

February 5, 2015

**Ex Parte Notice**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: *Federal-State Joint Board on Universal Service, CC Docket No. 96-45;*  
*Universal Service Contribution Methodology, WC Docket No. 06-122***

Dear Ms. Dortch,

On February 4, 2015, Carol Pomponio of the Federal Communications Commission's Wireline Competition Bureau contacted undersigned counsel requesting clarifications regarding the Petition for Declaratory Ruling (the "Petition") filed by The *Compliance Group* on January 27, 2015.<sup>1</sup> In response to staff's request, the following information was communicated regarding the issues that were addressed by the Petition.

The 2014 FCC 499-A Instructions state that systems integrators deriving less than five percent of their systems integration revenues from the resale of telecommunications are not required to either file or contribute directly to universal service.<sup>2</sup>

In the *2006 VoIP USF Order*, the FCC concluded that I-VoIP providers are "providing interstate telecommunications."<sup>3</sup> "Specifically, using the Act's definitions, we find that interconnected VoIP providers "provide" the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."<sup>4</sup> The FCC then went on to explain what it meant by "provide":

"Congress did not define the term "provide" or "provider," but the structure of the Act informs us that "provide" is a different and more inclusive term than "offer." It is settled law that the determination of what is "offered," under the Act's definitions, "turns on the nature of the functions the end user is offered." Had Congress intended us to look at the same factors in analyzing our permissive authority under

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<sup>1</sup> See generally *In the Matter of Petition of the Compliance Group, Inc. for a Declaratory Ruling that the Systems Integrator Exemption Applies to the Resale or Provision of Interconnected Voice over Internet Protocol-Based Communications Services By Systems Integrators*, WC Docket No. \_\_\_, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Declaratory Ruling (filed Jan. 27, 2015).

<sup>2</sup> Instructions to 2014 FCC Form 499-A at 5.

<sup>3</sup> *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, ¶ 39 (rel. June 27, 2006).

<sup>4</sup> *Id.*

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section 254(d), it would have referred to “other offerors of telecommunications.” Because Congress used a different term – “providers” – we understand Congress to have meant something broader. Common definitions of the term “provide” suggest that we should consider the meaning of “provide” from a supply side, *i.e.*, from the provider’s point of view. For example, Black’s Law Dictionary defines “provide” to mean “[t]o make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.” Transmission is an input into the finished service “offered” to the customer. But from the interconnected VoIP provider’s point of view, we believe that the provider “provides” more than just a finished service. We believe that it is reasonable to conclude that a provider “furnishes” or “supplies” components of a service, in this case, transmission.”<sup>5</sup>

Finally, the FCC concluded “we find interconnected VoIP providers to be “providing” telecommunications regardless of whether they own or operate their own transmission facilities or they obtain transmission from third parties. In contrast to services that merely use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission *itself* to end users.”<sup>6</sup>

The objective of the Petition for Declaratory Ruling is to resolve the uncertainty that exists as a consequence of the limited scope of the term “resale of telecommunications” when viewed in the context of how many systems integrators deliver I-VoIP services to their systems integration customers, which does not always involve “resale.” The question in need of clarification, therefore, is whether a Systems Integrator that provides a service that meets the definition of I-VoIP is *providing* or *reselling* telecommunications for purposes of the exemption.

The second issue to resolve involves the inconsistency in the FCC’s rules and the Form 499-A Instructions between how I-VoIP providers must report, and how Systems Integrators must report. As noted above, the Instructions state that Systems Integrators that derive less than five percent of their system integration revenue from the resale of telecommunications **are not required to file or contribute directly to universal service**. However, the FCC’s rules and the Instructions also state (and USAC has advised us) that **all I-VoIP providers must file** the Form 499-A. Furthermore, Section 54.708 of the Commission’s rules states:

“If a contributor’s contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so to by our rules governing Telecommunications Relay Service (47 CFR 64.601 *et seq.* of this chapter), numbering administration (47 CFR 52.1 *et seq.* of this chapter), or shared costs of local number portability (47 CFR 52.21 *et seq.* of this chapter). **The foregoing notwithstanding, all interconnected VoIP providers, including**

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<sup>5</sup> *Id.* at ¶ 40.

<sup>6</sup> *Id.* at ¶ 41.

**those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet.”<sup>7</sup>**

Similarly, the 2014 499-A Instructions state:

“There is no exception for entities that offer services to a narrow or limited class of users. Thus filers include:

Entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis.

Most telecommunications carriers and **all interconnected VoIP providers including those that qualify for the *de minimis* exception under the Commission’s universal service rules.**

Owners of pay telephones, also known as ‘pay telephone aggregators.’”<sup>8</sup>

Furthermore, the 2014 499-A Instructions also state:

“Exempt Providers: Some providers may be exempt from contributing to USF, but nevertheless must file this Worksheet because they are required to contribute to TRS, NANPA, or LNPA. For USF purposes, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of USF pass-through surcharges. If an entity is not required to contribute to any of these support mechanisms, then it is not required to file this Worksheet. Three types of non-common-carrier telecommunications providers may, under the circumstances set forth below, not be required to contribute to USF: (1) *de minimis* telecommunications providers; (2) government, broadcasters, schools, and libraries; and (3) systems integrators and self-providers.”<sup>9</sup>

Thus, if a Systems Integrator provides I-VoIP services, and therefore is an I-VoIP provider required to file a Form 499-A, but derives less than five percent of its systems integrator revenue from I-VoIP, is it still required to file a Form 499-A?

According to both the 499-A Instructions and definition of Systems Integrator exemption, the answer is unequivocally “no.” But according to USAC, the answer would be “yes” – because of the other Title II programs and FCC regulatory fees applicable to all providers of I-VoIP services.

So there are essentially two confusing, uncertain issues associated with the Systems Integrator exemption that require clarification, either of the rules or the 499-A Instructions:

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<sup>7</sup> 47 C.F.R. § 54.708 (emphasis added).

<sup>8</sup> Instructions to 2014 FCC Form 499-A at 3 (emphasis added).

<sup>9</sup> *Id.* at 3-4.

- 1. Does the term “resell telecommunications” include “providing Interconnected VOIP,” or is it limited to “resellers” of I-VoIP only? The Petition advocates for the broad coverage of all forms of I-VoIP services delivered to systems integration customers, and hence, adding the term “resale and provision of I-VoIP.”**
- 2. Are Systems Integrators that are also I-VoIP providers exempt from 499 registration and filing requirements; or are Systems Integrators that “provide” I-VoIP services treated differently than Systems Integrators that “resell telecommunications”, thus creating the un-level playing field described in the Petition?**

We believe that the reason the second issue exists is because the FCC likely considers Systems Integrators that “resell telecommunications” to be “private carriers” that are exempt from Title II program fees (*i.e.*, TRS, NANP, LNP), and FCC regulatory fees (that is until the recent reinterpretation of the scope of the regulatory fee, which over the past 2 years *has* extended to private carriers, even though the FCC regulatory fee never applied to private carriers for 10+ years prior thereto). In contrast, Interconnected VoIP has no “private carrier” precedent associated with the service. Hence, I-VoIP seems precluded from taking advantage of the lighter touch regulations that apply to private carriers, including qualification for the benefits of the Systems Integrator exemption.

We hope that this correspondence helps clarify the issues, our concerns, and our objective of having language added to the Form 499 Instructions to clarify the scope and contours of the SI exemption’s application to systems integrators providing I-VoIP services to their systems integration customers.

If you feel an amended Petition is necessary, we would not object to a voluntary withdrawal and re-submission. We look forward to your guidance.

Pursuant to Section 1.206(b) and consistent with Section 1.49(f) of the Commission’s rules, a copy of this notice is being filed electronically in the above-referenced dockets.

Respectfully submitted,



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