

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

In the Matter of)	
)	
Petition of The <i>Compliance</i> Group, Inc.)	WC Docket No. _____
for a Declaratory Ruling that the)	
Systems Integrator Exemption)	
Applies to the Resale or Provision of)	
Interconnected Voice over Internet)	
Protocol by Systems Integrators)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

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

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I. Introduction and Summary

Pursuant to Section 1.2 of the Federal Communication Commission's ("FCC" or "Commission") rules,¹ The *Compliance* Group, Inc. ("The *Compliance* Group")² respectfully submits this Petition seeking a Declaratory Ruling clarifying the application of the Systems Integrator Exemption ("SI Exemption") to the provision of Interconnected Voice over Internet Protocol ("I-VoIP") services.

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

¹ 47 C.F.R. § 1.2.

² The *Compliance* Group (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.

Forms 499-A (or 499-Q) nor contribute directly to the Universal Service Fund (“USF”).³ Instead, qualified systems integrators are treated by their suppliers as the end users of the telecommunications they purchase, and, as such, contribute indirectly to the USF by way of pass-through fees.

In 2006, the FCC extended universal service contribution obligations to I-VoIP providers, classifying I-VoIP providers as “providers of interstate telecommunications” for purposes of section 254(d) of the Communications Act of 1934, as amended (“Communications Act”), which governs universal service. However, in extending other Title II contribution obligations to I-VoIP (including Telecommunications Relay Service (“TRS”), numbering administration, and local number portability), the Commission has explicitly refused to classify I-VoIP services as either telecommunications or information services. As a result, I-VoIP providers can arguably claim the SI Exemption as providers of interstate telecommunications for USF contribution purposes, but the Commission’s rules and precedent make it unclear whether qualifying I-VoIP providers are required to register with the FCC and contribute to other Title II programs. More broadly, whereas systems integrators reselling telecommunications may qualify as “private service providers” exempt from all Title II regulations (not just contributions in support of Title II programs), it is unclear whether systems integrator providers of I-VoIP services could achieve regulatory parity under the existing FCC regulatory framework applicable to providers of I-VoIP services, as reflected in the Form 499 and its Instructions.⁴

³ Presumably, many such systems integrators are also “private service providers” and not “common carriers”; as such, they are exempt from all Title II regulations. While it is beyond the scope of this Petition, which seeks regulatory parity exclusively for purposes of USF contributions, the Commission may want to ensure greater and broader regulatory parity among all Systems Integrators through a separate rulemaking.

⁴ The clarification requested in this Petition is important to address a glaring ambiguity in the Instructions that subjects I-VoIP systems integrators to disparate treatment. The Universal Service Administrative Company (“USAC”) cannot resolve this ambiguity as it is not authorized to interpret ambiguous regulations. 47 C.F.R. § 54.702(c). Accordingly, The *Compliance* Group submits this Petition preemptively to obtain Commission clarification before a systems integrator is forced to endure the cost and burden of appealing an adverse interpretation. *See* Universal Service Fund

The Commission has never defined “resale of telecommunications” specifically for purposes of the SI Exemption. With respect to traditional telecommunications services, “resale” arrangements were fairly straight-forward. A provider purchased telecommunications inputs from a supplier, and resold them, either in their original form or as part of a larger telecommunications service. The introduction of I-VoIP services, however, has dispelled traditional notions of “resale.” I-VoIP providers often purchase components of the service (including telecommunications inputs) and integrate them to sell a finished I-VoIP solution. Accordingly, such providers are not purchasing and reselling a completed service, but combining components for resale. It is unclear whether such an arrangement would fall within the scope of “resale of telecommunications.” Thus, while the Commission has determined that I-VoIP qualifies as “telecommunications,”⁵ it is unclear if and when provisioning of I-VoIP would meet the definition of “*resale* of telecommunications.”

Notably, the SI Exemption predated the commercial viability, widespread availability, and popularity currently enjoyed by a diverse range of I-VoIP technologies and services. VoIP technologies have since evolved, and may be offered as part of larger enterprise communications solutions. Because the Commission broadly defined I-VoIP as a service that merely “enables” two-way communications (among other factors), service providers can offer VoIP in a number of new and unique ways. For example, a provider can sell a single piece of software that enables two-way IP-based communications and thereby offer an I-VoIP service. Such sales models do not lend themselves to “resale” arrangements. Because of the evolution of I-VoIP and enterprise communications, the Commission should declare that, for purposes of the SI Exemption “resale of telecommunications” includes both the resale and provisioning of I-VoIP.

Audits & Appeals: Primer on Processes and Risks, Marashlian & Donahue, LLC (last visited March 17, 2014)
https://files.commtracks.com/resources/PRIMER_ON_USAC_AUDITS_AND_FCC_APPEALS_11_01_2013.PDF).

⁵ Note, however, that the Commission has not expressly confirmed that I-VoIP qualifies as “telecommunications” specifically for the purpose of the SI Exemption.

Wherefore, The *Compliance* Group asks the Commission to define the “resale of telecommunications,” with respect to the SI Exemption only, to include the “resale or provision of I-VoIP services.”

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.⁶ In creating the SI 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.”⁷ 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.⁸

At that time, I-VoIP services were neither defined nor regulated by the FCC, and I-VoIP services were not widely available to enterprise 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. The Commission has since defined “I-VoIP” and extended USF and other Title II obligations to I-VoIP providers.⁹ However, the

⁶ *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, 13 FCC Rcd 5318, 5471-75 (1997) (“SI Exemption Order”).

⁷ *Id.* at 5472.

⁸ *Id.* at 5472-73.

⁹ *In re Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 34 (2006) (extending USF contribution obligations to I-VoIP providers (“USF I-VoIP Extension Order”)); *In re IP-Enabled Services*, Report and Order, 22 FCC Rcd 11275, ¶ 32 (2007) (extending TRS contribution obligations to I-VoIP providers) (“TRS I-VoIP Extension Order”); *In re Telephone Number Requirements for IP-Enabled Service Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶¶ 38-39 (2007) (extending LNP and NANP administration contribution obligations to I-VoIP providers) (“LNP/NANP I-VoIP Extension Order”). The Commission also extended FCC regulatory fee obligations to I-VoIP providers, effectively requiring I-VoIP providers to file Form 499-A. *See In re Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further

Commission has not amended its rules or the instructions pertaining to the SI Exemption in FCC Form 499-A to address how the SI Exemption applies to these other Title II obligations in light of the extension of such obligations to I-VoIP providers.

Likewise, the Commission has not amended the Instructions to clarify the scope of the SI Exemption as applied to I-VoIP services. In extending USF contribution obligations to I-VoIP providers, the Commission deemed I-VoIP providers “providers of interstate telecommunications” under section 254(d).¹⁰ The Instructions 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 service¹¹

Therefore, the SI Exemption arguably already applies to I-VoIP that is resold by systems integrators, but the use of the term “resale” does not contemplate the variety of ways in which a company qualifying for the SI Exemption might offer I-VoIP service. To clarify, a Declaratory Ruling confirming that the SI Exemption applies to both the provisioning and resale of I-VoIP is required.

The requested clarification of the SI Exemption will help eliminate uncertainty and doubt that currently plagues systems integrators and their customers. 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.¹² Many companies that have historically enjoyed the benefits of the SI Exemption due to their resale of traditional telecommunications now find themselves caught between the migration towards I-VoIP, fueled by consumer demand, and the fear that this migration will not only cost them the exemption from the regulatory filing burdens of the USF but also subject them to the full panoply of Title II regulations

Notice of Proposed Rulemaking, 22 FCC Rcd 15712, ¶ 11 (2007) (extending FCC regulatory fee obligations to I-VoIP providers) (“FCC Reg. Fee I-VoIP Extension Order”).

¹⁰ USF I-VoIP Extension Order, 21 FCC Rcd at ¶ 35.

¹¹ Instructions to 2014 FCC Form 499-A at 5 (emphasis added).

¹² 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>.

currently applicable to I-VoIP service providers (including, but not limited to, the obligation to contribute to the other Title II programs, such as TRS, NANP and LNP).

III. The Commission Should Clarify the Application of the SI Exemption to a Systems Integrator Providing I-VoIP Services

The Commission should clarify that the SI Exemption applies to 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 services¹³ – also supports inclusion of I-VoIP services within the SI Exemption. Furthermore, the Commission should declare that the SI Exemption applies to both the resale and provisioning of I-VoIP services. Unlike traditional telecommunications services, due to the broad definition of “I-VoIP,” service providers offer I-VoIP through unique sales arrangements. The Commission presumably did not contemplate such sales models when it adopted the SI Exemption – prior to the widespread availability of I-VoIP. Moreover, clarifying the scope of the Exemption will also prevent market inefficiencies and encourage the continued adoption of advanced telecommunications technologies.

¹³ In adopting the SI Exemption, the Commission recognized that both the administrative burden on its USF administrator, USAC and the costs to 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.

A. The Commission Should Clarify that the “Resale of Telecommunications” Includes the Resale or Provision of I-VoIP Services for Purposes of the SI Exemption

As noted above, the SI Exemption’s use of the term “resale of telecommunications” is ambiguous.¹⁴ The Commission defines “I-VoIP” as a service that “enables real-time, two-way voice communications.”¹⁵ As a result, a systems integrator may be providing I-VoIP to a customer simply by installing software on the system it develops for its customer that enables real-time, two-way voice communications.¹⁶ However, whether the systems integrator purchased the software it installs or developed the software in-house, the systems integrator is not “reselling” an I-VoIP service in this situation. Rather, the systems integrator would be providing an I-VoIP service to its customer.

Furthermore, VoIP providers often purchase inputs and combine them to provide an I-VoIP solution. The VoIP provider does not purchase and resell an integrated I-VoIP offering. Instead, the provider “sells” a completed I-VoIP solution, often (but not always) through the combination of “resold” telecommunications and non-telecommunications components. It is unclear whether such an arrangement would qualify as “resale” of the I-VoIP service under the SI Exemption. Such arrangements are increasingly common with the pervasiveness of I-VoIP in the market. However, because the SI Exemption predated the widespread diffusion of VoIP technologies, the language limits the Exemption to “resale” of telecommunications, and must be revised to reflect current marketplace realities and create parity between providers relying upon various technologies to provision similar services.

¹⁴ As noted above, in extending USF obligations to I-VoIP, the Commission classified I-VoIP providers as “providers of interstate telecommunications” for USF contribution purposes. *See* USF I-VoIP Extension Order, 21 FCC Rcd at ¶ 35. The primary issue for which The *Compliance Group* seeks clarification is the application of the term “resale” to I-VoIP-based services.

¹⁵ 47 C.F.R. § 9.3 (emphasis added).

¹⁶ The definition also states that an I-VoIP service 1) requires a broadband connection from the user’s location; 2) requires Internet protocol-compatible customer premises equipment (CPE); and 3) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. 47 C.F.R. § 9.3.

Absent clarification that the SI Exemption includes the resale or provision of I-VoIP services, systems integrators offering I-VoIP services will be at a significant competitive disadvantage. 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. And, in some cases, a single systems integrator might even have to contribute directly to the USF for I-VoIP 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). If the Commission fails to clarify the application of the SI Exemption to the provisioning and resale of I-VoIP services, it would effectively be encouraging a systems integrator to continue reselling traditional telecommunications, which would inhibit the Commission's ongoing commitment to market-based deployment of advanced communications technology.¹⁷

Moreover, the 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,¹⁸ and the Commission has recognized that assessing contributions equitably requires it to craft universal service rules that are both competitively and technologically neutral.¹⁹ 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.²⁰ It would be highly unfair and contrary to

¹⁷ 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) .

¹⁸ 47 U.S.C. § 254(b)(4).

¹⁹ *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.").

²⁰ 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.

the Commission's intentions in extending Title II regulations to I-VoIP providers to effectively treat I-VoIP services differently for purposes of the SI Exemption based on an incongruity between the Commission's definition of I-VoIP service and the term "resale of telecommunications" as used in the SI Exemption.

B. The Commission Should Clarify Whether Qualified Systems Integrators Providing or Reselling I-VoIP Must Register and Contribute to the Non-USF-Based Title II Programs

The Commission's rules conflict with the Instructions for the SI Exemption as applied to the provision of I-VoIP. The Commission's rules require *all* I-VoIP providers to register with the FCC and file Forms 499.²¹ On the other hand, the Instructions state that a systems integrator is not required to file the Form 499.²² This inconsistency leaves a systems integrator providing I-VoIP service in limbo with respect to the SI Exemption.

The Commission could quickly and easily clarify this issue by amending the Instructions to state that a systems integrator that qualifies for the exemption need not contribute to the USF or file a Form 499 unless it is required to file by another provision of the Commission's rules.²³ Longer term, the Commission should examine and seek to ensure parity with respect to the broader regulatory treatment of Systems Integrators, regardless of technologies used.

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

Like a systems integrator reselling traditional telecommunications, a systems integrator providing I-VoIP service contributes indirectly to the USF. Many systems integrator I-VoIP providers purchase underlying telecommunications inputs to facilitate their I-VoIP service,²⁴ and if a systems

²¹ See 47 C.F.R. § 54.708.

²² Instructions to 2014 FCC Form 499-A at 5.

²³ The Commission uses this approach for other *de minimis* contributors in Section 54.708 of its rules. A "contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year *unless it is required to do so by our rules governing* [TRS, NANP, or LNP]." See 47 C.F.R. § 54.708.

²⁴ As the Commission noted in creating the SI Exemption, a systems integrator does not own the facilities necessary to provide telecommunications service. This remains true, which requires a

integrator does not purchase underlying telecommunications inputs, its customers must purchase those inputs to facilitate the systems integrator's service.²⁵ The suppliers of these underlying telecommunications inputs treat a qualified exempt systems integrator as an end user and can assess USF pass-through charges on the purchase of the inputs. Accordingly, a declaration that the resale and provisioning of I-VoIP qualify as the "resale of telecommunications" for purposes of the SI Exemption would not erode the USF, as suppliers will continue to pay into the Fund (and their I-VoIP provider customers will contribute indirectly through pass-throughs). Thus, as intended by the Carrier's Carrier Rule, one carrier in the distribution chain will still contribute to the Fund.²⁶

The SI Exemption crafted by the Commission also ensures that a systems integrator that takes advantage of the Exemption only derives a small portion of its revenue from the provision of telecommunications. Only a systems integrator that derives less than five percent (5%) of its systems integration revenue from the "resale of telecommunications" may qualify for the exemption.²⁷ That five percent threshold prevents a systems integrator from abusing the exemption and shirking its responsibility to contribute to the USF 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 and resale of I-VoIP

systems integrator to purchase underlying telecommunications inputs such as SIP trunks or DID lines from telecommunications providers.

²⁵ The lone exception to this would arise when a customer purchases broadband Internet access services to support the I-VoIP service provided by a systems integrator. This exception exists because broadband Internet access service is currently exempt from USF contributions; however, the Commission has an open proceeding to consider whether it should extend USF contribution obligations to broadband Internet access services. See *In re Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, ¶¶ 65-72 (2012).

²⁶ *In the Matter of Universal Service Contribution Methodology, et. al.*, Order, 27 FCC Rcd 13780, ¶ 11 (2012) ("...our present rules require contribution [to the USF] only once along the distribution chain."); *In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service, Application for Review by American Cyber Corp., Coleman Enterprises, Inc., Inmark, Inc., Lotel, Inc., and Protel Advantage, Inc.*, Order on Reconsideration, 29 FCC Rcd 7538, ¶ 4 (WCB 2014) ("The Commission's rules presently require contribution [to the USF] only once along the distribution chain.")

²⁷ SI Exemption Order, 13 FCC Rcd at 5472-73.

services will erode the USF 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 and resale 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. Furthermore, the Commission should clarify whether systems integrators providing I-VoIP and qualifying for the SI Exemption: (1) must register and file FCC Forms 499; and (2) must contribute to the non-USF Title II programs.

Respectfully Submitted,



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