

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Compass Global, Inc.)
)
Request for Review of Decision of the)
Universal Service Administrator)
And Request for Initiation of an)
Investigation into the Policies and)
Procedures of the Universal Service)
Administrative Company in this Matter)
_____)

WC Docket No. 06-122

COMMENTS OF COMPASS GLOBAL, INC.

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September 19, 2008

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Executive Summary

Compass Global, Inc. (“Compass Global”), files these Comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) recent Public Notice soliciting comment on Compass Global’s July 31, 2008 *Request For Review of a Decision by the Universal Service Administrative Company and Request for an Investigation Into the Policies and Procedures of the Universal Service Administrative Company In this Matter* (“*Request for Review*”). In this *Request for Review*, Compass Global explained, that despite the company’s continued efforts to meet its Universal Service Fund (“USF”) obligations, Universal Service Administrative Company’s (“USAC”) mis-administration of the USF made it almost impossible to lawfully comply with the USF rules.

As detailed herein, USAC’s mistreatment of Compass Global includes the misrepresentation and withholding of critical information necessary for Compass Global to meet its contribution obligations, the unauthorized alteration of Form 499-As, the refusal to accept Form 499-A revisions submitted within 12 months of the original filing deadline, and the premature collection of contribution amounts subject to a lawful dispute. All of these actions are contrary to USAC’s fair and competitively neutral administration of the USF and have unfairly prejudiced Compass Global, ultimately giving rise to a Notice of Liability of Forfeiture on April 9, 2008 (“NAL”).

Since this time, Compass Global has continued to uncover more and more evidence of the systematic failure of the administration of the USF. This conduct has unfairly prejudiced Compass Global. For this reason, Compass Global urges the Commission to rigorously examine USAC’s overall administration of the USF in light of the unlawful conduct that Compass Global has experienced in its attempts to fully comply with the FCC’s USF regulations.

As highlighted herein, one recent example of how broken the Fund administration has become came on the eve of the FCC's issuance of the Public Notice in this proceeding. Despite months of seeking clarification from NECA, the entity managing TRS contributions, Compass Global finally received a copy of an *ex parte* communication to the Commission on August 20, 2008 – five months after the Commission issued its NAL against Compass Global and nearly two months after Compass Global submitted its response to this NAL. This information, which provided only a rudimentary explanation of NECA's contribution assessments, would also surely have been useful to Compass Global as the company formulated the instant *Request for Review*, as those pending issues form a part of the instant matter. NECA's actions here again illustrate the need to fully investigate the administration of both USAC and NECA, particularly because such practices prejudice all contributing carriers.

The USF administrators' debt collection practices are also another example of how broken the Fund administration is. As Compass Global details in these comments, throughout the entirety of the appeals process, administrative agencies have actively referred disputed amounts to the Department of Treasury for debt collection, despite the fact that Compass Global has diligently informed all these administrative agencies, in particular USAC, NECA and the FCC, of the appeal of these amounts. Not only is this practice of premature debt collection patently unfair to Compass Global, but it is a blatant violation of the Federal Debt Collection Act and Compass Global's due process rights.

Compass Global also reiterates its request that the FCC must examine how USAC's manipulation of the 12-Month limit on revising Form 499-As materially affects those filers, like Compass Global, who are lawfully entitled to these revisions. Furthermore, Compass Global submits that USAC's strict adherence to this policy is a violation of the FCC's own rules and the

Administrative Procedure Act (“APA”) because such policy was unilaterally enacted by USAC without notice or the opportunity for public comment.

Finally, Compass Global asserts that the Commission must affirm that any transfer of monetary amounts subject to a valid dispute is a direct violation of the Debt Collection Improvement Act (“DCIA”) and the Commission’s policies enacted thereunder. Premature debt collection has subjected Compass Global to unlawful harassment and prejudicial conduct, and is a violation of Compass Global’s due process rights. For this reason, the Commission must strongly affirm that such conduct is unlawful towards any filer who has a valid dispute over its contribution obligations.

Compass Global hopes that these Comments will provide the Commission with valuable insight into how frustrating compliance with USAC’s administration has become. Compass Global also hopes that these Comments will serve as a guide to help other parties affected by USAC’s policies and procedures understand the need for desperate reform of the USF administration.

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COMMENTS OF COMPASS GLOBAL, INC.

I. Introduction

Compass Global, Inc. ("Compass Global"), by its attorneys, hereby files these Comments in response to the *Public Notice*, DA 08-1942, released August 20, 2008, in WC Docket No. 06-122, regarding Compass Global's July 31, 2008 *Request For Review of a Decision by the Universal Service Administrative Company and Request for an Investigation Into the Policies and Procedures of the Universal Service Administrative Company In this Matter* ("Request for Review"). In this *Request for Review*, Compass Global has asked the Federal Communications Commission ("Commission") to review the Universal Service Administrative Company's ("USAC") decision to deny Compass Global's filing of a revised Form 499-A Form and to examine USAC's misleading conduct which ultimately led to the issuance of an Administrator's Decision on June 2, 2008. Compass Global has also asked the Commission to review USAC's collection efforts in regard to this matter, and hold in abeyance all purported collection action and/or attempts until a final resolution has been reached in the ongoing Commission investigation currently underway in File No. EB-06-IH-3060.

While the *Request for Review* and Compass Global's Response to the Commission's NAL ("*NAL Response*") speak for themselves, Compass Global takes this opportunity to publicly comment to bring to the Commission's attention certain facts on which Compass Global itself may have a special insight, as this will assist other industry participants to fully understand the matter at hand and to thereby facilitate a full airing of those issues. Indeed, even the Commission has recently indicated that review of the conduct of the USF administrators is warranted in the recently established proceeding specifically aimed at eliminating fraud, waste, and inefficiencies in USAC's administration of the USF in *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration and Oversight* ("*USF NOP*").¹

It is against this background that the Commission must demonstrate to all industry participants that it is wholly inappropriate for USF administrators to subject Compass Global and other reporting entities to unnecessary delay, harassment, and unresponsiveness when pursuing valid claims before these administrative entities. Compass Global's experience, as detailed herein, provides clear evidence that greater regulatory safeguards are desperately needed. For this reason, Compass Global reiterates its position in its *Request for Review* that the Commission must declare that USAC's treatment of Compass Global during the ongoing dispute has resulted in systematic unfairness and that USAC's refusal to accept and process Compass Global's revised Form 499-A for 2006 must be reversed. Doing so will not only prevent Compass Global from being unlawfully denied its opportunity to file revisions, but the Commission's clarity will also send a strong message that other filers will not be subjected to similar outrageous conduct and unfair prejudice when reporting and contributing to the USF.

¹ WC Docket No. 05-195 (Rel. September 12, 2008) (In particular, paragraphs 24 and 25 solicit comments on how to "establish customer service standards and to report regularly on the quality of service provided to USF stakeholders" and paragraph 32 seeks "comment on whether [the FCC] should take additional measures concerning NECA's relationship to the current USF Administrator and its activities in the program.")

II. Factual Background

Compass Global, a leading provider of IP-based transport services and enhanced communications services, manages a high-speed data transport service which routes traffic between key international destinations and among major global communications companies. Compass Global specializes in interconnecting, routing, and managing this global information traffic between many of the world's most difficult to reach destinations in places such as South America, Africa, Asia and the Middle East.

As explained fully in the *Request for Review* and *NAL Response*, Compass Global's position in the management of global communications gave rise to a USAC investigation. Before and during the time of this investigation, Compass Global had good reason to believe that its role as an IP-based transport provider did not subject the company to reporting and contribution obligations.

For several months prior to this investigation, Compass Global had engaged in discussions with Commission's Investigations and Hearings Division ("IHD") staff stemming from certain data requests associated with Section 64.1195 Compliance Survey letters, issued on June 9, 2006.² Compass Global explained that the company did not believe it was required to register with the Commission and file Form 499-As because it provided no retail telecommunications services during the relevant periods (*i.e.*, 2004 through 2005 revenue years).³ Nevertheless, IHD continued to pressure Compass Global into filing Form 499-As for subsequent reporting periods.

Instead of continuing to dispute IHD's assessment and possibly incur a formal investigation and forfeiture penalties, Compass Global decided to register as an Interstate Telecommunications

² See Exhibit 1 of the *Request for Review*, June 9, 2006, letter from Hugh L. Boyle, Chief Auditor, Investigations & Hearings Division, Enforcement Bureau, "Re: Section 64.1195 Compliance Survey, Reference Number: UC 4-11."

³ See Compass Global Response to Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3060, attached to the *Request for Review* as Exhibit 2.

Service Provider (“ITSP”) and submitted original 2005 and 2006 499-As. Since the filing deadline set by IHD, September 5, 2006, was fast approaching, Compass Global submitted these original filings without the direct oversight of counsel. This resulted in Compass Global mistakenly filing its original 2005 and 2006 499-As with improperly allocated revenue information, largely based on perceived and real pressures exerted by audit staff of the IHD.

Several months later, despite these submissions, the IHD opened a formal investigation in File No. EB-06-IH-3060 through a Letter of Inquiry (“LOI”) dated May 7, 2007. In response to the LOI, Compass Global immediately retained legal counsel to ensure full compliance with the Commission’s investigation. During the internal inspection in response to the LOI, Compass Global’s counsel soon discovered that Compass Global had incorrectly reported revenue as “prepaid calling card” revenue in its initial 2005 and 2006 499-As.⁴ On September 4, 2007, Compass Global filed revised 2005 and 2006 499-As to correct revenue reported in the initial 499-As that were submitted under duress less than twelve (12) months earlier.⁵ A week later, on September 11, 2007, USAC rejected these revised 499-As, claiming that Compass Global had failed to file them within the twelve (12) month limitations period for filing 499-A revisions.⁶ Compass Global immediately appealed this rejection as contrary to the Commission’s and USAC’s rules and a violation of Compass Global’s due process rights.⁷

USAC’s failure to accept Compass Global’s revisions also gave rise to other regulatory disputes. Since both the 2005 and 2006 initial 499-As erroneously identified the Company as a “prepaid calling card” provider and included revenue that was incorrectly reported based on

⁴ Counsel advised the IHD of these determinations in responses filed June 29 and July 30, 2007.

⁵ See Exhibits 4 and 5 of the *Request for Review* (Copies of Compass Global’s revised 2005 Form 499-A “File-Stamp” and its revised 2006 Form 499-A “File-Stamp”).

⁶ See Exhibit 6 and 7 of the *Request for Review*

⁷ See Exhibit 8 of the *Request for Review*

regulatory classifications that are inaccurate, a significant portion of the charges invoiced by each of the USF Program administrators is incorrect and not lawfully owed by Compass Global. This has resulted in USAC, NECA and other FCC Program administrators⁸ generating invoices which substantially overstate Compass Global's contribution obligations based on the incorrectly reported revenue figures.

Compass Global has continued to diligently appeal all of these Notices throughout the ongoing dispute. For example, on February 8, 2008, Compass Global appealed a January 9, 2008 notice of debt transfer of unpaid TRS contributions because the debt transfer notice contained inaccurate amounts and failed to consider the "Appealed" status of the underlying dispute. On March 28, 2008, Compass Global filed another appeal of a February 28, 2008 debt transfer notice because the amounts invoiced to Compass Global had been rendered inaccurate, at least to some degree, by USAC's reporting to NECA of inaccurate contribution base revenues.

Despite these appeals, the disputed amounts were referred to the Commission, which resulted in the premature issuance of the NAL on April 9, 2008. Up until this time, Compass Global had neither received any final response from USAC about the status of its filings nor whether USAC would reconsider Compass Global's November 6, 2007 Request for Reconsideration. It was only until June 2, 2008, two months *after* the Commission issued the NAL,

⁸ NECA, the administrator of the Telecommunications Relay Services ("TRS") Fund, issued invoices for Compass' 2005 and 2006 contribution obligations based on the initial 499-As submitted September 5, 2006. Likewise, Neustar, Welch & Company and the FCC (administrators of carrier obligations to support the North American Numbering Plan, Local Number Portability and Annual FCC Regulatory Fees) issued invoices based on the erroneous 499-A submissions.

and within days of when the deadline for Compass Global's reply to the Commission was due, that USAC released its Administrative Decision on this matter.⁹

As detailed by Compass Global in the *Request for Review*, this Decision contained facts wholly inconsistent with Compass Global's record of payment and compliance. For instance, USAC claimed for the very first time that it had never received Compass Global's 2005 Form 499-A. USAC also misrepresented the filing date of Compass Global's revised Form 499-As, despite time-stamped evidence that Compass Global had submitted the revised Form 499-As within the 12 month filing deadline. And, subsequent investigations of online filing records have revealed that USAC purposely altered Compass Global's revised Form 499-A by changing the filing status of Form 499-As from "Revised" to "Original" filings. In addition, Compass Global believes that USAC provided inaccurate information about Compass Global to the Commission, which ultimately led to the unfair issuance of the April 9, 2008 NAL.

Collection of disputed amounts has continued even after Compass Global's response to the Commission's NAL. For example, on July 19, 2008, Compass Global received a letter from the Department of Treasury, in which Compass Global is requested to make payment of outstanding amounts owed by Compass Global, "[a]ccording to the records of the Federal Communications Commission." This letter did not identify the agency to which the debt was owed, nor was Compass Global able to find an amount due which accurately corresponded with the amount transferred to the Department of Treasury. Compass Global subsequently advised the Department of Treasury to cease collection because of the ongoing dispute with USAC. Collection persists even to this day, as Compass Global is still being billed for amounts subject to dispute.

⁹ In fact, the deadline for Compass Global's response to the FCC's NAL was originally May 23, 2008; if Compass Global had not independently secured an extension of this due date, USAC's Administrative Decision would have come almost two months *after* Compass Global's NAL Response was due.

All of these actions are a direct result of USAC's failure to properly administer the USF in accordance with the Commission's rules. Importantly, despite Compass Global's diligent attempts to comply with the IHD's investigation and USAC's rules, this failure has resulted in the unnecessary and unfair pursuit of contribution amounts greater than those lawfully owed by Compass Global. For this reason, Compass Global has asked the Commission to investigate USAC's conduct and, where appropriate, declare that any conduct prejudicial to filers is not allowed under the USF rules.

III. The Commission Must Clarify That All USF Administrative Agencies Cannot Engage in Any Unlawful Conduct Which Unfairly Prejudices Filers, Including the Misrepresentation or Withholding of Necessary Information From Filers, the Unauthorized Alteration of Filings, and the Premature Collection of Disputed Amounts.

First and foremost, the Commission must clarify that USAC can neither make false or misleading statements in the process of administering the USF nor can USAC alter a Form 499 filing, or any other filing, in a manner that unfairly prejudices contributors. USAC, as an entity designated by the Commission to administer the USF, is subject to traditional standards of fair play and justice. USAC is also authorized under the Commission's rules to administer "the universal service support mechanisms in an efficient, effective, and competitively neutral manner."¹⁰ Thus, USAC is prohibited from engaging in any conduct which is unfairly detrimental to filers such as Compass Global. The same principle applies to all other Funds' administrative agencies.

a. The Commission Must Hold That All USF Administrative Agencies Cannot Make Incorrect Statements or Unauthorized Changes to Form 499s That Will Unfairly Prejudice Filers.

The Commission must reiterate that any misrepresentation, omission, or unauthorized modification of information reported on Form 499s is a direct violation of the regulations governing USF administration. This type of conduct not only unfairly prejudices individual filers but it also

¹⁰ 47 C.F.R. § 54.701(a).

greatly interferes with the ability of other filers to faithfully comply with their own contribution obligations. Nowhere is this clearer than in Compass Global's *Request for Review*, which sets forth several of USAC's disingenuous statements and actions which severely undermine its credibility to administer the USF.

First, USAC has provided untruthful and often conflicting accounts about which forms were received from Compass and at what times. For example, in the June 2, 2008 Administrator's Decision, USAC attempted to disavow receipt of the original 2005 Form 499-A despite Compass' "time-stamped" evidence and USAC's earlier statements to the contrary.¹¹ This denial is particularly implausible due to the length of the closely monitored investigation of Compass Global's contribution obligations.¹²

Secondly, USAC's practice of unilaterally altering the filing status of Form 499s is in direct conflict with the fair and judicious administration of the Fund. The most egregious issue highlighted by Compass Global is USAC's unilateral revision of Compass Global's Form 499-As by changing the filing status on line 612 from "Revised filing with updated revenue data" to "Original April 1 filing for the year." Compass was neither consulted about the status change nor afforded the opportunity to review USAC's revisions. Instead USAC simply posted an altered copy of Compass Global's revised 2005 Form 499-A disguised as the original filing. This represents a substantive,

¹¹ See Exhibit 6 of the *Request for Review*, e.g., USAC September 11, 2007, rejection letter "Re. 2005 FCC Form 499-A Revision Rejection," p. 1 ("The Universal Service Administrative Company (USAC) has completed a review of the revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by 826215 Compass Global, Inc. for the period 2004. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.")

¹² Indeed, staff from the IHD had closely followed Compass Global's efforts to complete and file both Forms 2005 499-A and 2006 499-A and had also followed up with the company routinely for updates on its progress and the likely date upon which the forms would actually be filed with USAC. Following Compass Global's submission of both the 2005 and 2006 Form 499-As on September 5, 2006, staff overseeing this matter, in particular IHD representative Mr. Nand Gupta, never again contacted the Company with respect to *either* form, that for 2005 or that for 2006. Thus, it is particularly difficult for Compass Global to believe that the original 2005 499-A was not also received by USAC along with the 2006 form on September 5, 2006.

rather than a purely ministerial, change to a document, made without the filer's knowledge or consent. To put it mildly, this is wholly inappropriate behavior for an entity acting under color of law through authority granted by an agency of the federal government.

Moreover, it is simply not correct that because USAC has (belatedly) billed Compass Global USF assessments based upon these revised figures, the Company has not been harmed by USAC's dereliction of duty. Quite the opposite is true since, absent USAC's dereliction of duty, Compass Global would not have become the target of an unwarranted NAL proceeding. Neither would the Company have been forced to twice appeal NECA notices of intent to transfer collection debts which had not been definitively quantified. Because of this, the Commission must investigate USAC's processing of Form 499s and take whatever steps are necessary to prevent future filers from suffering the same prejudicial treatment that Compass Global has endured.

Indeed, Compass Global has recently discovered that USAC has altered other filer Form 499s filing status. Exhibits attached to these Comments provide an independent demonstration of this behavior:

- Attachment 1 is a hard copy of an Initial Registration of a 499-A as filed by a new filer.¹³ Line 612 is clearly marked as "New Filer, registration only."
- However, in Attachment 2 of the online version of this same filing after being received and posted online by USAC, the filing is identified as "Original April 1 filing for year" on line 612.

This example demonstrates that USAC's misadministration of the Fund has not only improperly prejudiced Compass Global, but has the potential to materially affect other filers. This practice is especially egregious because Form 499-As are signed under the penalty of perjury, thereby giving rise to potential criminal penalties for misinformation provided on Form 499-A. Because of this, the

¹³ Filing information has been redacted to keep the identity of the Filer confidential for the purposes of public commenting.

Commission must take all necessary action to ensure that USAC accurately records and maintains all filings and that failure to do so is an unlawful practice.

b. The Commission Must Clarify That All USF Administrative Agencies Must Respond in a Timely Manner to All Requests for Clarification or Disputes Over Contribution Amounts.

The Commission must make it clear that an administrators' failure to respond in a timely manner to all requests for clarification or disputes over contribution amounts is also unlawful under the USF rules. As the facts indicate above, much of the underlying dispute between USAC and Compass Global arose because USAC failed to timely respond to Compass Global's repeated requests for clarification about what contribution obligations were actually owed by law. Compass Global received no word from USAC about its pending appeal and was, thus, stuck in limbo about its full payment obligations until after the Commission issued the NAL. And, it was only in the June 2, 2008 Administrator's Decision that Compass Global first learned that USAC did not allegedly receive Compass Global's original 2005 Form 499-A.

Throughout the ongoing dispute underlying the *Request for Review*, Compass Global has continually met with silence from USAC regarding the status of its filings. As fully described herein, USAC never, at any time, informed Compass Global that it had accepted and utilized Compass Global's revised revenue figures in calculating assessments for the period covered by the revised form. In fact, quite the opposite is true. USAC categorically rejected – in writing – Compass Global's revised form, informing the company that the form had not been accepted and would not be processed.

Just as it neglected to correct its written statements to Compass Global, USAC also apparently failed to inform the Commission that Compass Global had been billed for– and had paid in full – all federal USF assessments which USAC ultimately assessed upon the company. Compass

Global made these payments well in advance of the issuance of the NAL, which alleges that Compass Global had intentionally underpaid federal USF assessments. The Commission could not have issued a NAL containing the specific (and erroneous) factual allegations without having first received these factual allegations from USAC. Thus, USAC, having first provided false information to the Commission, upon the basis of which Compass Global became the subject of a NAL, took no steps to correct its misinformation to the Commission.

Further, it was not until June 2, 2008 that USAC asserted the claim that it had indeed accepted Compass Global's revised 2005 Form 499-A and billed the Company assessments based upon the revenue figures contained therein. As noted above, Compass Global paid all such assessments in full. Thus, the allegations in the NAL that Compass Global underpaid these federal assessments are patently incorrect; indeed, any assertion that Compass Global *intentionally* underpaid these amounts is impossible.

Compass Global has also continually met with frustration when trying to receive clarification from USAC and other administrative agencies like NECA. NECA's operations are of particular importance to Compass Global because of recent facts learned after the initial *Request for Review* was filed. On August 20, 2008, the eve of the issuance of the Public Notice soliciting comments in the proceeding, Compass Global received its first clarification of the contribution amounts subject to dispute from NECA. This clarification came in the form of a copy of an email that NECA had sent to the Commission two months earlier, on June 20, 2008.

Compass Global had repeatedly petitioned NECA for clarification of the payment amounts properly owed during and up to the issuance of the Commission's Public Notice. However, instead of providing a timely response to Compass Global, NECA sent an email directly to the Commission with a short breakdown of the amounts NECA had transferred to the Commission for collection.

This *ex parte* communication with the Commission was made on June 20, 2008, just 18 days following the issuance of the Administrator's Decision. Notwithstanding the fact that NECA's bare-bones submission to the Commission fell far short of adequately addressing the issues raised in Compass Global's pending NECA Appeals, receipt of this information would surely have been useful to Compass Global as the Company formulated the instant Request for Review, as those pending issues form a part of the instant matter. Ultimately, a faxed copy of NECA's communication with the Commission was forwarded to Compass Global (with the ridiculous assertion by NECA that it had only submitted this information to the Commission and not to Compass Global because the Company's NECA Appeals appeared "directed to the Commission"). NECA's failure to police the actions of its own employees also figures prominently in the circumstances complained of in the Request for Review. And, NECA's disingenuous eleventh-hour communication with Compass Global again illustrates the need to fully investigate the administration of both USAC and NECA, particularly because such practices prejudice all contributing carriers.¹⁴

Overall, these administrative delays and the overall lack of clarification of the underlying disputed amounts have directly contributed to an administrative nightmare that ultimately resulted in

¹⁴ Indeed, the practice of engaging in such "eleventh hour" tactics to the detriment of reporting entities is one which USAC and NECA share. As noted above, the Administrator's Decision itself was issued literally days before Compass Global was required to submit its response in defense of the FCC's Notice of Apparent Liability for Forfeiture. Because Compass Global's submission was voluminous, necessarily providing for Commission review a fully developed written record of the course of the matter, the Company was granted an extension in response time in order to compile its full response to the NAL. That response, consisting of 131 pages in text *without* attachments, is part of the public record as Exhibit 2 in the *Request for Review*. Compass Global invites industry review of these materials in order to gain a clear understanding of the full scope of the ongoing refusal of USAC and NECA to assist the Company in any way to ascertain the accuracy of federal contribution assessments. Thus, but for the grant of the necessary extension in Compass Global's filing date, the Administrator's Decision, which provided, for the first time, a whole-cloth attempted rationalization for USAC's public refusal to accept (and private unauthorized authorization of) Compass Global's documents, would have come *only after the date* upon which Compass Global was required to defend itself against the unwarranted allegations in the NAL.

the issuance of an unwarranted NAL. For this reason, Compass Global urges the Commission to examine USF administration procedures and declare that USAC and all other administrators must fully and adequately respond to all filer inquiries in order to avoid any unfair treatment or enforcement proceedings.

c. The Commission Must Reverse USAC's Refusal to Accept and Process Compass Global's Revised 2006 Form 499-A.

USAC's refusal to accept Compass Global's revised filings is also a dereliction of its duty to fairly and properly administer the fund. The facts in this dispute are simple: Compass Global filed its 2005 and 2006 499-A revisions on September 4, 2006 (received at USAC on September 5, 2006). The receipt date is clearly within 12 months of September 6, 2006, the date Compass Global initially filed its original 2005 and 2006 Form 499-As. USAC's denial of Compass Global's revised filings is thus, on its face, contrary to the Commission's own *Form 499-A Revision Order* which specifically dictates that filing must be made within 12 months in order to afford contributors "adequate time to discover errors, while providing incentive to submit accurate revenue information in a timely manner."¹⁵ Indeed, the Commission found that "twelve months is ample time for a diligent filer to determine what revenues it earned the prior year."¹⁶

Denying Compass Global this revised time period significantly undermines the Commission's policy goals by unfairly prejudicing Compass with respect to other filers who were afforded an opportunity to file revised Form 499s. This is especially true because Compass initially filed its Form 499-As out of an abundance of caution and at the specific request of the IHD in order to avoid a formal investigation. The fact that the Commission later initiated an investigation into Compass' filing status, and Compass' erroneous reporting was discovered during this investigation,

¹⁵ *Form 499-A Revision Order*.

¹⁶ *Id.* at 1017.

only compounds this unfair treatment, as USAC's refusal to honor Compass' revision had led to the Commission's imposition of penalties based on the unrevised amounts. Thus, USAC's negligence has directly led to a vastly increased forfeiture penalty and has created the appearance that Compass failed to meet its USF obligations, even though the company has continued to report and pay lawfully owed contribution amounts. Hence, the Commission should not allow USAC to penalize voluntary contributors by obliterating the ability to revise initial estimations of contribution amounts made in a good faith attempt to comply with the IHD's orders.

d. The Commission Must Rule That the Collection by an USF Administrative Agency of Contribution Amounts Subject To Dispute is a Violation Of Due Process Under the Commission's Rules.

The Commission must clarify in this proceeding that the premature collection of contribution amounts is a violation of a filer's due process rights because it significantly undermines a filer's ability to dispute the validity of these charges. As the facts indicate, Compass Global has continued to advise both USAC and other fund administration agencies about the ongoing appeal of USAC's initial determinations. Compass Global has served copies of every appeal on the FCC, USAC, and NECA. There is no question then, that all relevant parties have been fully apprised of the administrative appeal status perfected by Compass Global.

Yet only recently has Compass Global been required to further defend itself against continuing efforts by an independent collection firm, which operates pursuant to a contract with the Federal government, in order to stem the unlawful pursuit of these as yet unsubstantiated "debts" purportedly owed by Compass Global. Only by providing evidentiary documentation of Compass Global's various administrative appeals, which have been lodged with USAC, NECA and the FCC over the past year, has Compass Global been able to temporarily halt these continuing collection efforts.

This demonstrates that, notwithstanding FCC rules which specifically protect the rights of reporting entities to perfect administrative appeals (and to protect themselves from unwarranted collection efforts until those appeals are fully and finally decided), neither USAC nor NECA, upon receipt of such perfected appeals, took any action to prevent their own staffs from referring amounts which, as a matter of law, must be held in abeyance during the pendency of the appeal to the Department of the Treasury and a private collection agency. The Commission should thus hold that administrative agencies may not recommend amounts subject to appeal for collection without first receiving final confirmation that these appeals have been settled. A policy contrary to this will subject all filers like Compass to unlawful and unnecessary harassment.

IV. USAC's Strict Adherence to the 12-Month Filing Rule is a Violation of the Commission's Rules and the Administrative Procedure Act Because it Materially Penalizes Contributors who are Lawfully Entitled to Revisions

The Commission should undergo an examination of whether USAC's strict application of the 12-month filing limitation is in compliance with USAC's delegated authority and the Administrative Procedure Act ("APA"), both of which prohibit USAC from creating its own "substantive" rules without a proper delegation of authority from the Commission and/or public notice and comment on the proposed rules.

It is well established that USAC does not possess any independent authority to create decisional or interpretative rules governing USF programs.¹⁷ The Commission and the Federal-State Joint Board retain full authority and control over USF programs, and USAC, at all times, remains

¹⁷ Although its existence was not mandated by the Section 254 of the Communications Act, USAC was established at the direction of the FCC as an independent not-for-profit entity with the sole function of administering the USF and other universal service support programs.

subject to Commission oversight.¹⁸ The limited responsibilities delegated to USAC are clear in the rules and regulations setting forth the scope of USAC's charter. Specifically, Sections 54.702(a) and (b) of the Commission's rules clearly state that USAC is responsible for administering the USF programs, including billing, collection and disbursement of USF funds.¹⁹ In addressing early concerns over the role of USAC, the Commission has emphasized that USAC's functions are to be "exclusively administrative,"²⁰ noting that Section 54.702(c) expressly limits USAC's power by stating that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission."²¹

Despite the fact that USAC is clearly prohibited from establishing policy or addressing uncertainties in the administration of the USF on its own, it has clearly done so in this case. In denying acceptance of Compass' revised 2005 and 2006 499-As as explained in its September 11, 2007 letters, USAC has relied on its "previously adopted policy," approved by the USAC Board of Directors during a USAC Board of Directors meeting on July 27, 1999, limiting the period for carrier-initiated adjustments to USF submissions. According to an Action Item entitled, "Recommended Deadline for True-Up of Form 457," USAC's staff recommended the following to the Board:

"[b]eginning with the September 1, 1999, data submission; carrier initiated requests for changes in reported revenues be limited to 12 months Changes to prior

¹⁸ See *In the Matter of Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9192 at ¶¶ 813-815 (1997) ("1997 Joint Board Order"); *1998 Joint Board Order* at 25065 at ¶ 14; see also 47 U.S.C. § 254, *et seq.*

¹⁹ 47 U.S.C. §§ 54.702(a)-(b).

²⁰ *1998 Joint Board Order* at ¶ 15 (*responding to comments of BellSouth, Sprint and US WEST*).

²¹ 47 U.S.C. §§ 54.702(c).

submissions as a result of an audit of a carrier's revenue reported on the Form 457 would not be impacted by the proposed limitation."²²

USAC's staff offered the following rationale to support adoption of the recommendation:

"Historically, USAC has accepted any changes in revenue information reported by telecommunications service providers, regardless of when the changes were reported. It is becoming increasingly burdensome administratively to continue accepting revisions to reported revenue information indefinitely . . . Each time a change is reported that affects end-user billed revenue, it necessitates revising the service provider's billed amounts for the period impacted by the change."²³

The adoption of such a policy is completely unauthorized and inappropriate.

If USAC's 12-month limit for acceptance of corrected USF filings is deemed to be justified and appropriate, such a limit was not properly adopted by USAC as an administrative policy. Rather, if such a rule should be properly adopted, it would require the Commission to properly delegate this authority to USAC and follow normal notice and comment rulemaking procedures guaranteed under Section 553 of the APA.

A 12-month limit is more than a mere administrative or organizational measure. It is a decisional rule with potentially material adverse impacts on contributors as well as on the USF as a whole. In Compass' case, the automatic imposition of USAC's 12-month limit clearly results in such a materially adverse impact on the contribution amounts owed. All together, USAC's rejection of Compass' revised 2005 and 2006 499-As, based on the 12-month limitation rule, forces Compass to not insubstantial amounts in excess of those which result from calculation of assessments based upon Compass Global's accurate revenue figures.

Nowhere is there statutory or regulatory authority cited to support the USAC policy and nowhere is any indication given that USAC sought public comment or consulted with the

²² The specific resolution stated, "RESOLVED, That the USAC Board of Directors directs staff to no longer accept carrier initiated requests for changes in revenues reported on prior FCC Form 457 beyond 12 months from the initial submission of the Form in question." See *Action Item # aBOD05*.

²³ See *Action Item # aBOD05*.

Commission prior to adopting the policy. Thus, the adoption of, and reliance upon, such a policy directly violated the Administrative Procedure Act and contravenes express limits on USAC's discretion.

Finally, USAC's adoption and imposition of such a rule, without public notice or comment, that clearly and demonstrably results in the confiscation of Compass' property without just cause, also violates basic notions of due process under the Fifth Amendment of the U.S. Constitution.

Even if USAC is deemed to have the authority to adopt policies concerning the filing of corrected 499-As, the particular policy at issue here is manifestly arbitrary and unfair. USAC has limited a carrier's ability to recover refunds, or to adjust the reporting mechanism to accurately portray a contributor's revenues, beyond a certain date, but has accepted no corresponding limit on its own ability to conduct audits, impose changes to reported revenues, and collect underpayments. It is simply inappropriate for USAC to have such unequal and limitless discretion to recover revenues from carriers, while imposing an apparently strict limit on the ability of carriers to obtain refunds. Absent a waiver of the 12-month policy here, the USF programs are unjustly enriched. Such a result flouts the Commission's directive that USAC recover all funds due in an equitable and nondiscriminatory manner,²⁴ and cannot be justified.

V. The Commission Must Affirm that the Transfer of Amounts Subject to an Appeal to the Department of Treasury for Collection is a Direct Violation of the Debt Collection Improvement Act and the Commission's Policies Enacted Thereunder.

The Commission must also affirm that the Commission cannot and will not transfer amounts subject to a valid dispute and an appeal to the Department of Treasury for debt collection. Immature transfer of disputed amounts is a blatant violation of the Debt Collection Improvement Act ("DCIA") and the Commission's own debt collection policies.

²⁴ See generally, 47 U.S.C. § 254.

Indeed, the Department of Treasury's regulations implementing the DCIA, which parallel the Commission's DCIA regulation, reflect this procedural safeguard. Specifically, 31 C.F.R. § 285.13(d)(2)(iii), states this point of law succinctly:

A debt is not in delinquent status if ... [t]he existence of the debt or the agency's determination that the debt is delinquent is being challenged under an ongoing administrative appeal or contested judicial proceeding and the appeal was filed by the debtor in a timely manner.

It is, thus, clear that any disputed debts cannot be referred to the Department of Treasury without first allowing all administrative appeals to run their course. Bypassing the administrative appeals process also results in unfair collection practices and subjects companies like Compass Global to unnecessary harassment and collection efforts by the Federal government.

Under the Commission's own DCIA rules, the Commission can only transfer debts to the Department of Treasury after there has been a final determination that the debt is in fact due. This point is expressed most concretely in the 2004 *DCIA Order* in which the Commission held that

where an applicant has filed a timely administrative appeal, or a contested judicial proceeding, challenging either the existence of, or the amount of, a debt, such debt shall not be considered delinquent for purpose of the red light rule.²⁵

Under this framework, debts which are subject to valid appeals are not delinquent, and therefore cannot be transferred to the Department of Treasury for collection.

In addition, transferring debts before the appeals process has been finalized violates a company's due process rights because it denies an alleged debtor the opportunity to fully respond and present exculpatory arguments and evidence against the collection of this collection of debt.²⁶

²⁵ *In the matter of Amendment of Parts 0 and 1 of the Commission's In the matter of Amendment of Parts 0 and 1 of the Commission's Rules*, 19 FCC Rcd. 17704 at ¶ 8 (2004) ("2004 DCIA Order").

²⁶ The FCC's own rules and policies evidence a commitment to the protection of due process rights which is fully in accord with the principles underlying the Debt Collection Improvement Act of 1996; i.e., "[t]o ensure

Indeed, under the facts at hand, USAC transferred alleged “debt,” *i.e.*, those remaining contribution amounts disputed by Compass Global, to the Commission even before a final administrative decision was issued by USAC. This premature transfer of debt gave rise to the Commission’s NAL (which was also issued before USAC’s Administrator’s Decision). These transfers were made despite the fact that Compass Global filed an appeal of USAC’s contribution and alerted USAC and other administrative entities (NECA and the Commission) of the appeal. Hence, these premature transfers have deprived Compass Global of the due process rights to full adjudication of these matters before collection practices are initiated. Continuation of these practices will also deny parties their due process rights. The Commission should, therefore, declare that contribution amounts subject to a valid dispute cannot be transferred until the opportunity for a final decision has been rendered.

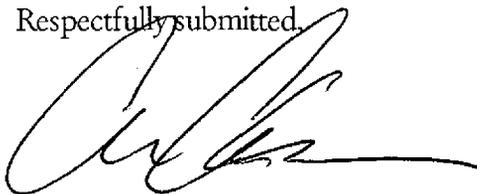
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that debtors have all appropriate due process rights, including the ability to verify, challenge and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.” Public Law 104-134, 110 Stat. 1321-58 (Apr. 26, 1996), Debt Collection Improvement Act of 1996, Sec. 31001(b)(5).

VI. Conclusion

For the reasons set forth above, Compass Global asserts that the Commission should, in the course of its investigations of USAC's administrative practices, declare that: 1) purposeful misstatements and alterations of filings, which result in unfair prejudice towards filers, are a direct violation of the Commission's rules; 2) USAC's strict application of the 12-month limitation is a violation of the Commission's policies and of the APA; and 3) that contribution amounts subject to an appeal cannot be referred to the Department of Treasury under the DCIA. These holdings will provide certainty to contributors like Compass Global that the Commission and USAC are administering the USF in a fair and equitable manner under the law.

Respectfully submitted,



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September 19, 2008

Counsel for Compass Global, Inc.

Attachment 1

Hard Copy of an Initial Registration of a 499-A as Filed by a New Filer.

Block 6: CERTIFICATION: to be signed by an officer of the filer

601 Filer 499 ID [from Line 101]	NEW
602 Legal name of reporting entity [from Line 102]	[REDACTED]

Section IV of the instructions provides information on which types of reporting entities are required to file for which purposes. Any entity claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which entities meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify, below.]

603 I certify that the reporting entity is exempt from contributing to: Universal Service TRS NANPA LNP Administration
 I certify that the reporting entity is an interconnected VoIP filer became subject to FCC Form 499 filing requirements on or after August 1, 2006 and therefore is reporting revenues in Blocks 3, 4, and 5 for the fourth quarter of 2006 instead of for the entire calendar year.

Provide explanation below:

604 Please indicate whether the reporting entity is State or Local Government Entity I.R.C. § 501 Tax Exempt

605 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.

I certify that I am an officer of the above-named reporting entity as defined on page 28 of the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named reporting entity is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in Section II-B of the instructions.

606 Signature	_____		
607 Printed name of officer	First [REDACTED]	M	Last [REDACTED]
608 Position with reporting entity	[REDACTED]		
609 Business telephone number of officer	[REDACTED] ext -		
610 Email of officer Required if available -- not for public release	[REDACTED]		
611 Date	1/10/08		

612 Check those that apply: Original April 1 filing for year New filer, registration only Revised filing with updated registration Revised filing with updated revenue data

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W., Suite 200 Washington DC, 20036
 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet information: (858) 641-8722 or via email: Form499@universalservice.org

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Save time, avoid problems -- file electronically at

<http://forms.universalservice.org>

FCC Form 499-A
 January 2007

Attachment 2

Online Version of 499 Registration After being Received and Posted Online by USAC

2007 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting Calendar 2006 Revenues)

Block 6: CERTIFICATION: to be signed by an officer of the filer

601 Filer 499 ID [from Line 101] [REDACTED]

602 Legal name of reporting entity [from Line 102] [REDACTED]

Section IV of the instructions provides information on which types of reporting entities are required to file for which purposes. Any entity claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which entities meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify, below.]

603 I certify that the reporting entity is exempt from contributing to:

Universal Service TRS NANPA LNP Administration

I certify that the reporting entity is an interconnected VoIP filer that became subject to FCC Form 499 filing requirements on or after August 1, 2006 and therefore is reporting revenues in Blocks 3, 4, and 5 for the fourth quarter of 2006 instead of for the entire calendar year.

Provide explanation below:

604 Please indicate whether the reporting entity is State or Local Government Entity I.R.C. § 501 Tax Exempt

605 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.

I certify that I am an officer of the above-named reporting entity as defined on page 28 of the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named reporting entity is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in Section II-B of the instructions.

606 Signature

607 Printed name of officer

First [REDACTED] MI [REDACTED] Last [REDACTED]

608 Position with reporting entity [REDACTED]

609 Business telephone number of officer

([REDACTED]) - [REDACTED] ext - [REDACTED]

610 Email of officer || Required if available -- not for public release || [REDACTED]

611 Date

01/10/2008

612 Check those that apply:

Original April 1 filing for year New filer, registration only Revised filing with updated registration Revised filing with updated revenue data

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036
 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet information: (888) 641-8722 or via email: Form499@universalservice.org

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FCC Form 499-A
 August 2007