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January 31, 2008

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Appeal of USAC Invoices, CC Docket Nos. 96-45, 97-21

Dear Secretary Dortch:

Global Crossing Bandwidth, Inc. (“GCBI” or the “Company”), through its undersigned counsel, respectfully appeals two Universal Service Administration Company (“USAC”) billing statements issued to GCBI, dated October 22, 2007, Invoice Number UDB10000272438 and November 22, 2007, Invoice Number UBD1000027748 (“Contested Invoices”). As discussed in detail below, the contested invoices are the result of a USAC audit of GCBI’s 2005 Form 499A filing for calendar year 2004.¹ On June 22, 2007, GCBI sought Federal Communications Commission (“FCC” or “Commission”) review of the USAC

¹ See Email from Christy Mi, USAC, to Diane Peters, Global Crossing (April 30, 2007) (enclosing Memorandum from Wayne Scott, USAC, to WB Erwin, USAC, ostensibly dated February 15, 2007 (“Final Audit Report”). The February 15, 2007, date is incorrect. The memorandum incorporates GCBI’s responses to the Preliminary Audit Report, which GCBI did not send to USAC until March 9, 2007. The memorandum also incorporates USAC’s responses to GCBI’s position. The cover email also notes that “The attached report was approved by our board of directions [sic].” USAC later stated that the USAC Board of Directors approved the final audit report on April 19, 2007. See Letter from Chang-Hua Chen, USAC to Michael J. Shortly, III, Global Crossing Bandwidth, Inc. (June 21, 2007).

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Administrator's Final Audit Report² and submits this letter to supplement the request for review proceeding with this related appeal of the contested USAC invoices.

Background

From September 2005 through April 2007, USAC performed an audit of GCBI's 2005 Form 499A filing for calendar year 2004. As a result of that audit, USAC required GCBI to make universal service fund ("USF") contributions based on revenues from resold services, despite unambiguous Commission direction that resellers are required directly to contribute to the USF and that underlying carriers, such as GCBI, are not required to make contributions based on revenues from services provided to resellers. GCBI sought Commission review of the USAC Administrator's Final Audit Report and that request is still pending.

Since releasing its Final Audit Report, USAC has issued invoices to GCBI wherein USAC attempts to collect USF contributions based, in significant part, on revenues which are attributable to GCBI's resold services and for which the resellers are required to make universal service contributions. Specifically, USAC concluded that GCBI was liable for, and has included in each contested invoice, the following contribution amounts:

[BEGIN REDACTION]

[END REDACTION]

² See *Global Crossing Bandwidth, Inc. Request for Review of Decision of Universal Service Administrator*, CC Docket Nos. 96-45, 97-21 (filed June 22, 2007) ("GCBI Request for Review").

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GCBI's Appeal

GCBI respectfully appeals the above-referenced billing statements, because they include amounts that are the subject of a pending dispute. Specifically, by letter dated August 2, 2007, GCBI notified USAC that the Company was disputing the audit results, which have led to USAC issuing the invoices at issue, and questioned USAC's legal authority to issue invoices while GCBI's dispute was pending before the Commission.³ On December 11, 2007, GCBI again sent a letter notifying USAC that the Company was disputing the validity of the invoiced amounts and the assessment of the adjusted USF contribution amounts while the dispute is pending before the Commission.⁴

In particular, GCBI contests the accuracy of the adjusted contribution amounts on the contested invoices because they are based on revenues attributable to resold services. In its Final Audit Decision, USAC required GCBI to include in its universal service fund contribution base approximately \$69,000,000 in revenue attributable to resold services for which the resellers did not, in turn, make universal service fund contributions.⁵ This additional revenue resulted in GCBI being held liable for an additional USF contribution totaling \$5,558,465, more than ten times the contribution amount of \$500,466 that GCBI calculated as attributable to its own end user revenues.⁶

Permitting USAC to invoice and collect from GCBI USF contributions based on revenues from resold services would contradict established Commission policies and create new rules in violation of the requirements of the Administrative Procedure Act. As GCBI explained in greater detail in its Request for Review of Decision of Universal Service Administrator, the Commission repeatedly has ruled that resellers, not their underlying carriers, are responsible for making USF contributions.⁷ Further, requiring GCBI to pay the erroneous adjusted USF amounts essentially would permit USAC to create a new rule – shifting USF contribution liability from resellers to their underlying carriers – absent the requisite authority and without following appropriate notice and comment rulemaking procedures.⁸

³ See Letter from Michael J. Shortley, III, Vice President & General Counsel - North America, GCBI to David Capozzi, General Counsel, USAC (dated Aug. 2, 2007).

⁴ See Letter from Michael J. Shortley, III, Vice President & General Counsel - North America, GCBI to USAC (dated Dec. 11, 2007).

⁵ See GCBI Request for Review at 1.

⁶ See GCBI Request for Review at 8-9.

⁷ See GCBI Request for Review at 9-13.

⁸ See GCBI Request for Review at 17-18.

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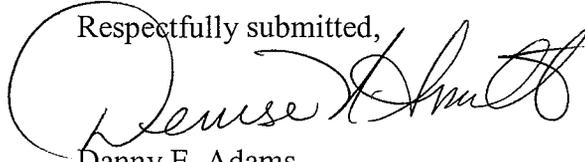
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Therefore, GCBI respectfully requests that the Commission require USAC to rescind the October and November USF contribution invoices pending the Commission's consideration of GCBI's appeal of the USAC audit that gave rise to the contested invoices.

Please contact the undersigned at (202) 342-8400 if you have any questions regarding this appeal.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Denise N. Smith". The signature is written in black ink and is positioned to the right of the typed name.

Danny E. Adams
Denise N. Smith

Counsel to Global Crossing Bandwidth, Inc.