

January 27, 2015

Accepted / Filed

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

JAN 27 2015

Federal Communications Commission  
Office of the Secretary

**Re: Petition of The *Compliance* Group, Inc. for a Declaratory Ruling that the Systems Integrator Exemption Applies to the Resale or Provision of Interconnected VoIP-Based Communications Services by Systems Integrators**

Dear Secretary Dortch:

On behalf of The *Compliance* Group, Inc. ("The *Compliance* Group"), please find enclosed an original and one (1) copy of The *Compliance* Group's Petition for Declaratory Ruling regarding the application of the Systems Integrator Exemption to I-VoIP providers. Please also find enclosed five (5) additional copies of the Petition for Declaratory Ruling as a courtesy for each of the Commissioners.

Should you have any questions please do not hesitate to contact me.

Respectfully submitted,



Jonathan S. Marashlian  
Counsel for The *Compliance* Group, Inc.

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

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| In the Matter of  | ) |  |
|   | ) |  |
| Petition of The <i>Compliance</i> Group, Inc.<br>for a Declaratory Ruling that the<br>Systems Integrator Exemption<br>Applies to the Resale or Provision of<br>Interconnected Voice over Internet<br>Protocol-Based Communications Services<br>By Systems Integrators | ) | WC Docket No. _____<br><b>Accepted / Filed</b>               |
|   | ) |  |
|   | ) | JAN 27 2015  |
|   | ) | Federal Communications Commission<br>Office of the Secretary |
| Universal Service Contribution Methodology  | ) | WC Docket No. 06-122   |
|   | ) |  |
| Federal-State Joint Board on<br>Universal Service   | ) | CC Docket No. 96-45  |
|   | ) |  |

**Petition of The *Compliance* Group, Inc.  
for a Declaratory Ruling that the Systems Integrator Exemption  
Applies to the Resale or Provision of Interconnected VoIP-Based  
Communications Services by Systems Integrators**

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January 27, 2015

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Applies to the Resale or Provision of Interconnected VoIP-Based  
Communications Services by Systems Integrators**

**I. Introduction and Summary**

Pursuant to Section 1.2 of the Federal Communication Commission's ("FCC" or "Commission") rules,<sup>1</sup> The *Compliance* Group, Inc. ("The *Compliance* Group")<sup>2</sup> respectfully submits this Petition seeking a Declaratory Ruling that the Systems Integrator Exemption ("SI Exemption") applies to the resale or provision of Interconnected Voice over Internet Protocol ("I-VoIP") based communications services by systems integrators.

Pursuant to the SI Exemption, systems integrators that derive less than five percent of their systems integration revenues from the "resale of telecommunications" are neither required to file Forms 499-A (or 499-Q) nor contribute directly to the Universal Service Fund. Instead, qualified

<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> The *Compliance* Group ([www.ComplianceGroup.com](http://www.ComplianceGroup.com)) is a regulatory, tax and corporate compliance consulting firm catering to a diverse range of service providers, including systems integrators serving consumers of enterprise class communications and information technology services.

systems integrators are treated as the end users of telecommunications by their suppliers of resold telecommunications and, as such, contribute indirectly to the USF.

The Form 499-A instructions do not define "resale of telecommunications" for purposes of SI Exemption qualification. The SI Exemption predated the commercial viability, widespread availability and popularity currently enjoyed by a diverse range of I-VoIP technologies and services. Over the past decade, I-VoIP services have been rapidly replacing traditional switched telephony. In the absence of unnecessary and unintended regulatory obstacles, this is a trend that is expected to continue.<sup>3</sup>

The Commission jeopardizes the advancements made in enterprise VoIP adoption through its maintenance of an outdated and unreasonably narrow SI Exemption that currently benefits only those systems integrators reselling legacy telecommunications to their systems integration customers. The Commission's failure to update or clarify the SI Exemption to encompass I-VoIP services has created an uneven playing field among providers of traditional telecommunications and I-VoIP services. Continued delay in announcing the extension of the SI Exemption to providers of I-VoIP services imposes a significant, yet easily fixable, speed bump on the Commission's stated objective of incentivizing the transition from traditional telecommunications to advanced communications technologies.<sup>4</sup>

Wherefore, The *Compliance* Group hereby prays the Commission issue a Declaratory Ruling that systems integrators reselling I-VoIP services are eligible for the SI Exemption, provided their revenue from the resale or provision of I-VoIP is less than 5% of their systems integration revenue. The FCC can accomplish this either by: (1) clarifying that, for purposes of the SI Exemption only, "the resale of telecommunications" includes the resale or provision of I-VoIP

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<sup>3</sup> See e.g., Charlie Reed, *Top Telecom Trends in 2014*, Atlantic-ACM, Jan. 15, 2014 ("...business VoIP will increase its share of the business voice market from 17 percent this year to more than 40 percent by 2018"), <https://www.atlantic-acm.com/component/k2/top-telecom-business-trends-in-2014>.

<sup>4</sup> See e.g., Federal Communications Commission, *IP Transition Guide*, May 20, 2014, <http://www.fcc.gov/guides/ip-transition>.

services; or (2) revising the Form 499-A instructions to clarify that systems integrators that derive less than five percent of their systems integration revenues from either "the resale of telecommunications" or "the resale or provision of interconnected VoIP" qualify for the SI Exemption.

The requested clarification will further the intent of the SI Exemption, provide clarification to the industry, and create incentives that will accelerate the adoption of enhanced communications technologies. Issuing the requested declaratory ruling would:

- (1) preserve the competitive-neutrality of the SI Exemption;
- (2) ensure the technologically-neutral application of the SI Exemption to systems integrators otherwise eligible for the exemption; and
- (3) promote market-based decision-making that will benefit consumers while simultaneously accelerating the fulfillment of the Commission's policy goals.

Perhaps more than anything, the requested clarification of the SI Exemption will eliminate the uncertainty and doubt that currently plagues hundreds, potentially thousands of systems integrators and their tens of thousands of customers nationwide. Many of these same companies have historically enjoyed the exemption due to their resale of traditional telecommunications, but today they find themselves paralyzed with fear that the migration towards I-VoIP, fueled by consumer demand, will not only cost them the exemption from the regulatory filing burdens of the USF program, but also subject them to the full panoply of Title II regulations currently applicable to I-VoIP service providers.

## **II. Background**

The Commission created the SI Exemption in 1997 in response to a petition for reconsideration filed by the Ad Hoc Telecommunications Users Committee.<sup>5</sup> In creating the SI

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<sup>5</sup> *In re Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, CC Docket Nos. 96-45, 96-262, 94-1,91-213,95-72, 13 FCC Rcd 5318, 5471-75 (1997) ("SI Exemption Order").

Exemption, the Commission sought to limit the burden of complying with universal service contributions for "non-common carriers that obtain a *de minimis* amount of their revenues from the resale of telecommunications."<sup>6</sup> In determining what constitutes a *de minimis* amount of revenue, the Commission concluded that a systems integrator that derives less than five percent (5%) of its systems integration revenue from the resale of telecommunications would be considered *de minimis* and, therefore, exempt from making direct universal service contributions.<sup>7</sup> At that time, I-VoIP services were neither defined or regulated by the FCC, nor widely available to consumers. Thus, in referring to the "resale of telecommunications," the Commission's order applied the SI Exemption to the entire scope of then available or then known regulated communications services. Had Interconnected VoIP services been in existence at the time the Commission established the SI Exemption, the language used to define the SI Exemption undoubtedly would not have left any room for doubt that I-VoIP services were covered by the exemption.

The instructions to the FCC's annual universal service reporting form, the Form 499-A, express the SI Exemption as follows:

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service.<sup>8</sup>

The instructions reference the "resale of telecommunications," and do not specifically and expressly contemplate that systems integrators reselling I-VoIP services qualify for the SI Exemption. Yet, from the standpoint of a systems integrator, it makes no difference whether it resells a communications service solution to its customers using traditional telecommunications or I-VoIP services, and consumers are increasingly demanding I-VoIP solutions.

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<sup>6</sup> *Id.* at 5472.

<sup>7</sup> *Id.* at 5472-73.

<sup>8</sup> Instructions to 2014 FCC Form 499-A at 5.

### **III. The Commission Should Clarify that the SI Exemption Applies Regardless of the Technology a Systems Integrator Uses to Provide Communications Services**

The Commission should clarify that the SI Exemption applies to the provision of I-VoIP services because, from the standpoint of a systems integrator, the provision of a communications service to a customer is the same whether the systems integrator offers I-VoIP or traditional telephone service. Therefore, the rationale that supported the creation of the SI Exemption – limiting the regulatory burden on systems integrators that derive a *de minimis* amount of their systems integration revenue from regulated communications services<sup>9</sup> – also supports inclusion of I-VoIP services within the SI Exemption. And clarifying the scope of the exemption will also prevent market inefficiencies and encourage the continued adoption of advanced telecommunications technologies.

#### **A. Application of the SI Exemption to the Provision of I-VoIP Services Will Preserve the Competitive Neutrality of the Exemption**

Absent a clarification that the SI Exemption applies equally to I-VoIP and traditional telephony service providers, I-VoIP providers will be at a significant competitive disadvantage. The Commission initially defined "I-VoIP" and has extended Title II regulations to I-VoIP providers specifically because I-VoIP services serve as substitutes for traditional telephony.<sup>10</sup> It would be highly unfair and contrary to the Commission's intentions in extending Title II regulations to I-VoIP providers to treat I-VoIP services differently for purposes of the SI Exemption. I-VoIP providers contribute to universal service on the same terms as traditional circuit switched providers.

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<sup>9</sup> In adopting the SI Exemption, the Commission recognized that both the administrative burden on USAC and the costs for qualifying systems integrators associated with complying with universal service contributions could outweigh the benefits. Exempting qualifying systems integrators from making universal service contributions prevents those systems integrators from bearing the costs of direct universal service contributions, including, among other things, developing accounting systems to track and remit contributions. It also saves USAC the administrative burden of collecting contributions from systems integrators that derive only a small amount of revenue from the provision of telecommunications services, contributions that might not cover the administrative costs of collection. This balancing of the costs and benefits and the rationale supporting the SI Exemption apply equally to I-VoIP service providers and providers of traditional telecommunications services.

<sup>10</sup> See *IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10245, 10257-58 ¶ 24 (2005) ("*VoIP 911 Order*"), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 9.3.

Accordingly, I-VoIP providers should be entitled to the same exemptions under the USF program that exist for similarly situated providers offering services that the FCC, itself, deems "substitutes" for one another.

Moreover, the Communications Act of 1934, as amended, ("Communications Act") and the Commission's rules require the Commission to assess universal service contributions fairly. Section 254 of the Communications Act explicitly states that contributions should be assessed on an equitable and nondiscriminatory basis,<sup>11</sup> and the Commission has recognized that assessing contributions equitably requires it to craft universal service rules that are both competitively and technologically neutral.<sup>12</sup>

If the Commission fails to apply the SI Exemption to I-VoIP services, it will violate its own principles of competitive neutrality by perpetuating an unfair advantage for systems integrators offering traditional telecommunication services over similarly situated competitors providing I-VoIP. Systems integrators otherwise eligible for the SI Exemption that deploy I-VoIP services face the same accounting and other administrative burdens of directly contributing to universal service that other eligible systems integrators face. In some cases, a single systems integrator might even have to contribute directly to the Universal Service Fund for I-VoIP-based services it provides to a customer while remaining exempt from contributions for the traditional telecommunications services it provides to another customer (or even to the same customer). In order to maintain the competitive neutrality between similarly situated systems integrators, the Commission must clarify that the SI Exemption applies to I-VoIP services.

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<sup>11</sup> 47 U.S.C. § 254(b)(4).

<sup>12</sup> *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

**B. The Commission Should Clarify that the SI Exemption Applies to I-VoIP to Preserve the Technological Neutrality of the Exemption**

As noted above, the Commission's principles of competitive neutrality require that its universal service support mechanisms and rules "neither unfairly favor nor disfavor one technology over another."<sup>13</sup> Therefore, the Commission cannot distinguish among systems integrators based on technological differences between traditional telecommunications service and I-VoIP. In creating the SI Exemption, the Commission noted that systems integrators that derive less than five percent of their revenue from providing a telecommunications solution to their customers do not "significantly compete with common carriers that are required to contribute to universal service."<sup>14</sup> The Commission concluded that systems integrators are in the business of integrating customers' computers and other informational systems, and it found that providing a telecommunications service is incidental to that core service.<sup>15</sup> This conclusion remains true for systems integrators that use I-VoIP technology to provide customers with a communications service.

The primary service a systems integrator provides is the efficient implementation, management, and maintenance of a customer's computer and information systems. In many cases, the shift to IP-based systems has made it easier and more convenient for a user to obtain a communications solution, in the form of an I-VoIP service, from a systems integrator, but the communications component of the integration package remains *de minimis* both in terms of the reason for which a consumer seeks the services of a systems integrator and as a percentage of the revenue a systems integrator generates from the customer. Accordingly, the FCC's reasoning for adopting the SI Exemption applies equally to telecommunications and I-VoIP service providers.

When the Commission adopted the SI Exemption, I-VoIP technologies were neither widespread nor regulated. Thus, the Commission intended the Exemption to apply to the entire universe of regulated telecommunications then available. The FCC did not intend to distinguish

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<sup>13</sup> *Id.*

<sup>14</sup> SI Exemption Order at 5472.

<sup>15</sup> *Id.*

between technologies or to create differing treatment between providers offering traditional telephony and providers of services that incorporate elements of advanced communications technology. The SI Exemption was technology neutral in its application. To preserve the technological neutrality of the Exemption, the Commission must clarify that it applies to providers of both telecommunications and I-VoIP service.

**C. Neutral Application of the SI Exemption Will Promote Market Efficiency and Further the Commission's Policies Promoting the Deployment of Advanced Communications Technologies**

In addition to ensuring the fair application of the Commission's rules, principals of competitive and technological neutrality promote market efficiency, which in turn helps consumers and speeds the deployment of advanced communications technologies. The Commission has routinely acknowledged that its rules should not create hurdles to market-driven adoption of advanced communications technologies. For example, in the Commission's IP-Transition docket, the Commission has recognized the important role market-based decision-making plays in the deployment of new communications technologies and the importance of the Commission crafting its rules to remove barriers to that market-based deployment.<sup>16</sup> The Commission's rules should not dictate or drive the service choices of systems integrators; rather, systems integrators should use their expertise to determine what services they will offer and what services best fit their customers' needs.

Clarifying that the SI Exemption applies to the provision of I-VoIP services will allow systems integrators to make decisions about supplying I-VoIP services based on their business judgment and their customers' needs. Applying the SI Exemption differently based upon the technology offered (I-VoIP vs. traditional legacy services) will distort the competitive choices made by systems integrators. For example, a systems integrator may decide not to offer I-VoIP services because of the potential administrative burdens, enforcement risk, and added cost to the customer. And, if providers are

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<sup>16</sup> See, e.g., *In re Technology Transitions, etc.*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433 (2014).

forced to offer fewer choices to consumers of systems integration, consumers will have less choice in the market place, which will corrupt the purpose of the SI Exemption and harm competition and consumers.

Moreover, these distortions may slow the deployment of advanced communications services and disrupt the IP-transition. Robust competition among communications providers (offering both traditional telecommunications and I-VoIP) helps drive the ongoing development of I-VoIP technology. It also helps drive investment in and adoption of the underlying advanced communications technologies needed to support I-VoIP services. These market forces help speed deployment by incentivizing investment. They also help improve advanced communications technologies by encouraging providers to improve their products and services to meet their customers' needs. Disparate treatment of traditional telecommunications and I-VoIP under the SI Exemption would distort the benefits of robust market-based competition discussed above. However, the Commission can easily eliminate this distortion by clarifying that the SI Exemption applies to I-VoIP services.

#### **D. Applying the SI Exemption to I-VoIP Providers Will not Erode the Universal Service Fund**

The SI Exemption crafted by the Commission ensures a systems integrator that takes advantage of the exemption only derives a small portion of its revenue from the provision of telecommunications. The five percent threshold, already in place, prevents a systems integrator from abusing the exemption and shirking its responsibility to contribute to universal service if the systems integrator derives more than a *de minimis* portion of its systems integration revenue from the provision of telecommunications. Therefore, there is little risk that applying the SI Exemption to the provision of I-VoIP services will erode the universal service base or significantly expand the exemption's use beyond otherwise qualifying systems integrators.

**IV. Conclusion**

For the foregoing reasons, The *Compliance* Group urges the Commission to clarify that the SI Exemption applies to the provision of I-VoIP services in order to preserve the competitive and technological neutrality of the exemption and to encourage the efficient operation of the systems integration marketplace.

Respectfully Submitted,



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