

Before the
Federal Communications Commission
Washington, DC 20554

_____ In the Matter of

WC DOC 06-122

Request for Review by Momentum Telecom,
Inc. of a Decision of the Universal Service
Administrator (USAC Audit No.
CR2013CP010)

CC Docket No. 96-45
CC Docket No. 97-21

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Federal Communications Commission
Office of the Secretary

REQUEST FOR CONFIDENTIALITY

Pursuant to Section 0.459 of the Commission's rules, Momentum Telecom, Inc. ("Momentum") hereby requests confidential treatment of the Exhibit 1 attached to its Request for Review by Momentum Telecom, Inc. of a Decision of the Universal Service Administrator ("Request for Review") filed concurrently with this Request in the above-captioned proceeding. Exhibit 1 is a copy of the final "USAC Internal Audit Division Report on the Audit of Momentum Telecom, Inc. - 2012 FCC Form 499-A Rules Compliance" ("Audit Report"), which is the subject of Momentum's Request for Review. The Audit Report contains confidential information regarding Momentum's business practices, including details on the company's lines of business and associated revenues as reported on its 2012 Form 499-A and as disclosed via the USAC audit.

DOCKET FILE COPY ORIGINAL

This information is highly commercially-sensitive trade secret information that Momentum has not previously made public. There is a risk that Momentum would suffer competitive harm if its confidential and trade secret information were made available to competitors. Momentum consistently seeks to keep the above referenced confidential information from being publicly disclosed, and only shares such information with its attorneys

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and any other professional advisors on a need-to-know basis. USAC also has classified its Audit Report as Confidential.

Momentum therefore requests that the confidential information be withheld from routine public inspection, pursuant to Sections 0.457 and 0.459 of the Commission's rules. The Exhibit has been clearly marked "**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION**" in the upper right hand corner of each page, and enclosed in a separate envelope to the Secretary.

Respectfully submitted,



Paul B. Hudson
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September 26, 2014

September 26, 2014

VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Request for Review by Momentum Telecom, Inc. of a Decision of the Universal Service Administrator (USAC Audit No. CR2013CP010), CC Docket Nos. 96-45 and 97-21

Dear Ms. Dortch:

Please find enclosed an original and four copies of the Request for Review by Momentum Telecom, Inc. of a Decision of the Universal Service Administrator, as well as Momentum Telecom, Inc.'s accompanying Request for Confidentiality. An additional stamp-and-return copy of each document has been enclosed as well.

The Request for Confidentiality covers Confidential Exhibit 1 to the Request for Review. The exhibit has been clearly marked as confidential in accordance with the Commission's confidentiality rules.

Pursuant to Section 54.721(c) of the Commission's Rules, a copy of the enclosed Request for Review by Momentum Telecom, Inc. of a Decision of the Universal Service Administrator has been served on USAC via U.S. mail.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,



Paul Hudson
Counsel for Momentum Telecom, Inc.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Request for Review by Momentum Telecom,
Inc. of a Decision of the Universal Service
Administrator (USAC Audit No.
CR2013CP010)

CC Docket No. 96-45
CC Docket No. 97-21

**MOMENTUM TELECOM, INC.
REQUEST FOR REVIEW OF A DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR**

Momentum Telecom, Inc. (“Momentum”) (Form 499 Filer ID 821474), by its attorneys and pursuant to section 54.719 of the Commission’s rules, 47 C.F.R. §54.719, hereby requests review of the decision of the Universal Service Administrative Company (“USAC”) to approve the final “USAC Internal Audit Division Report on the Audit of Momentum Telecom, Inc. – 2012 FCC Form 499-A Rules Compliance” (USAC Audit No. CR2013CP010) (“Audit Report”), attached hereto as confidential Exhibit 1. Momentum has an interest and standing to bring this request for review to the Commission as the party required to amend its Form 499-A as a result of USAC’s action.

Momentum is a wholesale and retail competitive telecommunications service provider headquartered in Birmingham, Alabama. USAC’s Internal Audit Division (“IAD”) conducted an audit of Momentum’s 2012 Form 499-A and issued its Audit Report on May 22, 2014. On July 29, 2014, USAC notified Momentum that the USAC Board of Directors had approved the final Audit Report. Momentum acknowledges that it made mistakes in completing its 2012 Form 499-A, and does not appeal all of USAC’s audit findings. Momentum has changed the personnel that are responsible for its Form 499 filings, retained new counsel experienced in Form 499s and

Commission rules, and instituted new recordkeeping and reseller certification procedures. However, Momentum believes that USAC's Finding #1 erred in two ways. First, Momentum requests review of USAC's Audit Report Finding #1, which, among other things, ordered Momentum to classify its un-tariffed end-user "Access Charge" revenue associated with its local exchange service as 100% interstate. As demonstrated below, this finding is contrary to the applicable 2012 Form 499-A Instructions and Commission precedent. Second, Finding #1 ordered Momentum to reclassify certain reseller revenue as end-user revenue on the basis that Momentum allegedly had not fully satisfied the Commission's requirements for establishing a reasonable expectation that such customers were contributing to the fund. Momentum urges the Commission to direct USAC to permit Momentum, for a reasonable period after the Commission's order on appeal, to re-amend its 2012 Form 499-A to classify such revenue as exempt reseller revenue to the extent that Momentum then has evidence, compliant with Commission requirements, that the customer is contributing for the relevant time period.

Momentum therefore respectfully requests that the Commission vacate Finding #1 of USAC's Audit Report and remand this matter to USAC for further proceedings.

ARGUMENT

I. USAC Improperly Seeks to Treat Momentum's Un-Tariffed End-User Surcharge as 100% Interstate.

The Audit Report ordering Momentum to report as 100% interstate the un-tariffed "access charges" that it billed to its end-user local exchange customers. Specifically, IAD stated that:

The Carrier reported its FCC Access Line charges on the incorrect line of its form and in the incorrect jurisdiction. The Carrier should have reported [this revenue] on Line 405 of its form as 100 percent interstate, rather than on Lines 404.1, 404.2, or 404.3 of the form¹

¹ Audit Report at page 15.

This finding should be vacated because Momentum's reporting of its end-user access charges were fully in compliance with the 2012 Telecommunications Reporting Worksheet Instructions ("2012 Instructions") as they existed at that time. The 2012 Instructions state that "[t]elecommunications providers that do not have subscriber line charge ... tariffs on file with the Commission or with a state utility commission or who are not reselling such tariffed charges, should report \$0 on Line 405."² Momentum did not tariff any subscriber line charge or similar charge, including its end-user access charge, in its FCC Tariff No. 1 or any other tariff, throughout 2011. Momentum also was not passing through the tariffed SLC charges of another carrier. The Form 499-A Instructions and the Form 499-A itself repeatedly refer to Line 405 as designated only for "tariffed" charges.³ Accordingly, Momentum was correct in reporting its non-tariffed SLC surcharge revenues with the revenue categories on which the surcharges were levied in Line 404, and not in Line 405.

Momentum's appeal is supported by the Commission's 2013 Declaratory Ruling and Order in favor of Blackfoot Communications' appeal of a similar USAC audit decision.⁴ Like Momentum, Blackfoot had not reported its "subscriber access charge" as 100% interstate revenue in Line 405 of its 2010 Form 499-A. According to the Order, Blackfoot acknowledged the similarity of its charge to ILEC subscriber line charges, but explained that the line item better enabled its "customers to compare [its] rates to those of its competitors," and "state[d] that it

² 2012 Instructions at 16.

³ *Id.* at 15 ("Line 405 should include charges to end users specified in access tariffs, such as tariffed subscriber line charges and PICC charges") and 24 ("Revenues for the whole bundle, except for tariffed subscriber line and PICC charges, should be reported on Line 404"); 2012 Form 499-A at Line 405 (indicating that Line 405 is for "Tariffed subscriber line charges").

⁴ *In re Universal Service Contribution Methodology; Petition for Declaratory Ruling by the Rural Independent Competitive Alliance; Request for Review of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, Declaratory Ruling and Order, WC Docket No. 06-122, 28 FCC Rcd 16037 (WCB 2013).

treats all of its fixed service revenues as intrastate revenues for all purposes.”⁵ The Commission agreed, and rejected USAC IAD’s finding that Blackfoot should report its subscriber access charge in Line 405:

There is no existing Commission rule or order mandating that CLECs allocate and report for USF contributions purposes a portion of the revenues derived from their fixed local revenues to the interstate jurisdiction. Therefore, unless a CLEC chooses to recover the non-traffic-sensitive costs of providing interstate or interstate exchange access service from their end-user customers, *and records such revenue as such in its supporting books and records*, there is no obligation to report those revenues in the interstate jurisdiction as a SLC.⁶

Momentum does not record its end-user access charge in its books as associated with interstate services. Moreover, the Commission’s Order went on to list certain instances in which a CLEC’s “non-traffic-sensitive charge” on local exchange customers should be reported as 100% interstate: (1) if it tariffs the charge in an interstate tariff; or (2) if it records the charge on its general ledger as a SLC or equivalent charge for the non-traffic sensitive costs of providing interstate or interstate exchange access service.⁷ Neither of these applies in this case.

Momentum’s end-user access charge is not tariffed. While incumbent SLCs are treated as 100% interstate because the charges represent the portion of local service associated with access to the interstate network, in lieu of additional access charges imposed on interexchange carriers, Momentum’s end-user access charge has no such basis. Momentum bills access revenues to IXCs. Its end-user access charge is not recorded in any separate general ledger account, but instead is recorded with its fixed local exchange telephone service revenues that are reported in Line 404 of the Form 499.

⁵ *Id.* at ¶ 8.

⁶ *Id.* at ¶ 10 (emphasis added).

⁷ *Id.* at ¶ 13.

In the Blackfoot case, the Commission concluded that “if a CLEC bills its end-user customers a separately stated line item for a service not contained in an interstate tariff and records those revenues as ‘fixed local exchange’ revenues in its general ledger, it is not required to report those revenues as interstate for contribution purposes.”⁸ The same is true here.

Moreover, treating Momentum’s end-user access charge as 100% interstate would result in unfairly double-assessing the calculated interstate portion of Momentum’s local service revenues. The percentage that Momentum calculated to reflect the interstate portion of its revenues of its local exchange service revenues was premised on the inclusion of the end-user access charge revenues as part of the service; but USAC’s approach would result in a higher effective percentage by assessing 100% of the surcharge on top of the interstate allocation in Line 404. For all of these reasons, Momentum respectfully requests that the Commission vacate USAC’s improper instruction that Momentum classify its un-tariffed end-user local exchange charges as 100% interstate.

II. The Commission’s Policy Against “Double Collection” Should Afford Momentum the Opportunity to Re-Amend its Form 499-A to Classify Reseller Revenues as Exempt Where it Can Demonstrate Actual Contribution

Second, Finding #1 ordered Momentum to reclassify certain reseller revenue as end-user revenue on the basis that Momentum allegedly had not fully satisfied the Commission’s requirements for establishing a reasonable expectation that such customers were contributing to the universal service fund. Momentum acknowledges that its recordkeeping practices with respect to the period in question were not ideal for demonstrating compliance with this requirement at the time of USAC’s audit. However, at least to the extent that the Commission permits Momentum to re-revise its 2012 Form 499-A as a result of vacating Finding #1 for the

⁸ *Id.*

reasons set forth above, Momentum should also be able at that time to re-amend its re-classification of its reseller and end-user revenues to the extent that it can then demonstrate actual contribution in compliance with Commission requirements. The Commission has held that "USAC should not seek to 'double collect' from a wholesale provider, even if the wholesale provider cannot demonstrate a reasonable expectation, if the wholesale provider's customer did in fact contribute to the Fund."⁹ The Commission has previously confirmed that carriers and USAC may rely on post-dated confirmatory certificates to show such contribution.¹⁰

Therefore, Momentum appeals USAC's decision in Finding #1 that Momentum must re-classify wholesale revenues as end-user revenues.

Conclusion

For all of these reasons, Momentum respectfully requests that the Commission vacate Finding #1 of USAC's Audit Report and remand this case to USAC for further proceedings.

Respectfully submitted,



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Counsel for Momentum Telecom, Inc.

September 26, 2014

⁹ *In re Universal Service Contribution Methodology; Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc.; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications; XO Communications Services, Inc. Request for Review of Decision of the Universal Service Administrator; Universal Service Administrative Company Request for Guidance, Order, WC Docket No. 06-122, 27 FCC Rcd 13780 ¶ 8 (2012); see also id. at ¶¶ 43-46.*

¹⁰ *Id.*

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Declaration of Kelly Windham

I, Kelly Windham, certify that I am the Regulatory & Cost Manager for Momentum Telecom, Inc. ("Momentum"), that I am familiar with and responsible for Momentum's reporting of its telecommunications revenues to the Universal Service Administrative Company (USAC), that the facts set forth in the foregoing Request for Review of USAC's Audit Report of Momentum's 2012 Form 499-A are true and correct to the best of my belief, that I am authorized to make this declaration on behalf of Momentum, and that this declaration is consistent with 47 C.F.R. § 1.17 which requires truthful and accurate statements to the Commission.

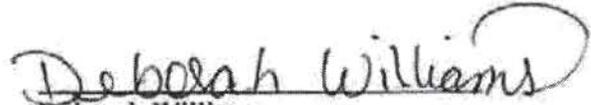
Signed this 26th day of September, 2014.



Kelly Windham

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Request for Review by Momentum Telecom, Inc. of a Decision of the Universal Service Administrator** has been served upon the following: USAC, 2000 L Street, N.W., Suite 200, Washington, DC 20036 by U.S. Mail, this 26th day of September, 2014.


Deborah Williams

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EXHIBIT 1

**Copy of
Final “USAC Internal Audit Division Report
on the Audit of Momentum Telecom, Inc. –
2012 FCC Form 499-A Rules Compliance”**