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March 7, 2016

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MAR - 7 2016

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, American Teleconferencing Services, Ltd., d/b/a Premiere Global Services *Application for Review of Decision of the Wireline Competition Bureau and Request for Waiver of One-Year Downward Revision Deadline for FCC Forms 499-A, WC Docket No. 06-122*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on March 3, 2016, American Teleconferencing Services, Ltd., d/b/a Premiere Global Services ("ATS"), a wholly owned subsidiary of Premiere Global Services, Inc. ("PGI"), met with members of the Telecommunications Access Policy Division ("TAPD") of the Wireline Competition Bureau ("Bureau") concerning ATS's Application for Review of Decision of the Wireline Competition Bureau and Request for Waiver of One-Year Downward Revision Deadline for FCC Forms 499-A ("Application for Review").¹ In attendance on behalf of ATS were David Trine, Executive Vice President of PGI; Brooks Askins, Lead Senior Counsel and Vice President of PGI; and Steven A. Augustino and Jameson J. Dempsey of Kelley Drye &

¹ See *Application for Review by American Teleconferencing Services, Ltd., d/b/a Premiere Global Services of Decision of Wireline Competition Bureau and Request for Waiver of One-Year Downward Revision Deadline for FCC Forms 499-A, WC Docket No: 06-122* (filed July 9, 2015) ("Application for Review"); see also *In the Matter of Universal Service Contribution Methodology, Request for Review and Waiver by American Teleconferencing Service, Ltd. d/b/a Premiere Global Services, WC Docket No. 06-122, Order* (June 9, 2015) ("ATS Waiver Order").

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Warren LLP. Chin Yoo, Carol Pomponio, Soumitra Das, and Regina Brown attended the meeting on behalf of TAPD.

During the meeting, ATS outlined the factual circumstances and key legal arguments set forth in its Application for Review of the *ATS Waiver Order*, as set forth in more detail in the presentation attached as **Exhibit A**. Specifically, ATS argued that the Application for Review should be granted because (1) the Bureau unlawfully replaced its multi-factor hardship-and-equity standard with a new single-factor “order of magnitude” test that is absent from prior Commission precedent; (2) the Bureau incorrectly limited its hardship analysis to the monetary value of the erroneous contribution, ignoring other material and important facts that can impose an undue hardship on a filer; and (3) the Bureau inequitably punished ATS—a company with a long history of compliance that made good faith efforts to correctly report its assessable revenues—while granting waivers for filers that had not complied with USF reporting obligations for years.

In addition, ATS provided information in support of its argument that the nature and extent of the hardship that the ministerial error has caused warrant granting ATS’s waiver request. ATS explained that the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] harm at issue is significant and material by the standards of both the Securities and Exchange Commission (“SEC”) and PGI’s internal and external auditors (KPMG). In Staff Accounting Bulletin No. 99, the SEC states that a matter is material “if there is a substantial likelihood that a reasonable person would consider it important.”² Here, a write-off of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] based on the ministerial error would negatively impact PGI’s 2013 earnings per share by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in the third quarter of 2013 and [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the entire year. A reasonable investor almost certainly would find this impact material.³ Second, in 2013, PGI’s internal and external auditors agreed that amounts above [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] were material to the company’s consolidated financial statements. As a result, after the *ATS Waiver Order*, PGI added the following note to its SEC Form 10-Q filings

² See Securities and Exchange Commission, Staff Accounting Bulletin No. 99 (Aug. 12, 1999), available at <https://www.sec.gov/interps/account/sab99.htm>.

³ See *In re Burlington Coat Factory Securities Litigation*, 114 F. 3d 1410, 1420 n.9 (3d Cir. 1997) (“Defendants do not attempt to suggest that the alleged earnings per share overstatements of 2-3 cents themselves should be ruled immaterial. Indeed, earnings reports are among the pieces of data that investors find most relevant to their investment decisions. In deciding whether to buy or sell a security, reasonable investors often rely on estimates or projections of the underlying firm’s future earnings. Information concerning the firm’s current and past earnings is likely to be relevant in predicting what future earnings might be. Thus, information about a company’s past and current earnings is likely to be highly ‘material.’”) (internal citations omitted).

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for the second and third quarter of 2015 cautioning that the impact of the ministerial error would be material: "If the [FCC]'s determination is sustained, the amount could result in a material adjustment to our consolidated financial statements which could impact our results of operations."⁴ For these reasons, PGI submits that the ministerial error rises to the level of undue hardship sufficient to warrant granting a waiver of the one-year downward revision deadline and its request to refile its 2012 FCC Form 499-A.

Moreover, during the meeting PGI provided additional information on the circumstances surrounding the ministerial error. In particular, PGI reiterated that in early 2013, it first obtained (through its third-party billing software provider) access to information and reporting capabilities allowing ATS to more precisely track and report revenues associated with international and foreign traffic.⁵ This new information demonstrated that previous ATS filings had included a significant amount of *non-assessable* revenues related to non-US-transiting, foreign-to-foreign traffic in its contribution base. Importantly, no USF recovery was collected from ATS's customers for this non-assessable revenue. Moreover, because the revenue in question is non-assessable, the Universal Service Fund has no legitimate interest in benefitting from ATS's ministerial error.

Using the new data, ATS diligently worked with its third-party billing service provider and internal staff over the course of several months to refine its internal controls and billing systems to determine, in good faith, the precise amount of revenue attributable to non-assessable, non-US-transiting, foreign-to-foreign traffic. The fact that ATS took prompt, diligent, and good faith steps to improve its tracking and reporting capabilities and filed revisions as soon as practicable distinguishes this case from situations where a filer makes a mere business

⁴ See PGI SEC Form 10-Q for Q2 2015 (Aug. 7, 2015), *available at* <https://www.sec.gov/Archives/edgar/containers/fix069/880804/000088080415000054/pgi2015063010q.htm>; PGI SEC Form 10-Q for Q3 2015 (Nov. 9, 2015), *available at* <https://www.sec.gov/Archives/edgar/data/880804/000088080415000065/pgi2015093010q.htm>. Relevant excerpts from these filings are attached as **Exhibit B**.

⁵ Despite prompt and persistent efforts, ATS was unable to obtain and isolate foreign-to-foreign revenue information earlier than 2013. PGI began reporting and contributing to the Universal Service Fund after the *InterCall Order*, when the Commission first included stand-alone conference service providers as filers. To meet this reporting obligation, PGI needed significant modifications to billing and reporting systems used for conferencing purposes. Upgrades to account for the Commission's contribution methodology took years and several iterations, particularly as needed to isolate international and foreign-to-foreign call traffic, which often is routed through multiple conference bridges under the advanced global routing architecture that PGI has deployed. As a result, although PGI reported international and foreign-to-foreign traffic to the best of its abilities throughout the relevant time period, it only acquired the precise reporting capabilities and relevant information in early 2013. Its March 2013 revision thus was its first filing with the new, more precise information and capabilities.

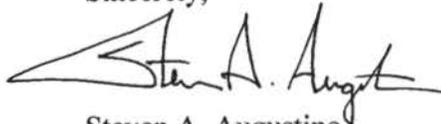
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decision not to report its revenues accurately, or unreasonably delays its revisions, only to subsequently seek a refund.

Finally, during the meeting, Commission staff raised several questions related to the operation of ATS's audio-bridging network and internal billing and collection processes. PGi will provide supplemental information in a forthcoming ex parte filing.

In accordance with Section 1.1206(b)(2)(iii), this notice is timely filed.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a long horizontal line extending to the right.

Steven A. Augustino
Jameson J. Dempsey
*Counsel for American Teleconferencing
Services, Ltd. d/b/a Premiere Global Services*

cc: FCC personnel listed above

Exhibit A

American Teleconferencing Services d/b/a Premiere Global Services (PGi)

Meeting with FCC Wireline Competition Bureau



KELLEY
DRYE

March 3, 2016



Company Overview

- American Teleconferencing Services, Ltd. d/b/a Premiere Global Services (PGi) is a provider of audio, video, and web-based collaboration software and services
- Founded in 1991
- Headquarters in Atlanta, GA
- 2,000 employees worldwide
- PGI has hosted over 1.2 billion people from 155 countries
- 50,000 enterprise customers, including 75% of the Fortune 100™

Timeline of the Error on PGI's 2012 FCC Form 499-A



- March 27, 2012: PGI timely files ATS's 2012 FCC Form 499-A (reporting 2011 revenues)
- Q1 2013: PGI for the first time obtains access to information and capabilities showing that previous Form 499-A filings had included non-assessable foreign-to-foreign revenues in its USF contribution base
- March 28, 2013: PGI timely files an amended 2012 FCC Form 499-A to segregate those non-assessable foreign revenues from its assessable contribution base. Due to a ministerial error, PGI mistakenly reports these non-assessable revenues as assessable on its amended 2012 FCC Form 499-A (i.e., PGI places approximately [REDACTED] on Line 417 instead of 418.3(a))
- July 25, 2013: PGI doesn't learn of the error until it receives its July 2013 USAC invoice, after the one-year deadline for downward revisions to FCC Forms 499-A. While PGI expects to receive an invoice of [REDACTED], the invoice indicates that PGI owes [REDACTED] in true-up—a total impact of approximately [REDACTED]
- August 5, 2013: After promptly investigating the error, PGI prepares and files amendments to its 2012 FCC Form 499-A
- August 15-25, 2013: While USAC accepts amendments to other filings impacted by the ministerial error, USAC rejects PGI's amendments to the 2012 Form 499-A



PGi's 2013 Request for Review

- October 29, 2013: PGI files with the Bureau a request for review and waiver of the one-year revision deadline because:
 1. The error was clerical in nature
 2. The error caused disproportionate hardship for PGI
 3. PGI immediately sought to correct its error
 4. PGI paid its July 2013 invoice in full on October 2, 2013, and would pay its remaining true-up invoices in full in accordance with USAC's "pay and dispute" policy
 5. A waiver is in the public interest
 6. The USF would not be adversely impacted by granting a waiver
- January 16, 2014, PGI meets with Bureau-level staff to provide further information in support of its request



The *ATS Waiver Order*

- June 9, 2015: The Bureau issued an order (*ATS Waiver Order*) denying PGI's request for review and waiver, improperly establishing a new standard for waiver appeals based on a single factor: the order of magnitude of the mistake

[T]he hardship to ATS does not rise to the order of magnitude that the petitioners in the precedent cited by ATS would have faced but for the waiver. For example, in each of the precedents cited, the petitioners faced a contribution obligation that amounted to multiple times its actual obligation for the quarter. Due to its error, ATS faces an increased obligation, but the increase in its obligation is a fraction of what it would have owed but for the mistake.

-ATS Waiver Order ¶ 7

The Commission Should Grant PGi's *ATS Waiver Order* Appeal



- July 9, 2015: PGI appeals the *ATS Waiver Order* to the full Commission
- The Commission should grant the appeal of the *ATS Waiver Order* because:
 1. The Bureau improperly imposed a new single-factor “order of magnitude” test rather than its traditional multi-factor test. Previous cases involving waivers of FCC Form 499 revision deadlines have involved an analysis of multiple factors, including the nature of the error, the steps that the petitioner took to remedy the error, and undue hardship
 2. The Bureau incorrectly limited its hardship analysis to the monetary value of the contribution, ignoring other material and important facts that can impose economic hardship on a filer
 3. The Bureau inequitably punished ATS—a company with a long history of compliance that made good faith efforts to correctly report its assessable revenues—while granting waivers for filers that had not complied with USF reporting obligations for years



The [REDACTED] harm to PGI is significant and material (cont.)

- The SEC’s definition of “materiality” would suggest the [REDACTED] is material
 - Staff Accounting Bulletin No. 99 defines materiality as “A matter is material if there is a substantial likelihood that a reasonable person would consider it important”
 - [REDACTED]
 - Investors would consider that material
- Our auditors considered the [REDACTED] refund material
 - [REDACTED]
 - [REDACTED], we added a footnote to our Q2-15 and Q3-15 10-Qs that stated the amount is material
 - Excerpt from our USF Contribution Matter footnote “. . . . If the Deputy Chief’s determination is sustained, the amount could result in a material adjustment to our consolidated financial statements which could impact our results of operations”



Questions?

Exhibit B

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2015

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission File Number: **001-13577**

PREMIERE GLOBAL SERVICES, INC.

(Exact name of registrant as specified in its charter)

Georgia

59-3074176

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

3280 Peachtree Rd N.E., The Terminus Building, Suite 1000, Atlanta, Georgia 30305

(Address of principal executive offices, including zip code)

(404) 262-8400

(Registrant's telephone number including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	"> <input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Outstanding at August 4, 2015</u>
Common Stock, \$0.01 par value	46,808,447

PREMIERE GLOBAL SERVICES, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

State Corporate Tax Matter

On August 6, 2010, our former subsidiary, Xpedite, received a final determination from the New Jersey Division of Taxation upholding a corporate business tax audit assessment for the tax years ended December 31, 1998 through December 31, 2000 and December 31, 2002. The assessment totaled approximately \$6.2 million as of August 15, 2010, including approximately \$2.4 million in taxes and \$3.8 million in accrued interest and penalties, on which interest continues to accrue. The assessment relates to the sourcing of Xpedite's receipts for purposes of determining the amount of its income that is properly attributable to, and therefore taxable by, New Jersey. We are vigorously contesting the determination through a timely appeal that we filed with the Tax Court of New Jersey on November 2, 2010. On April 24, 2015, we filed a motion for summary judgment with the Tax Court of New Jersey which, if resolved in our favor, may eliminate the entire amount of tax, interest and penalties related to the final determination. The motion was heard by the Tax Court on July 10, 2015; however, its decision has not yet been rendered. We believe we are adequately reserved for this matter. However, if the New Jersey Division of Taxation's final determination is sustained, the amount assessed could result in a material adjustment to our consolidated financial statements which would impact our cash flows and results of operations. We agreed to indemnify EasyLink for this matter in connection with our PGiSend sale.

USF Contribution Matter

Our subsidiary, ATS, received a letter from the USAC dated August 21, 2013, rejecting ATS' revised amended 2012 Annual Telecommunications Worksheet on Form 499-A as not timely filed. On October 29, 2013, ATS filed an appeal to USAC's decision with the FCC, as it subjects ATS to true-up invoices related to USF contributions. ATS incorrectly reported foreign-to-foreign revenues within its amended 2012 Form 499-A, and, as a result, those revenues (and some newly-identified foreign revenues) were incorrectly subject to USF contribution. On June 9, 2015, the Deputy Chief of the Wireline Competition Bureau (who has the delegated power to handle routine USF appeals) denied our FCC appeal. We are vigorously contesting this decision through an Application for Review of the Decision filed on July 9, 2015 asking the full Commission to review the Deputy Chief's determination. If the Deputy Chief's determination is sustained, the amount could result in a material adjustment to our consolidated financial statements which could impact our results of operations.

Other Litigation and Claims

We are involved in other litigation matters and are subject to claims that we do not believe will have a material adverse effect upon our business, financial condition or results of operations, although we can offer no assurance as to the ultimate outcome of any such matters.

12. SEGMENT REPORTING

We manage our operations on a geographic regional basis, with segments in North America, Europe and Asia Pacific. The accounting policies as described in the summary of significant accounting policies are applied consistently across our segments. Revenue from our North America segment is recognized in the United States and Canada, and revenue from our Europe segment is primarily recognized in Ireland and the United Kingdom. We present "Operating income" for each of our segments as a measure of segment profit. Our chief operating decision makers use operating income without the impact of income taxes and other non-operating items internally as a means of analyzing segment performance and believe that it more clearly represents our segment profit on an ongoing basis. No single customer accounted for more than 10% of net sales for the three and six months ended June 30, 2015 and 2014.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

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Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

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Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Outstanding at November 5, 2015</u>
Common Stock, \$0.01 par value	46,753,585

PREMIERE GLOBAL SERVICES, INC. AND SUBSIDIARIES
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(UNAUDITED)

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We manage our operations on a geographic regional basis, with segments in North America, Europe and Asia Pacific. The accounting policies as described in the summary of significant accounting policies are applied consistently across our segments. Revenue from our North America segment is recognized in the United States and Canada, and revenue from our Europe segment is primarily recognized in Ireland and the United Kingdom. We present "Operating income" for each of our segments as a measure of segment profit. Our chief operating decision makers use operating income without the impact of income taxes and other non-operating items internally as a means of analyzing segment performance and believe that it more clearly represents our segment profit on an ongoing basis. No single customer accounted for more than 10% of net sales for the three and nine months ended September 30, 2015 and 2014.

The sum of these regional results may not agree to the consolidated results due to rounding. Information concerning our continuing operations in our segments is as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2015	2014	2015	2014
Net revenue:				
North America	\$ 89,759	\$ 87,507	\$ 272,155	\$ 267,029
Europe	36,014	36,080	110,573	111,497
Asia Pacific	15,194	16,796	44,865	49,383
Consolidated	<u>\$ 140,967</u>	<u>\$ 140,383</u>	<u>\$ 427,593</u>	<u>\$ 427,909</u>
Net revenue by type:				
Conferencing services revenue	\$ 107,917	\$ 112,119	\$ 329,797	\$ 345,442
UC&C SaaS revenue	22,188	13,029	61,403	35,758
Resold services revenue	10,862	15,235	36,393	46,709
Net revenue	<u>\$ 140,967</u>	<u>\$ 140,383</u>	<u>\$ 427,593</u>	<u>\$ 427,909</u>
Operating income (loss):				
North America	\$ (4,375)	\$ (6,613)	\$ (6,432)	\$ (3,663)
Europe	10,145	9,484	26,145	26,582

Asia Pacific

Consolidated

	<u>1,126</u>	<u>786</u>	<u>92</u>	<u>1,957</u>
\$	<u>6,896</u>	<u>\$ 3,657</u>	<u>\$ 19,805</u>	<u>\$ 24,876</u>