

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Request for Review of Decision of the )  
Universal Service Administrator by ) CC Docket Nos. 96-45 and 97-21  
 )  
Vycera Communications, Inc. )

REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE  
ADMINISTRATOR BY VYCERA COMMUNICATIONS, INC.

VYCERA COMMUNICATIONS, INC.

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Dated: August 16, 2006

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**I. INTRODUCTION AND SUMMARY**

Vycera Communications, Inc. (“Vycera”), in accordance with Sections 54.719(c) and 54.722 of the Commission’s rules and regulations (“Rules”),<sup>1</sup> appeals decisions of the Universal Service Fund (“USF”) Administrator and the Universal Service Administrative Company (“USAC”) Board of Directors (“Board”).<sup>2</sup> Specifically, Vycera appeals certain conclusions of a contributor revenue audit report issued by USAC and approved by the Board concerning Vycera

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<sup>1</sup> 47 C.F.R. §§ 54.719(c), 54.722 (2005).

<sup>2</sup> Vycera submitted this exact filing, with the exception of this particular footnote and the dates on the cover and signature pages, to the Office of the Secretary of the Commission, the Wireline Competition Bureau (“WCB”), and USAC counsel on June 28, 2006 via FedEx overnight delivery, as indicated on the Certificate of Service appended to the original June 28 filing. Although each of the intended recipients signed for the FedEx on June 29, 2006, the filing was never posted to the Commission’s Electronic Comment Filing System and a date-stamped copy was never returned to Vycera. When Vycera asked the Commission to verify receipt of the filing, Vycera was informed by Commission counsel in the WCB (Amy Bender) on August 16, 2006, that none of the parties could locate the filing in their records.

While Vycera understands the Commission experiences delays in receiving mail due to heightened security measures, a six-week delay seems extraordinary, and Vycera believes it is best to resubmit this Request for Review. In order to ensure that the applicable statute of limitations does not expire and to ensure that this filing relates back to the original June 28 filing, Vycera is filing, concurrent with this submission, a petition for waiver of the Commission’s statutory deadline for USAC appeals.

filing years 2003 and 2004 (“Audit Report”),<sup>3</sup> in which USAC concluded Vycera incorrectly stated revenues for those filing years in accordance with FCC Form 499-A Telecommunications Reporting Worksheet and Instructions (“Worksheet and Instructions”).

As discussed further below, the Audit Report contradicts and misinterprets Commission Rules and related USF orders, and thus, Vycera requests that the Commission reverse the noted decisions in the Audit Report and (i) exclude the subscriber line charge (“SLC”) from reported revenues or, in the alternative, allocate revenues at Line 405 of the 2003 and 2004 Form 499-A between interstate and international in the proportion of interstate and international toll service revenues reported at Line 414 of the applicable Form 499-A, (ii) allocate bad debt expense on the 2004 Form 499-A, Line 422 in the correct proportion, (iii) remove references to the notion that Vycera violated a nonexistent Commission rule, and (iv) reverse and rescind the revised 2003 and 2004 Form 499-A(s) prepared by USAC on Vycera’s behalf and processed for collections purposes.

## **II. FACTUAL BACKGROUND**

Vycera is a competitive local and long distance carrier that provides a full suite of local, long distance, international and enhanced calling services for the fast-growing U.S. Hispanic population. Focused exclusively on serving residential consumers in the Spanish-speaking community, Vycera offers special rates and customized calling plans that are priced between 10 and 45 percent less than competitive offerings to México, Latin America and domestically.

In or around the fourth quarter of 2004, USAC conducted an audit of Vycera’s 2003 and 2004 Form 499-A filings. The Audit Report, which was provided to Vycera on January 23, 2006, determined Vycera did not comply fully with Commission Rules and Form 499-A

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<sup>3</sup> A copy of the final Audit Report is appended hereto at Attachment A.

Worksheet and Instructions. On January 31, 2006, USAC demanded that Vycera complete and submit revised 2003 and 2004 Form 499-A(s) to reflect the Audit Report conclusions.<sup>4</sup>

In a letter dated March 2, 2006, (well before the appeal deadline for the Audit Report), USAC again demanded revised Form 499-A(s), and stated that failure to submit the revisions would result in USAC's completing such forms on Vycera's behalf and processing the forms for collection purposes.<sup>5</sup>

On March 22, 2006, Vycera appealed the Audit Report to USAC.<sup>6</sup> On or about April 7, 2006, after receiving Vycera's appeal but prior to issuing any decision, USAC informed Vycera that it had prepared and would be processing revised 2003 and 2004 Form 499-A(s) to reflect the revised revenue figures contained in the Audit Report findings.<sup>7</sup> In a letter dated May 4, 2006, Vycera explained to USAC that Vycera had appealed the Audit Report findings and thus objected to USAC's preparation and processing of revised Form 499-A(s) based on disputed findings.<sup>8</sup> Despite the Vycera's appeal and May 4 letter, USAC submitted an invoice and statement of account to Vycera on or about May 22, 2006, seeking payments based on the revised 2003 and 2004 Form 499-A(s) prepared by USAC.<sup>9</sup>

On June 6, 2006, USAC responded to Vycea's March 22 appeal, stating that it could not consider the appeal on the basis that an Audit Report is a Board action to be appealed only to the

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<sup>4</sup> A copy of the January 31, 2006 letter is appended hereto at Attachment B.

<sup>5</sup> A copy of the March 2, 2006 letter is appended hereto at Attachment C. The letter was postmarked March 8, 2006, and received by Vycera on March 13, 2006.

<sup>6</sup> A copy of Vycera's March 22 letter of appeal to USAC is appended hereto at Attachment D.

<sup>7</sup> A copy of the USAC letter dated April 7, 2006, is appended hereto at Attachment E.

<sup>8</sup> A copy of Vycera's May 4, 2006 letter is appended hereto at Attachment F.

<sup>9</sup> A copy of the invoice and statement of account dated May 22, 2006, is appended hereto at Attachment G.

Commission.<sup>10</sup> In that response, USAC acknowledged that Vycera would have sixty (60) days from June 6 to file with the Commission an appeal and request for review of the Audit Report and USAC's revision of the 2003 and 2004 Form 499-A(s) implementing the Audit Report.

Vycera disagrees with the following findings in the Audit Report:

Jurisdictional Allocation of Revenues: For subscriber line charges ("SLC") (referred to by USAC as Interstate Access Fees), USAC concluded that Vycera should have reported all SLC as 100 percent interstate revenue at Line 405 of the Form 499-A(s) submitted in 2003 and 2004.

Bad Debt: With respect to Vycera's deduction of bad debt at Line 422 of the 2004 Form 499-A, USAC determined Vycera should reallocate its bad debt expense attributable to interstate revenues based on the percentages resulting from the final Audit Report.

International Traffic & Revenue Report: USAC determined that Vycera's international traffic report filed pursuant to 47 C.F.R. § 43.61 did not match the figure reported at Line 419(e) of the 2003 Form 499-A, and declared the incongruence to be a violation of Commission Rules.

In addition, Vycera disputes the preparation and processing for collection revised 2003 and 2004 Form 499-A(s) based on incorrect findings contained in the Audit Report. As follows, Vycera addresses the above-listed issues and submits the decision USAC should have reached under the Commission's Rules and USF orders.

### **III. APPEAL OF DECISIONS OF THE UNIVERSAL SERVICE ADMINISTRATOR**

#### **A. Jurisdictional Allocation of Revenues (2003 and 2004 Form 499-A, Line 405)**

In the Audit Report, USAC found that Vycera did not report SLC as revenue at Line 405 of the 2003 and 2004 Form 499-A(s).<sup>11</sup> Furthermore, USAC determined that such charges must

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<sup>10</sup> A copy of the June 6 response from USAC is appended hereto at Attachment H.

<sup>11</sup> See Audit Report at 4.

be reported as 100 percent interstate revenue.<sup>12</sup> Those decisions misinterpret the Form 499-A Worksheet and Instructions and improperly characterize the SLC as revenue where Vycera does not book the SLC as revenue.

**1. SLC billed by Vycera should not be regarded as revenue.**

In the Audit Report, USAC cited the Form 499-A Worksheet and Instructions at Section III.C.2: “Gross revenues also should include any surcharges on telecommunications services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenue but which instead are remitted to government bodies.”<sup>13</sup>

As Vycera explained in its response to the Audit Report exception, Vycera merely passes through the SLC to its end user customers and does not retain the SLC.<sup>14</sup> For the relevant time periods of the audit (*i.e.*, revenue years 2002 and 2003), Pacific Bell assessed the SLC to Vycera with no resale or other discount.<sup>15</sup> Vycera passed that charge, without any markup, directly to its end user customers.<sup>16</sup> As a result, the SLC provides Vycera with no profit, and Vycera does not record the SLC as revenue on the company books.<sup>17</sup> The fee is netted against an expense account in the same manner in which Vycera handles other government-mandated surcharges.<sup>18</sup>

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<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Id.* at 5-6; *see also* Declaration of Thalia R. Gietzen, ¶4, appended hereto at Attachment I.

<sup>15</sup> Gietzen Declaration, ¶3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, ¶5.

<sup>18</sup> *Id.*

Furthermore, when Vycera calculated the USF surcharge for its customers in the applicable revenue years, it did not include the SLC because the SLC is not booked as revenue.<sup>19</sup>

USAC stated further in the Audit Report that “all surcharges on telecommunications services billed to customers and remitted to a non-government third party are considered gross revenues as it pertains to the 499 filings.”<sup>20</sup> That statement is overly broad and exceeds the scope of the Form 499-A Worksheet and Instructions by omitting the phrase “under contract.” Moreover, if USAC intended to include the phrase “under contract” in its statement, the USAC’s logic is flawed in that USAC concludes, without any support whatsoever, that the SLC must be revenue to Vycera as a surcharge “remitted to a non-government third party under contract” merely because the SLC is neither a surcharge billed to the customer and retained by Vycera nor a surcharge remitted to a government body. In other words, USAC mistakenly believes that surcharges fall into only three possible categories, and because two of the potential categories do not apply, Vycera’s SLC pass-through must be forced into the remaining category, no matter how awkward the reading or unjust the result.

Including the SLC as revenue and part of a filer’s contribution base in the particular circumstance of a carrier in Vycera’s position – *i.e.*, where the SLC is a mere pass-through charge to a customer – improperly shifts the financial burden of USF contributions to the carrier who recognizes no gain from the SLC. USAC would have Vycera pay the full amount of the SLC to Pacific Bell, recognize no revenue or profit from the SLC, and require Vycera to contribute to USF based on revenue that simply does not exist.

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<sup>19</sup> *Id.*

<sup>20</sup> Audit Report at 7.

While the SLC is a federally-regulated fee assessed directly against customers to recover a portion of loop costs allocated to interexchange access, Vycera pays the full amount of the SLC to Pacific Bell, recovering and retaining nothing. Accordingly, the SLC that is passed through by Vycera to its customers and offset entirely by payments to Pacific Bell should not be included in Vycera's contribution base.

**2. If the SLC is treated as revenue, such amounts should be allocated between interstate and international traffic revenues.**

If the SLC is categorized as revenue, it should not be allocated 100 percent to interstate revenue. Instead, where the SLC is paid by Vycera to Pacific Bell and merely passed through without markup to Vycera's end user customer, the SLC should be treated in a manner similar to the former PICC pass-through at Line 414 of the Form 499-A – *i.e.*, allocated in proportion to interstate and international revenues.

As the Commission has observed, “the SLC and PICC were established to recover loop costs for the same service—interexchange access.”<sup>21</sup> Because the two items were deemed equivalent in purpose and both relate to an end user's access to the interexchange network to make both interstate and international calls, Vycera should be permitted to allocate the SLC pass-through to end users in the same manner as PICC pass-through charges were allocated – *i.e.*, between interstate and international revenues at Lines 405(d) and 405(e), respectively.

USAC's reference to Form 499-A Worksheet and Instructions at Section III.C.3 (the Audit Report inadvertently refers to Section III.C.2) – “Circuits within the United States that connect a customer to an international circuit should be reported as interstate” – is entirely

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<sup>21</sup> *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, Sixth Report and Order in CC Docket Nos. 96-292 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12,962, ¶97 (2000).*

misplaced. That particular instruction has nothing to do with reporting revenue at Line 405. In fact, the instruction is a note that relates to reporting at Lines 418 and 419.

USAC's reference to the instruction is an attempt to rewrite the Form 499-A Worksheet and Instructions to require all international-bound traffic and revenue to be reported as interstate revenue. Moreover, USAC's proposed definition of interstate telecommunication contradicts the Commission's definition at 47 C.F.R. § 54.5. This effort by USAC is prohibited under 47 C.F.R. § 54.702(c), which states that "the Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."

Accordingly, if the SLC is treated as revenue, it should be allocated in line with PICC pass-through charges, and the allocation of the SLC amount of \$106,670 on the 2003 Form 499-A should be 3.15 percent interstate and 41.81 percent international, resulting in revised revenue figures of \$3,360 at Line 405(d) and \$44,599 at Line 405(e). For the 2004 Form 499-A, the allocation of the SLC amount of \$58,287 should be 2.45 percent interstate and 73.4 percent international, resulting in revised revenue figures of \$1,428 at Line 405(d) and \$42,783 at Line 405(e).

**B. Bad Debt Expenses (2004 Form 499-A, Line 422)**

Line 422 of the 2004 Form 499-A requires filers to list the portion of uncollectible revenue or bad debt expense of the amount reported at Line 421 associated with universal service contribution base amounts reported at Line 420. Filers that do not maintain records by business type are instructed to allocate the total bad debt reported at Line 422(a) based on the reported interstate and international revenue proportions.<sup>22</sup>

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<sup>22</sup> See 2004 Form 499-A Instructions at 18.

In the Audit Report, USAC noted that Vycera correctly allocated bad debt on Line 422 of the 2004 Form 499-A as 4.3 percent interstate revenue; however, based on its findings in the Audit Report, USAC determined that Vycera should reallocate bad debt based on the revised percentages resulting from USAC's recalculations of interstate and international percentages of gross revenue.<sup>23</sup>

Although USAC's findings for the 2004 Form 499-A increase interstate revenue from 4.3 percent to 5 percent of total gross revenue, Vycera disagrees with USAC's final percentage for interstate revenue. As indicated above with respect to the SLC, if the SLC is considered revenue, then it should be allocated between interstate and international revenue based on the proportion of long distance revenue at Line 414. After that appropriate adjustment is made, Vycera's percentage of interstate revenue for the 2004 Form 499-A, as seen at Line 420, should be 4.3 percent of gross revenue. The percentage of international revenue reflected at Line 420 should be 32.2 percent of gross revenue. And the bad debt expenses should be allocated accordingly (*i.e.*, 4.3 percent interstate and 32.2 percent international). Such a revision would result in a decrease in Vycera's "Interstate Amount Audited" in the amount of \$ 46,800 (as opposed to USAC's decrease of \$54,419) and a decrease in Vycera's "International Amount Audited" in the amount of \$350,456 (as opposed to USAC's decrease of \$349,018).

**C. International Traffic and Revenue Report (2003 Form 499-A, Line 419(e))**

USAC noted in the Audit Report that Vycera's reported revenue at Line 419(e) of the 2003 Form 499-A did not correspond to Vycera's international telecommunications traffic and revenue reported pursuant to 47 C.F.R. § 43.61.<sup>24</sup> Although the discrepancy had no monetary

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<sup>23</sup> Audit Report at 8.

<sup>24</sup> *Id.* at 12-13.

effect on Vycera's contribution base for the filing period, USAC declared the discrepancy to be a violation of Commission Rules.

There is, however, no Commission requirement that the revenue figures match. Indeed, the Form 499-A instructions anticipate discrepancies.<sup>25</sup> In the final Audit Report, USAC did not address the points raised by Vycera in its response to the exception.<sup>26</sup> Vycera believes it is imperative that the Commission review and reverse USAC's unfounded determination that Vycera has violated Commission Rules based on the discrepancy in international revenue reports.

**D. Production and Processing of Revised 2003 and 2004 Form 499-A(s)**

In January 31 and March 2, 2006 letters, USAC requested that Vycera submit revised 2003 and 2004 Form 499-A(s) reflecting the figures, percentages and conclusions set forth in the Audit Report. Because Vycera disagrees with and is appealing certain conclusions in the Audit Report, it should not be required to comply with the request until the appeals process is completed and a final determination concerning the validity of USAC's findings has been reached.

Vycera disagrees with aspects of the Audit Report, and thus, it cannot revise the forms and certify the authenticity and truth of the information if that information is based USAC's reported findings.<sup>27</sup> Accordingly, USAC should be required to withhold its request for revised Form 499-A(s) until these issues on appeal have been resolved.

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<sup>25</sup> *Id.* at 13-14.

<sup>26</sup> *Id.* at 14 (USAC response providing no additional comments).

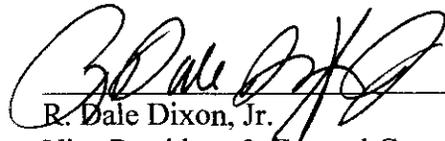
<sup>27</sup> *See, e.g.*, 47 C.F.R. § 54.711(a) (detailing certification requirements for submission of USF filings, including Form 499-A).

#### IV. CONCLUSION

Vycera respectfully requests that the Commission (1) reverse the above-noted determinations in the Audit Report, (2) reverse and rescind the revised FCC Form 499-A(s) prepared and processed by USAC, (3) prohibit USAC from attempting to collect payments based on the Form 499-A(s) prepared and processed by USAC, and (4) instruct USAC to accept revised FCC Form 499-(A)s that reflect reversal of the noted USAC determinations.

Respectfully submitted,

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August 16, 2006

# ATTACHMENT A

**PRIVILEGED & CONFIDENTIAL**

**To:** Mr. WB Erwin, Vice President of Finance Division  
**From:** Wayne Scott, Vice President of Internal Audit Division  
**Date:** October 5, 2005  
**Re:** Independent Auditor's Report of Contributor Revenue Compliance on Vycera Communications, Inc. (USAC Audit No. CR2005CP004)

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**Introduction**

The Internal Audit Division (IAD) of the Universal Service Administrative Company (USAC) has audited the compliance of the process by which Vycera Communications, Inc. (Vycera), Filer Identification Number 812626, completed its 2003 and 2004 Federal Communications Commission (FCC) Form 499-A with the regulations governing USF contributors set forth in 47 CFR Part 54 as well as FCC Form 499-A Instructions. Compliance with FCC Regulations and the Form 499-A Instructions is the responsibility of Vycera's management. IAD's responsibility is to express an opinion on Vycera's compliance with the Rules based on our audit.

**Purpose and Scope**

Elizabeth Chou, USAC Internal Auditor, conducted the audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States (GAS, 2003). Our audit included examining, on a test basis, evidence supporting the data reported to USAC on FCC Form 499-A, as well as performing such other procedures as we considered necessary to form an opinion. We believe that our examination provides a reasonable basis for our opinion.

**Background Information**

Vycera Communications, Inc. is a regional telecommunications carrier operating in California. The company offers residential domestic and international long-distance services throughout the West Coast of the United States. For the filings years at issue, the carrier reported the following revenues which were part of the federal universal service fund (USF) contribution base:

<u>Contribution Base</u>	<u>2003</u>	<u>2004</u>
Interstate Revenue	260,301	494,134
International Revenue <sup>1</sup>	<u>3,458,301</u>	<u>3,689,916</u>
Total	\$3,718,602	\$4,184,050

### Objective and Procedures

The primary objective of our audit was to determine the accuracy and completeness of the revenues reported on the FCC Form 499-A and to identify any potential misstatements which may result in a change to the contribution liability amount. IAD performed an examination of the 2003 and 2004 FCC Form 499-A (covering the revenue period January 1, 2002 – December 31, 2003). IAD also performed procedures to ensure the carrier was compliant with FCC Form 499-A regulations concerning appropriate support and record retention. IAD sent a Form 499-A Questionnaire that was completed by the carrier. This questionnaire was used to gain a better understanding of the carrier's business and to identify any areas requiring additional attention.

IAD conducted audit procedures to ensure the carrier correctly reported "gross billed revenues"<sup>2</sup> from all sources on its Form 499-A by obtaining a reconciliation of the total revenues as reported on the Form 499-A to the carrier's financial statements. IAD also ensured the correct classification of the carrier's revenue accounts and appropriate placement on the different Form 499-A line items by reconciling the carrier's General Ledger (G/L) to the Form 499-A.

The FCC Form 499-A requires the carrier to classify revenues as either intrastate, interstate, and/or international revenues through the use of "good faith" estimates, safe harbor percentages, or actual revenue amounts. IAD obtained supporting documentation for the carrier's method and determination of these percentages or amounts to ensure it was compliant with the Form 499-A Instructions and FCC Regulations. To support "good faith" estimates, IAD requested documentation in the form of traffic studies or minutes of use reports.

Additionally, each filer that reports "Carrier's Carrier Revenue" in Block 3 of the Form 499-A, should have documented procedures to ensure that it reports in Block 3 only revenues from entities that reasonably would be expected to contribute to support universal service. IAD obtained a listing of all the carrier's resellers and ensured that proper documentation was adequately maintained. IAD also ensured that the carrier's resellers reported as revenue subject to USF the revenues the carrier reported as "Carrier's Carrier Revenue."

<sup>1</sup> This carrier qualified for the Limited International Revenue Exemption (LIRE) on the final processed 2003 and 2004 Form 499-A and did not contribute to the USF based on its international revenues.

<sup>2</sup> In a memo to the FCC dated November 4, 2005, USAC IAD requested the Commission's guidance on carriers who report revenues based on revenue recognition principles in accordance with GAAP as these revenues often differ from "gross billed revenues." Until this determination is made by the Commission, IAD will audit carriers' Form 499-A based on revenues reported in the carriers' general ledger and Financial Statements.

## **Conclusion**

In our opinion, Vycera was not compliant with the FCC regulations for the periods reviewed and the carrier's revenues were not stated in accordance with the FCC Form 499-A Instructions in all material respects. The potential total monetary effect on the carrier's contribution base resulted in an increase on the 2003 Form 499-A of \$342,136 and an increase on the 2004 Form 499-A of \$50,608. The combined potential additional amount due to the Fund from the carrier for both years is \$29,173. A summary of IAD's findings and recommendations, the carrier's responses, IAD's response to the carrier's response, where applicable, and USAC Financial Operations Management responses are included below.

## **Audit Procedures, Findings, Recommendations and Responses**

### **1. USF Fees**

According to the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, applicable to the audited years, "[a]ny charge that is identified on a bill as recovering contributions to universal service support mechanisms must be shown on Line 403 and should be identified as either interstate or international revenues."

IAD determined from Vycera's questionnaire that its customers were billed USF fees in revenue year 2002. However, there was no revenue amount reported on Line 403 of the 2003 Form 499-A. Per the carrier, the carrier's auditors did not allow the carrier to report this as revenue on its financials because it is pass-through revenue. Therefore, USF fees were reported in the carrier's financials as an offset to the amount paid to the USF. IAD noted that for the Form 499-A, however, this amount must be reported in Line 403. IAD obtained the carrier's 2002 G/L and determined that the amount that should have been reported on the 2003 Form 499-A was \$187,036. IAD also noted that since Vycera qualified for LIRE on the 2003 Form 499-A and the pass-through charges are assessed on customers as recovery for USF contributions, these revenues must be classified as interstate revenues.

### **Recommendation**

USAC IAD recommends that Vycera re-file its 2003 Form 499-A to properly report revenues collected for USF on Line 403 of the Form 499-A.

### **Carrier Response<sup>3</sup>**

#### **2003 Form 499-A, Line 403**

Concerning the unreported USF fees collected by Vycera in 2002, Vycera agrees with IAD's conclusion that the unreported USF fee amount of \$187,036 should be reported on Line 403 of a revised 2003 Form 499-A as interstate revenue. And Vycera agrees with IAD's conclusion that Vycera qualified for LIRE on the 2003 Form 499-A before and after the IAD audit report.

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<sup>3</sup> The carrier's responses are indented to represent the exact response received from the carrier.

Accordingly, Vycera concurs with the portion of IAD's recommendation that Vycera re-file its 2003 Form 499-A to report \$187,036 collected for USF on Line 403. The revision results in an increase of on \$187,036 on Vycera's 2003 Form 499-A contribution base."

### **Financial Operations Management Response**

Financial Operations agrees with IAD's finding that the unreported USF fees should be reported on line 403 of the 2003 Form 499A.

Please note that the LIRE calculations will be conducted according to standard billing procedures based on official FCC regulations on the information provided in the new form. Financial Operations will not comment on any statement of LIRE for any filing until final billing processes have been completed.

### **2. Jurisdictional Allocation of Revenues**

According to the Instructions to the Form 499-A, "subscriber line charges levied under a tariff filed by the reporting entity or placed on customer bills as a pass-through of underlying carrier subscriber line charges" should be reported on Line 405 of the Form 499-A. It further instructs that federal subscriber line charges typically represent the interstate portion of fixed local exchange service. IAD noted that the FCC definition of a subscriber line charge includes, "FCC Charge for Network Access", "Federal Line Cost Charge", "Interstate Access Charge", "Federal Access Charge", or "Customer Line Charge." In addition, the Instructions to the Telecommunications Reporting Worksheet, Form 499-A states, "[i]f interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures."

Per the carrier, all revenue from Vycera's local services are generated from the resale of Pacific Bell's (Pac Bell) lines and are classified as intrastate revenues on the Form 499-A. IAD obtained sample Pac Bell invoices from both revenue year 2002 and 2003 to ensure these revenues were accurately reported as intrastate revenues. IAD noted that on each sample invoice, Pac Bell billed Vycera FCC Imposed Interstate Access Fees that Vycera then billed the consumer. Per the carrier, these fees were not booked as revenue but netted against an expense account and therefore omitted from both the 2003 and 2004 Form 499-A. IAD noted that per the Instructions to the Form 499-A, these revenues collected by Vycera and remitted to Pac Bell should be reported on the Form 499-A as interstate revenues. IAD obtained invoice summaries and G/L account details and noted that \$106,670 and \$58,287 in 2003 and 2004 respectively, should have been reported in Line 405 as interstate revenues.

IAD also noted that the carrier stated it used traffic reports generated from the billing systems to estimate the applicable interstate and international percentages. IAD obtained the traffic reports generated monthly in 2002 and 2003 and recalculated the interstate and international percentages to ensure the amount reported on the Form 499-As were reasonable. IAD noted that for revenue years 2002, IAD calculated a percentage for international revenue of 57 percent; however, the amount reported on the 2003 Form 499-

A was 42 percent. The carrier should therefore have reported the 57 percent as its international percentage of its long distance revenues; however this has no monetary effect on the carrier's additional contribution because the carrier qualified for LIRE on the 2003 Form 499-A. In 2003, on the 2004 Form 499-A, the carrier provided adequate documentation to validate and support the percentage allocations reported on the Form 499-A. IAD did not note a finding in this year.

### **Recommendation**

USAC IAD recommends that Vycera re-file its 2003 and 2004 Form 499-A to accurately report Interstate Access Fees as interstate revenue in Line 405. IAD also recommends that Vycera ensure all good faith estimates used in reporting intrastate, interstate and international allocations on the Form 499-A be adequately supported by its traffic studies or minutes of use reports.

### **Carrier Response**

#### 2003 Form 499-A, Line 405 & 2004 Form 499-A, Line 405

As acknowledged by IAD, the Company passes through to its customers an "FCC Imposed Interstate Access Fee" (*i.e.*, subscriber line charge) that is assessed by its underlying provider, Pacific Bell, with no resale or other discount to Vycera. Importantly, Vycera merely passes through this fee to its customers; the Company does not mark-up this fee in any way, nor does the Company book the fee as revenue. Instead, this fee is netted against an expense account, similar to how the Company handles other types of government-mandated surcharges.

In its *First Universal Service Order*, the FCC specifically recognized that unlike a universal service fee, the subscriber line charge is a *government-mandated* end-user surcharge.<sup>4</sup> While Vycera acknowledges that the Form 499-A instructions indicate that subscriber line surcharges should be reported as universal service revenue, as a government-mandated surcharge, the subscriber line charge instead should be treated the same way that other government-mandated surcharges are treated – namely, the subscriber line charge, if not booked as revenue by the carrier, should be excluded from reported revenue. Vycera would agree that to the extent that a carrier is not merely passing through a subscriber line surcharge, but instead is recovering an amount in excess of the subscriber line surcharge, it should be required to report and pay USF on the excess amount as revenue. But carriers that are passing through a government mandated surcharge should not be required to pay USF on that surcharge – it is not revenue and should not be treated as such.

Nevertheless, to the extent that USF is assessed on subscriber line surcharges, at minimum, that revenue should not be allocated as entirely interstate as done by the IAD. The purpose of the subscriber line charge is for local exchange carriers to recover the costs associated with providing access to the long distance

<sup>4</sup> *Federal-State Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶855 (1997) ("*First Universal Service Order*").

network.<sup>5</sup> Access to the long distance network includes the ability to place both interstate *and international* calls. While the Instructions to the Form 499-A state that subscriber line charges are “typically” interstate,<sup>6</sup> there is no FCC requirement that all subscriber line charges be classified for universal services purposes as entirely interstate revenue. Indeed, IAD did not cite to any authority for the proposition that subscriber line charges must be classified as interstate. Thus, to the extent that USF is assessed on subscriber line charges, Vycera objects to the IAD allocation of all of those charges as interstate. Instead, those charges should be allocated according to the traffic reports that Vycera provided to IAD to estimate the applicable interstate and international percentages for its end user revenues. Vycera’s traffic reports show that assuming subscriber line charges represent 100% interstate usage of the long distance network is patently unreasonable. USAC, can, in accordance with FCC rules and its own internal guidelines, make estimates of a contributor’s revenue in certain instances, based on all relevant information it has available.<sup>7</sup> Although IAD has relevant information regarding Vycera’s traffic patterns, it has disregarded that information and decreed all subscriber line charges to be interstate. Instead, to the extent that USF is assessed on subscriber line charges, IAD should allocate Vycera’s subscriber line charges according to traffic reports provided to IAD. Such an allocation is consistent with the FCC rules and would more accurately reflect the jurisdiction of the costs associated with the long distance network used in the provision of services to Vycera’s customers.

Finally, Vycera objects to the recommendation that it be required to re-file its Form 499-As consistent with the recommendations in this Worksheet. Where Vycera disagrees with the findings and appeals those findings, the Company reserves its right not to file a Form 499-A that contains inaccurate revenue information based on a finding that is subject to an appeal.”

### **IAD Response to the Carrier’s Response**

IAD reiterates that the Instructions to the Form 499-A explicitly state that subscriber line charges are to be included as interstate revenues on the Form 499-A. The carrier’s arguments directly contradict these Instructions.

### **Financial Operations Management Response**

499 Instructions

III. Specific Instructions

C. Block 3, Block 4-A and Block 4: Filer Revenue Information

2. Column (a) – total revenues

“Gross revenues also should include any surcharges on telecommunications services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that

<sup>5</sup> *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241, *modified on recon.*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983).

<sup>6</sup> Form 499-A, Instructions, at 22.

<sup>7</sup> *See, e.g.*, 47 C.F.R. § 54.709(d).

are not recorded on the company books as revenues but which are instead are remitted to government bodies.”

The 499 instructions provide that all surcharges on telecommunications services billed to customers remitted to a non-government third party are considered gross revenues as it pertains to the 499 filings. As stated in Vycera’s response, the “FCC Imposed Interstate Access Fee” (*i.e.*, subscriber line charge) is a pass-through fee to its customers that is remitted to Pac Bell. Pac Bell is not a government body. Accordingly, the 499 instructions require the subscriber line charge billed to Vycera’s customers be reported as gross billed revenue on line 405 of the 499A form.

Vycera contends:

“The purpose of the subscriber line charge is for local exchange carriers to recover the costs associated with providing access to the long distance network.<sup>8</sup> Access to the long distance network includes the ability to place both interstate *and international* calls..... those charges should be allocated according to the traffic reports that Vycera provided to IAD to estimate the applicable interstate and international percentages for its end user revenues.”

499 Instructions

III. Specific Instructions

C. Block 3, Block 4-A and Block 4: Filer Revenue Information

2. Column (a) – total revenues

“Circuits within the United States that connect a customer to an international circuit should be reported as interstate.”

The FCC 499 instructions reflect the fact that federal subscriber line charges typically represent the interstate portion of fixed local exchange. USAC also holds that the (as demonstrated in the instructions above) revenue from access to international circuits must be reported as interstate.

### 3. Bad Debt Expense

According to the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, dated April 2004, the amount reported as bad debt expense on Line 421 should be the amount reported as bad debt expense in the filer’s income statement for the year and the contributor’s uncollectible revenues/ bad debt expense should be calculated in accordance with Generally Accepted Accounting Principles. In addition, the Instructions state, “[f]ilers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 422. Filers that do not have such detail should make such assignments in proportion to the reported gross revenues.” The Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, dated

<sup>8</sup> *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241, *modified on recon.*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983).

April 2003, and the 2003 FCC Form 499-A do not allow a deduction for bad debt expense.

USAC IAD noted that on the 2003 Form 499-A, the carrier deducted \$15,756 from Line 404 and \$1,465,113 from Line 414 as bad debt. IAD noted, however, that this was not an allowable deduction until the 2004 Form 499-A and must be added back to the carrier's contribution base revenues for the 2003 Form 499-A. IAD also noted that this finding resulted in an increase in the carrier's total revenues for Line 404 from \$5,267,044 to \$5,282,800; however, these revenues are all classified as intrastate revenues and therefore do not have a potential effect on the carrier's contribution base.

The remaining potential effect of this finding for Line 414 on the carrier's contribution base is detailed below.

2003 Form 499-A							
Form 499-A Line	Revenue Amount Reported	Interstate Amount Reported	International Amount Reported	Revenue Amount Audited	Interstate Amount Audited	International Amount Audited	Potential Effect on Contribution Base
414	\$ 8,271,309	\$ 260,301	\$ 3,458,301	\$ 9,736,422	\$ 306,697	\$ 5,549,761	\$ 46,396
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ 46,396</b>

NOTE: IAD noted that the carrier appears to qualify for LIRE on the 2003 Form 499-A, therefore the potential effect on the carrier's contribution base is only assessed on interstate revenues.

USAC IAD also noted that in 2003 the carrier deducted \$19,530 as bad debt from the revenue amount reported in Line 404 (b) on the 2004 Form 499-A and inadvertently deducted this same amount again in Line 421. IAD noted that the deduction should be removed from Line 404 (b) so as to not double count the bad debt deduction. IAD noted that this finding resulted in a \$19,530 increase in the carrier's total revenues but has no monetary effect on the carrier's contribution base because the revenues reported in Line 404 (b) were all local revenues. In addition, IAD noted that the carrier does not track bad debt expense by jurisdiction and therefore must allocate revenues in accordance with the interstate and international revenue percentages reported on the Form 499-A. On the 2004 Form 499-A, IAD noted that the carrier correctly allocated its bad debt expense attributable to interstate revenues as 4.3 percent; however, due to the audit findings, this percentage is no longer reflective of the carrier's total interstate revenues and should be changed to 5 percent. (IAD noted the audit results had no effect on the international percentage of bad debt and therefore did not affect the carrier's international contribution base revenues.) The monetary effects of this change results in a decrease in the carrier's potential additional contribution base detailed in the following.

2004 Form 499-A							
Form 499-A Line	Revenue Amount Reported	Interstate Amount Reported	International Amount Reported	Revenue Amount Audited	Interstate Amount Audited	International Amount Audited	Potential Effect on Contribution Base
422	\$ (1,088,374)	\$ (46,739)	\$ (349,018)	\$ (1,088,374)	\$ (54,419)	\$ (349,018)	\$ (7,680)
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ (7,680)</b>

**Recommendation**

USAC IAD recommends that Vycera re-file its 2003 Form 499-A to properly report gross billed revenues without a deduction for bad debt expense. IAD also recommends that Vycera re-file its 2004 Form 499-A to properly allocate bad debt expense in proportion to gross revenues reported on the Form.

### **Carrier Response**

#### 2003 Form 499-A, Line 404

Regarding IAD's findings with respect to Vycera's 2003 Form 499-A, Line 404, Vycera agrees with IAD's conclusion that the \$15,756 of bad debt deducted by Vycera should be added back to its total revenue and that the bad debt amount is properly classified as intrastate revenue and has no effect on Vycera's contribution base. Accordingly, Vycera concurs with the portion of IAD's recommendation that Vycera re-file its 2003 Form 499-A to include in the total revenue amount reported at Line 404 the previously deducted bad debt amount of \$15,756, increasing the revenue amount in 2003 Form 499-A, Line 404 from \$5,267,004 to \$5,282,800. The revision would not result in any change on Vycera's 2003 Form 499-A contribution base.

#### 2004 Form 499-A, Line 404(b)

In addition, Vycera agrees with IAD's conclusion regarding Vycera's inadvertent duplication of the \$19,530 bad debt deduction on its 2004 Form 499-A, Line 404(b), and the conclusion that the IAD finding increases Vycera's total revenue by \$19,530 but has no effect on Vycera's contribution base because the revenues reported at Line 404(b) are properly classified as intrastate revenues. Thus, Vycera concurs with the portion of IAD's recommendation that Vycera re-file its 2004 Form 499-A to remove the \$19,530 bad debt reduction from Line 404(b), thus increasing Vycera's total revenue amount reported at Line 404(b) from \$6,686,249 to \$6,705,779. The revision would not result in any change on Vycera's 2004 Form 499-A contribution base.

#### 2004 Form 499-A, Line 422

Regarding IAD's findings with respect to Vycera's 2004 Form 499-A, Line 422, Vycera disagrees with IAD's audit findings and conclusions concerning Vycera's total 2004 interstate revenue amounts and related percentages between interstate and international revenue. For a more detailed dispute of the specific 2004 revenue findings and allocations, please see Vycera's responses below to Worksheet Nos. 4 and 6 (*IAD comment: reference to audit finding #2*). Accordingly, Vycera does not concur with IAD's recommendation that Vycera should allocate its bad debt expense attributable to interstate revenues as 5 percent versus the previously-filed 4.3 percent.

Vycera objects to the recommendation that it be required to re-file its 2004 Form 499-A consistent with this portion of the recommendations in this Worksheet. Where Vycera disagrees with the findings and appeals those findings, Vycera reserves its right not to file a Form 499-A that contains inaccurate revenue information based on a finding that is subject to an appeal.

2003 Form 499-A, Line 414

Concerning IAD's findings with regard to Vycera's 2003 Form 499-A, Line 414, Vycera concurs with IAD's conclusion that Vycera qualified for LIRE both before and after the IAD audit report and IAD's conclusion that the previously-deducted \$1,465,113 of bad debt should be added back to Vycera's total revenue amount, resulting in an increase in total revenue reported on the 2003 Form 499-A, Line 414 from \$8,271,309 to \$9,736,422. In addition, Vycera concurs with IAD's determination that Vycera's revenue year 2002 should have resulted in Vycera's having an international percentage of total revenue equal to 57 percent rather than the 42 percent previously reported by Vycera.

Accordingly, Vycera agrees with IAD's recommendation that Vycera re-file its 2003 Form 499-A, Line 414 to reflect (including the IAD findings and conclusions in Worksheet No. 3 (*IAD comment: reference to audit finding #4*)) total revenue of \$9,838,111, interstate revenue of \$308,731, and international revenue of \$5,649,417. The revisions at Line 414 – based on the relevant conclusions from Worksheet Nos. 2 and 3 (*IAD comment: reference to audit findings #3 and #4*) – would result in a total increase of \$48,430 on Vycera's 2003 Form 499-A contribution base."

**Financial Operations Management Response**

USAC Financial Operations Management has reviewed this IAD finding and has no additional comments.

**4. Reseller Revenues**

Per the Instructions to the Telecommunications Reporting Worksheet, Form 499-A, April 2004: Each filer should have documented procedures to ensure that it reports as "revenue from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service. The procedures should include, but not be limited to maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. Filers should provide this information to the Commission or the Administrator upon request. The filers should verify that each reseller will: 1) resell the filer's services in the form of telecommunications; and 2) contribute directly to the federal universal service support mechanisms."

IAD noted that the carrier did not maintain adequate information on its resellers in 2002 (the carrier exited the wholesale business in 2003) and did not have documented procedures to ensure that its resellers were contributing to the Fund. The carrier stated that it obtained tax exemption certificates for its resellers. However, IAD noted that this does not meet the requirements stated in the FCC Form Instructions to ensure each reseller contributes to the USF. IAD individually tested all of Vycera's ten resellers on the 2003 Form 499-A and determined whether each carrier contributed to the Fund using the FCC website and the USAC Form 499-A database. IAD noted that four out of the ten listed resellers did not contribute to the USF in 2002. In addition, IAD obtained a listing of revenue amounts associated with each carrier and noted that the revenue related to the resellers that did not contribute to the USF totaled \$101,689.

The potential effect of this finding on the carrier’s contribution base is detailed below.

2003 Form 499-A							
Form 499-A Line	Revenue Amount Reported	Interstate Amount Reported	International Amount Reported	Revenue Amount Audited	Interstate Amount Audited	International Amount Audited	Potential Effect on Contribution Base
414	\$ -	\$ -	\$ -	\$ 101,689	\$ 2,034	\$ 99,655	\$ 2,034
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ 2,034</b>

**NOTE 1:** The “Revenue Amount Reported and Audited” noted above for Line 414 indicates only the reported and audited amount of “Reseller Revenue” that should be reported in this line. It does not include Vycera’s long distance revenues also reported in this line and noted in audit finding # 3.

**NOTE 2:** IAD noted that the carrier appears to qualify for LIRE in 2003 and therefore the potential effect on the carrier’s contribution base is only assessed on interstate revenues.

**Recommendation**

USAC IAD recommends that Vycera re-file its 2003 Form 499-A to properly report carrier’s carrier revenues in Block 3 of the Form 499-A. IAD also recommends that if Vycera re-enters the wholesale business, it have documented procedures to ensure that each reseller will file a FCC Form 499-A and contribute directly to the universal service fund. Vycera should maintain filer ID numbers for all resale carriers and verify that these resellers are contributing to the universal service fund by using the FCC website: <http://gullfoss2.fcc.gov/cib/form499/499a.cfm>.

**Carrier Response**

2003 Form 499-A, Line 414

Vycera agrees with IAD’s recommendation concerning revenue from resellers to the extent that Vycera did not maintain Filer 499 IDs, or obtain written certification of contributor status from entities the revenue from whom Vycera reported as reseller revenue in 2002. Vycera, however, objects to IAD’s recommendation to the extent that it implies the Company was required to review the FCC on-line Form 499-A database to verify the contributor status of its reseller customers. There is no FCC rule requiring such action, nor does the Form 499-A instructions suggest such an action. Indeed, it is well known that the on-line Form 499-A database is notoriously unreliable, such that wholesalers cannot depend on it to confirm USF contribution status. Moreover, Vycera agrees that it should re-file its 2003 Form 499-A to properly report revenue related to the resellers that did not contribute to USF by reporting and allocating the \$101,689 in the following manner at Line 414: \$2,034 as interstate revenue and \$99,655 as international revenue. As noted above in response to Worksheet No. 2 (IAD comment: reference to audit finding #3), the revisions at Line 414 – based on the relevant conclusions from Worksheet Nos. 2 and 3 (IAD comment: reference to audit findings #3 and #4) – would result in a total increase of \$48,430 on Vycera’s 2003 Form 499-A contribution base.

Vycera also agrees with IAD acknowledgement that Vycera qualified for LIRE on the 2003 Form 499-A.