in A-CAM).¹¹ After several discussions and emails, USAC sent a Decision Letter to Mark Twain on October 16, 2020, stating that it rejected the Company's 2018 and 2019 filings on the basis that ILECs

⁸ See *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 17-99, 32 FCC 842, 849 (rel. Jan. 24, 2017).

⁹ See C.F.R. §§ 69.104(q) and (s) (prescribing maximum SLC charges, but not mandating any minimum SLC charge).

¹⁰ See, e.g., Federal Communications Commission, 2018 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), Jan. 2018 at 26; Federal Communications Commission, 2019 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), Jan. 2019 at 26. See also Section II. A., *infra*.

¹¹ As the Bureau acknowledges, the Commission "created the High-Cost Fund in part to supplement incumbent LECs' revenues to ensure they could cover their loop costs." Order at ¶ 6. After electing to participate in A-CAM, Mark Twain decided not to recover SLCs from its customers and as such has nothing to report for interstate local loop revenues. Moving forward, Mark Twain will charge its subscribers a portion of the local loop costs and will report the interstate revenue to USAC.

must recover a portion of the local loop through a flat-rate SLC assessed on the end-user customer.¹²

Pointing out that no Commission rule requires charging SLCs to its customers, Mark Twain filed a timely appeal of USAC's Decision Letter on November 16, 2020.¹³ In a letter dated September 10, 2021, USAC once again rejected Mark Twain's Forms 499-A submissions as non-compliant, based on the fact that "the Company ceased to impute a Subscriber Line Charge . . . to recover common line costs and report those revenues as interstate revenue on its Forms."¹⁴ On November 8, 2021, Mark Twain filed a Petition for Review of USAC's decision, asking the Commission to 1) confirm Mark Twain's understanding that, as a Model Carrier, the Company is not required to assess an end user SLC rate and therefore is not in violation of Section 69.104 of the Commission's rules and 2) reverse USAC's decision and restore funding.¹⁵

On July 15, 2022, the Bureau issued an Order reversing USAC's determination that ILECs have to charge their customers an itemized SLC.¹⁶ However, the Bureau held that the decision not to charge an SLC or equivalent as a separate interstate line item on a customer's bill does not relieve ILECs of their obligation to contribute to the USF based on their interstate loop revenues and that such revenues should be reported on line 404.¹⁷ Accordingly, the Bureau ordered Mark Twain to file corrections to its 2018 and 2019 Forms 499-A (and any subsequent

¹² See USAC Decision Received by Company, Oct. 16, 2020 (Exhibit A).

¹³ See *Mark Twain Rural Telephone Company's Request for Review of Decision of the Universal Service Administrator* (filed Nov. 16, 2020) (Exhibit B).

¹⁴ See USAC Decision Received by Company, Sept. 10, 2021 (Exhibit C) at 1.

¹⁵ Mark Twain Rural Telephone Company Petition for Review of Decision of USAC, WC Docket Nos. 10-90 and 06-122 (filed Nov. 8, 2021) ("Request for Review"). In its Request for Review, Mark Twain requested a restoration of funding of [REDACTED] plus interest accrued. *Id.* at 2. However, the total contribution amount would likely be much more if the Bureau's Order is applied retroactively.

¹⁶ Order at ¶ 16.

¹⁷ *Id.* at ¶ 18.

years) to reflect either an SLC or the interstate portion of its revenue associated with its local exchange service.¹⁸

While Mark Twain will in good faith comply with the Bureau's new protocols going forward as the Bureau may adopt them following the revisions it intends to make, the Company should not be liable for retrospective contributions because language expressly mandating such treatment was deleted a decade ago and even the Bureau itself acknowledges that the 499-A instructions pertaining to SLCs and the computation of local exchange service revenue since that time was ambiguous and vague, as discussed *infra*.

II. DISCUSSION

A. The Form 499-A Instructions Were Vague and Unclear.

The Company timely filed its Forms 499-A from 2018 - 2022 and followed the instructions specified by the FCC in the Reporting Worksheet Instructions. Those instructions stated that “[t]elecommunications providers that do not have SLC . . . tariffs on file with the Commission or with a state utility commission, . . . or that do not have separately stated charges for the interstate portion of fixed local exchange service or interstate exchange access should report \$0 [revenues] on Line 405.”¹⁹ Notably absent from the instructions was any direction on how to calculate the interstate portion of fixed local exchange service revenue for federal universal contribution purposes or that such revenue should be reported on any other line.

¹⁸ *Id.* at ¶ 23.

¹⁹ *See, e.g.*, Federal Communications Commission, 2018 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), Jan. 2018 at 26; Federal Communications Commission, 2019 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), Jan. 2019 at 26.

In June 2020, shortly after being notified that USAC was requesting revision of the 2018 and 2019 Forms 499-A's, Mark Twain alerted USAC that its instructions for calculating interstate loop contributions for USF purposes were unclear. Specifically, Mark Twain wrote that "[g]iven that no FCC regulations specify how A-CAM carriers are to calculate the required interstate portion of fixed local exchange local service revenue for federal universal service contribution purposes, Mark Twain seeks USAC guidance on how to proceed."²⁰ Apart from asserting that Mark Twain needed to impute a SLC to recover costs and report those as revenue (an assertion that the Bureau Order ultimately rejected), USAC never responded or provided such guidance.²¹

The Commission has held in a 2015 case that "when there is an ambiguity between the Rules and FCC form instructions, "the Commission generally defers to an applicant's reasonable interpretation of both."²² In that case, there was a discrepancy between the requirements for established local points as outlined in the Rules and as explained in the instructions and worksheets for the related FCC Form 340. The FCC found that since the instructions for Form 340 may reasonably be read differently, it would be "unfair" to enforce the rule against the petitioner.²³ The Commission further directed the Bureau to change its instructions to better conform with the rule.

Here, similarly, there is ambiguity in the instructions to FCC Form 499-A. The Bureau has acknowledged that its instructions are ambiguous regarding how contributors that do not charge a SLC must allocate revenues between the interstate and intrastate jurisdictions for USF

²⁰ See June 3, 2020 Letter from Jim Lyon, CEO & General Manager of Mark Twain to Tracey Pilsch (Exhibit D).

²¹ See July 24, 2020 Email from Jim Lyon to Tracey Pilch (Exhibit E); October 16, 2020 Letter from USAC to Jim Lyon (Exhibit F).

²² *Consideration of 7 Grps. Of Mutually Exclusive Applications for Permits*, 30 FCC Rcd 5161, 5182 (2015).

²³ *Id.*

contribution purposes and where those should be reported.²⁴ Indeed, in 2012, the Form 499-A Instructions included the following language:

Line 404 should not include subscriber line charges levied under a tariff filed by the filer or placed on customers bills as a pass-through of underlying carrier subscriber line charges. Filers should instead report such revenues on line 405. *Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange services; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of the appropriate line 404.1-404.5.*²⁵

The Bureau concedes that this language was “perhaps erroneously deleted from the instructions” in subsequent years and that “[t]he Bureau intends to revise the Form 499 instructions to add back in this clarifying language to the instructions before the next 499-A forms are due in 2023.”²⁶ This is a stunning disclosure given that the Bureau now expects Mark Twain to be financially liable for contributions for which it acknowledges the instructions were unclear.

Indeed, on the day that the Order was released, the Bureau also published a *Notice of Proposed Rulemaking* (“NPRM”) seeking comment on proposed changes to FCC Form 499-A and the accompanying instructions.²⁷ Specifically, the Bureau proposed an additional instruction for Line 404, reinstating the language from the 2012 instructions and adding an additional reference to ILECs:

Line 404 should not include subscriber line charge levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber charges. Filers should instead such revenues on line 405. *Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received*

²⁴ See Order at n. 61.

²⁵ See 2012 Instructions to the Telecommunications Reporting Worksheet, Form 499 A at 15 (emphasis added); see also Order at n. 62.

²⁶ Order at n. 62.

²⁷ See *Wireline Competition Bureau Seeks Comment on Proposed Changes to the FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, WC Docket No. 06-122, DA 22-764 (July 15, 2022).

*by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Incumbent LEC filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of the appropriate line 404.1-405.5. Line 404.1-404.5 should, however, include revenues from federally tariffed LNP surcharges, which should be identified as interstate revenues.*²⁸

This proposed language regarding ILECs included a footnote citing to the very Order that Mark Twain is appealing and which it obviously had no notice of when it made its 2018 – 2022 Form 499-A filings.

Fairness requires that Mark Twain not be penalized for following existing instructions when it had no prior notice of the Bureau’s clarification. While the Bureau states that “[t]he fact that the Form 499-A Instructions currently lack express language about how to calculate and report these revenues in no way relieves Mark Twain of its regulatory obligations to report all of its interstate revenues,”²⁹ the fact that the Bureau is revising those very instructions in 2023, and has issued an *NPRM* citing to the Order pertaining to Mark Twain and not any previous orders or guidance, speaks volumes. Mark Twain should not be penalized for its reasonable interpretation of the instructions as they appeared when Mark Twain made the filings, when it had no prior notice of the Commission’s clarification. Indeed, it would be unjust to expect a small rural ILEC, which relied on the explicit instructions on the 499-A and complied with them as written, to suffer financial losses all because the FCC provided insufficient guidance. Moreover, holding Mark Twain liable for such ambiguity *in the face of the prior deletion of the language indicating it should calculate and report revenues in this manner* would be patently unfair and arbitrary.

B. Mark Twain Should Not Be Responsible for Retroactive Contributions.

²⁸ *Id.* at Appendix B, p. 26 (*emphasis added*).

²⁹ *Id.* at ¶ 23

The Order states that while Mark Twain does not have to charge a SLC, that it “must select another mechanism to determine its interstate exchange access revenues, whether that method involves using the maximum SLC permitted by the Commission’s rules as a proxy for those interstate revenues, or a cost study to estimate an amount that is below the maximum allowable SLC amount if its cost permits it to do so.”³⁰ The Order further specifies that this amount should be reported on Line 404 of its Form 499-A submissions.³¹

While Mark Twain fully intends to comply with any instructions going forward that may reinstate the pre-2013 treatment of such revenues, the Company should not be liable for contributions for failing to do so in its Forms 499-A from 2018 – 2022. Had Mark Twain been on notice of the guidance promulgated in the Bureau’s Order, it would have collected additional revenue (whether through a SLC or other line item on subscribers’ bills) from its customers and complied during each of those years. However, Mark Twain cannot now charge its customers retroactively. As discussed *supra*, Mark Twain, in good faith, followed the instructions as they were available on Form 499-A and even sought clarification on the matter from USAC on multiple occasions. USAC’s response – that Mark Twain should have imputed SLCs to recover common line costs – was rejected by the Bureau in its Order. Given that the Bureau has acknowledged that the clarifying instructions regarding Line 404—the very line the Bureau wants Mark Twain to correct—were “erroneously deleted,” and it is now amending those instructions based on its decision in this case, the clarification provided by the Order regarding Line 404 should only apply prospectively.

C. In the Alternative, Mark Twain Requests a Waiver.

³⁰ *Id.* at ¶ 20.

³¹ *Id.*

To the extent Mark Twain’s Petition for Reconsideration is denied, Mark Twain requests a waiver of the computation of local loop revenue as applied to Mark Twain’s 2018 – 2022 Forms 499-A. Pursuant to Section 1.3 of its rules, the Commission may waive any provision of its rules “if good cause therefor is shown.”³² The Commission has found that good cause exists to waive its rules “where special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule.”³³ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁴

The factual circumstances here are certainly unique, given that the Bureau has acknowledged that the instruction to report local exchange service revenue on Line 404 was “erroneously deleted from the instructions.” As discussed *supra*, Mark Twain acted in good faith in filing its 2018 – 2022 Forms 499-A and requested guidance on how to proceed when USAC rejected it.³⁵ As such, Mark Twain should not be penalized for not having the benefit of the clarification that the recent Order set forth.

Further, requiring Mark Twain to make retroactive contributions would be an unnecessary financial burden for the company. Mark Twain is a small non-profit cooperative dedicated to bringing high-quality communications services to underserved businesses and residents in rural northeast Missouri. Should Mark Twain be liable for retroactive contributions, it has no way to recoup that money from its subscribers retroactively. Such a financial strain of retroactive payment and the expenses associated with compliance with this Order would impact Mark Twain’s ability to

³² 47 C.F.R. §1.3.

³³ *Applications of Intelsat LLC*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, 15486 ¶ 59 (2000).

³⁴ See generally *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁵ See n. 15, *supra*.

expand broadband services to much-needed underserved portions of its service area. Such a result would be contrary to the public interest and the very purpose of the USF, which is intended to increase access to services for consumers living in rural and insular areas.

Because Mark Twain had no prior notice of the Bureau's clarification regarding how to report exchange service revenues, the instructions at the time admittedly were unclear and are being revised, and Mark Twain would experience extreme financial hardship by having to make retroactive contributions, Mark Twain requests a waiver of the Bureau's reporting requirements as they pertain to Lines 404 and 405 of Form 499-A for its 2018-2022 filings. In conjunction with a waiver, the Bureau should order USAC to restore funding of the principal that USAC has been withholding from Mark Twain for [REDACTED] plus interest accrued consistent with federal court procedures.³⁶

III. CONCLUSION

Mark Twain intends to fully comply with the guidance promulgated by the Bureau's Order. However, Mark Twain respectfully requests the Bureau to reconsider its decision to direct Mark Twain to file corrections to its Form 499-A's for 2018-2022 and make the associated retroactive contributions to USF. In the alternative, Mark Twain requests that the Bureau grant a waiver of the requirements regarding computation of local loop revenue as applied to Mark Twain's 2018 - 2022 Forms 499-A's. In either case, Mark Twain also requests that the Bureau direct USAC to restore funding of [REDACTED] plus interest accrued.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'W. B. Allen', written in a cursive style.

³⁶ See 28 U.S.C. § 1961(a)

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August 15, 2022

Declaration of Jim Lyon

I, Jim Lyon, do hereby declare under penalty of perjury the following:

1. I am the CEO & General Manager of Mark Twain Rural Telephone Company.
2. I have read the foregoing Petition for Reconsideration and Request for Waiver, and that the factual statements made therein are true and correct to the best of my knowledge, information and belief.



Jim Lyon

August 15, 2022

Exhibit A

REDACTED

Exhibit B

REDACTED

Exhibit C

REDACTED

Exhibit D

REDACTED

Exhibit E

REDACTED

Exhibit F

REDACTED