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February 12, 2009

Via Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

STAMP & RETURN
FILED/ACCEPTED

FEB 12 2009

Federal Communications Commission
Office of the Secretary

Re: Petition of the Ad Hoc Coalition of International Telecommunications
Companies for Declaratory Rulings

Dear Ms. Dortch:

Transmitted herewith, is a Petition of the Ad Hoc Coalition of International Telecommunications Companies for Declaratory Rulings That: (1) Qualifying Downstream Carriers May Choose Either to Accept Supplier Pass-Through Surcharges or Pay Universal Service Fees Directly; and (2) Prepaid Calling Card Providers' Distributor Revenues are Not "End-User" Revenues and Allowing Reporting of Actual Receipts Only; or In The Alternative, to Initiate A Rulemaking to Address These Issues. An original plus nine (9) copies are enclosed.

An additional copy of this filing is also enclosed. Please date-stamp the copy and return in the postage-prepaid envelope provided.

Should there be any questions regarding this matter, kindly contact the undersigned.

Respectfully submitted,

Jonathan S. Marashlian

Enclosures

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

In the Matter Of the Ad Hoc Coalition
of International Telecommunications
Companies' Petition For Declaratory
Rulings That: (1) Qualifying Downstream
Carriers May Choose Either to Accept
Supplier Pass-Through Surcharges or Pay
Universal Service Fees Directly; and
(2) Prepaid Calling Card Providers'
Distributor Revenues are Not "End-User"
Revenues and Allowing Reporting of
Actual Receipts Only; or In The
Alternative, to Initiate A Rulemaking to
Address These Issues

PETITION OF THE AD HOC COALITION OF
INTERNATIONAL TELECOMMUNICATIONS COMPANIES
FOR DECLARATORY RULINGS THAT: (1) QUALIFYING
DOWNSTREAM CARRIERS MAY CHOOSE EITHER TO ACCEPT SUPPLIER PASS-
THROUGH SURCHARGES OR PAY UNIVERSAL SERVICE FEES DIRECTLY; AND
(2) PREPAID CALLING CARD PROVIDERS' DISTRIBUTOR REVENUES ARE NOT
"END-USER" REVENUES AND ALLOWING REPORTING OF ACTUAL RECEIPTS
ONLY, OR IN THE ALTERNATIVE, TO INITIATE A RULEMAKING
TO ADDRESS THESE ISSUES

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I. Introduction

We represent the Ad Hoc Coalition of International Telecommunications Companies (the "Coalition"), which is comprised of entities primarily engaged in the provision of international long distance services to US consumers. Members of the Coalition are providers of pre-subscribed and prepaid international long distance services and sell their services directly to retail consumers or through various distribution channels. This petition requests that the Commission take action on two distinct problems affecting telecommunications carriers. The first affects all international telecommunications companies ("ITCs") in general, including members of the Coalition. The second concerns a significant segment of these ITCs, prepaid calling card providers ("PCCPs").

The more widespread issue, impacting all ITCs, involves indirect Universal Service Fund ("USF") contributions. Many Coalition members currently face discriminatory, indirect USF obligations resulting from pass-through charges from their underlying carriers despite qualifying for exemptions from direct contribution requirements. This problem is particularly prevalent for carriers that qualify for the "de minimis" exemption, discussed below. The Coalition hereby requests that the Federal Communications Commission ("FCC" or "Commission") issue a declaratory ruling finding that "de minimis" providers may choose whether (a) to have their underlying carrier/supplier pass through surcharges OR (b) to pay contributions directly, even if the contributions would be less than \$10,000.¹

¹ This issue has been before the Commission on at least one prior occasion, but the Commission has yet to rule on the matter. In *ex parte* communications, the American Public Communications Council ("APCC") raised the issue and its particular effects on payphone service providers highlighting the widespread nature of the problem. See *Ex Parte* Letter to Marlene Dortch from Albert A. Kramer and Robert F. Aldrich, Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 at 7-9 (Aug. 23, 2005); *Ex Parte* Letter to Marlene Dortch from Albert A. Kramer and Robert F. Aldrich, Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Jan. 9, 2006).

The narrower issue, affecting only PCCPs, likewise results in discriminatory USF obligations. However, this effect stems from the Commission's reporting obligations rather than its carrier classifications, specifically the requirement to report distributor revenue as "end-user" revenue and at "face value." Because this system fails to take into account common prepaid calling card distribution methodologies and contradicts fundamentals of Generally Accepted Accounting Principals ("GAAP"), the Coalition requests that the Commission issue a declaratory ruling finding that distributor revenues are not end-user revenues and allowing PCCPs to report actual receipts from distributors rather than "face value" receipts. In the alternative, the Coalition requests that the Commission initiate a rulemaking proceeding to further evaluate and address the issues raised by this petition.

II. Background

The Telecommunications Act of 1996 announced that "All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."² Most carriers pay a percentage of their interstate and international end-user revenues set by the FCC that varies on a quarterly basis, known as the contribution factor.³ However, in order to ensure equitable and non-discriminatory assessment, the FCC exempted "de minimis" providers and those whose revenues derive primarily from international service. Specifically, the Commission's rules provide "If a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so to by our rules governing Telecommunications Relay Service."⁴ The de minimis exemption attaches automatically, and the USF administrator, Universal Service Administrative Company

² 47 U.S.C. § 254(d).

³ 47 C.F.R. § 54.706(b); 47 C.F.R. § 54.709(a).

⁴ 47 CFR § 54.708.

("USAC"), has rebuffed carriers' attempts to decline the exemption and contribute directly when it is in their best interests. The FCC also established the Limited International Revenue Exemption ("LIRE") which limits the burden on carriers whose interstate end-user revenues amount to less than twelve percent of their combined interstate and international end-user revenues by allowing them to contribute based solely upon their interstate revenues.⁵

A multitude of carriers have filed with the Commission for clarification regarding their contribution obligations.⁶ One such group of providers is the prepaid calling card industry.⁷ In a 2006 order, the Commission clarified that all PCCPs qualify as contribution-eligible telecommunications carriers.⁸ The Commission's 499-A annual reporting worksheet also reserves a line for "revenues from prepaid calling cards provided either to customers, distributors or to retail establishments."⁹ Thus, PCCPs are treated like any other telecommunications carrier and must contribute based on the quarterly contribution factor unless they qualify either for LIRE or the de minimis exception. However, PCCPs are crippled by reporting instructions developed by USAC. Specifically, USAC directs PCCPs to report prepaid calling card revenues from distributors as end-user revenues and at "face value" even if actual receipts reflect a distributor discount.

⁵ 47 CFR § 54.706(c).

⁶ See, e.g. *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Petition for Declaratory Ruling of CTIA - The Wireless Association on Universal Service Contribution Obligations* (filed Aug. 1, 2006); *Petition for Declaratory Ruling of Cingular Wireless LLC* (filed Aug. 8, 2006); *Petition for Reconsideration and Clarification of BellSouth Corporation*, CC Docket No. 96-45 (filed Dec. 6, 1999).

⁷ See, e.g. *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket No. 03-133; WC Docket No. 05-68, Rel. FCC 05-41, 20 FCCR 4826 (2005).

⁸ Declaratory Ruling and Report and Order, *In the Matter of Regulation of Prepaid Calling Card Service*, WC Docket No. 05-68, FCC 06-79, Rel. June 30, 2006.

⁹ See 2008 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 27, available at <http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf>.

III. The Commission Should Eliminate Discriminatory Pass-Through Charges

A. The Commission Treats Non-Contributing ITCs as End-Users

The 2008 Form 499-A states that “[i]n general, contributions are calculated based on contributors’ end-user telecommunications revenue information.”¹⁰ (emphasis added). The Commission treats non-contributors as end-users for the purpose of calculating USF liability for underlying carriers. The instructions to Form 499-A note “some carriers may be exempt from contributing directly to the universal service support mechanisms...These contributors must be treated as end users by their underlying carriers.”¹¹ The Commission further notes “Sales to *de minimis* resellers, end-user customers, governments, non-profits, and any other non-contributors are treated as end-user revenues.”¹²

Known as the “carrier’s carrier rule,” this restriction of contributions to end-user revenues prevents duplicative USF contributions at the wholesale and retail levels.¹³ It exempts wholesalers from contribution when their reseller customers contribute directly. Under the rule, underlying carriers must determine whether their downstream reseller customers contribute directly to the USF. To make the determination, carriers simply visit the FCC’s website which lists each reseller and its contribution status. Because carriers self-report revenues, a carrier’s status with the Commission changes only if it reports revenues exceeding the threshold for direct reporting. In other words, a carrier becomes a direct reporter only if its USF fees equal or exceed \$10,000. Reseller carriers whose USF liability falls below \$10,000 annually are treated as end-users. Because a carrier’s USF contribution base is tied to its end-user revenues, this expands the underlying carrier’s contribution

¹⁰ *Id.* at 4.

¹¹ *Supra*, note 9 at 5.

¹² Telecommunications Industry Revenues 2005, Industry Analysis & Technology Division, Wireline Competition Bureau, June 13, 2007 at *28.

¹³ *See, e.g. Vonage Holdings Corp. v FCC*, 376 U.S. App. D.C. 396, 401 (2007).

eligibility.¹⁴ Since USF fees derive from end-user revenues, carriers are entitled to pass their obligations along to end-user customers.¹⁵ Therefore, end-users, including exempt resellers, are often ultimately responsible for the USF burden of underlying carriers.

B. As End-Users, Exempt Non-Contributing ITCs May Be Obligated to Contribute Indirectly to the USF

The FCC recognizes the occurrence of “indirect compensation” requirements noting “some carriers may be exempt from contributing directly to the universal service support mechanisms (e.g., because they are *de minimis*), but nevertheless must file because they are required to contribute to TRS, NANPA, or LNPA. These non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.”¹⁶ Thus, rather than a complete exemption, a non-contributing downstream carrier must pay pass-through charges if its underlying carrier elects to shift its USF burden. For example, assume domestic carrier M has \$75,000 in revenue and the contribution factor is 10%. Carrier M’s USF liability is \$7,500, and it therefore qualifies for the *de minimis* exemption, escaping any obligation to contribute directly to the USF. However, that carrier’s underlying carrier, carrier P, must, according to the FCC’s rules and USAC’s instructions, treat this downstream carrier as an end-user. If the underlying carrier is not also a *de minimis* carrier or does not meet some other exemption, it must contribute according to the contribution factor.

So, for example, if carrier P has \$10,000,000 in revenue, carrier P does not meet the *de minimis* exemption and must contribute \$1,000,000. Although the underlying carrier is not

¹⁴ 47 CFR § 54.706(b).

¹⁵ See USAC website, “Each company makes a business decision about whether and how to assess customers to recover its Universal Service Fund costs.”, <http://www.usac.org/about/universal-service/purpose-of-fund/>; 47 C.F.R. § 54.712.

¹⁶ *Supra*, note 9 at 5.

obligated to pass on its USF burden, it may elect to do so under the Commission's rules.¹⁷ It must pass charges along to end-users in proportion to their revenue stream.¹⁸ Thus, carrier P will shift to carrier M the additional burden it faces as a result of USF charges levied on carrier M's revenues. In this instance, carrier M has contributed \$75,000 in additional revenue which amounts to \$7,500 in USF fees facing carrier P. Thus, carrier P will bill carrier M \$7,500 for the expense. The ultimate result is that carrier M is no longer exempt and is subject to the exact same contribution obligations as a similarly situated carrier that does not qualify for the de minimis exemption.

This problem is exacerbated when the "de minimis" exemption collides with LIRE. Presently, carriers that fail to qualify for LIRE, such as carrier M, generally accept the current state of affairs because they might see but a modest savings, if any, if they qualified and paid into the fund directly. They find the administrative cost of filing regularly with the FCC to exceed the potential cost-saving benefit. Here, carrier M's direct and pass-through obligations were equal. Therefore, if given the option to choose between either contributing directly and accepting pass-through charges, carrier M would likely accept pass-through fees to avoid undertaking the expensive and time-consuming reporting process. While this result is arguably unfair in that it forces an otherwise exempt carrier to contribute at all, it imposes but a miniscule penalty in comparison with the inequities plaguing LIRE-qualifying de minimis carriers.

For example, compare carrier M with international carrier C. Assume carrier C also has \$75,000 in interstate telecommunications revenue but also \$10,000,000 in international revenues. Because carrier C's interstate revenues account for less than .75% of its combined interstate and international end-user revenues, carrier C qualifies for LIRE. Therefore, carrier C need only contribute on the basis of its \$75,000 worth of interstate revenue. Assuming a contribution factor

¹⁷ *Supra*, note 15.

¹⁸ 47 C.F.R. § 54.712(a).

of 10%, carrier C's USF obligation amounts to \$7,500, placing it squarely within the de minimis exemption which attaches automatically. Therefore, carrier C's underlying carrier, carrier D, must treat carrier C as an end-user and is entitled to bill pass-through charges to carrier C. However, carrier D's contribution base includes the ENTIRETY of carrier C's interstate and international end-user revenue pool. Thus, carrier D treats carrier C's \$10,075,000 in total revenues as contribution-eligible end-user revenues. Carrier D then calculates its USF liability based upon the 10% contribution factor at \$1,075,000, the entirety of which it may pass along to carrier C. Carrier C's burden has increased from \$0 (de minimis) to \$1,075,000.

However, if the FCC allowed carriers to opt-out of de minimis treatment, carrier C in the second example would clearly elect to decline the exemption. If carrier C refused the exemption, its contribution would be but \$7,500, the same as domestic company M in the first example, resulting in a 99% savings of \$1,067,500. This simple election procedure would be easy to administer and virtually cost-free. The Commission need only add a checkbox on its Form 499-A allowing de minimis carriers to select either pass-through charges or direct contribution.

C. Indirect Compensation Results in Discriminatory, Inequitable Contribution

The imposition of indirect compensation obligations contradicts the intended purpose of exemptions and limitations on contribution liability. In enacting the de minimis and LIRE exceptions, the Commission intended to exempt small carriers with limited revenue pools from the crippling burden of USF contribution.¹⁹ The current system protects underlying carriers but penalizes downstream carriers that otherwise should face minimal or no USF contribution liability. It further competitively disadvantages small carriers that cannot as easily absorb substantial fees as large providers. Thus, rather than reflecting an equitable and non-discriminatory contribution

¹⁹ See, e.g. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Report to Congress), Rel. FCC 98-67, 13 FCC Rcd 11501, 11570-71 fn 141 (1998).

system, as intended by Congress, carriers experience inequitable, excessive and disproportional contribution obligations.

Further, the system presents some ITCs with a Hobson's choice that creates an incentive to misrepresent actual revenues in Forms 499-Q which, but for operation of the present rules, the ITC would not be obligated to file. Specifically, the current system incentivizes contributors that are both LIRE-qualified, yet remain de minimis, to first file Form 499-Qs, when otherwise not required to, but also over-report their retail interstate revenues in Form 499-Qs to avoid exorbitant USF pass-through surcharges from their suppliers. As explained below, the supplier's USF surcharges would be outrageous because, under the current system, supplier's base pass-throughs on both interstate *and* international charges. To avoid supplier USF pass-through charges on international charges, ITCs may be forced into manipulating their 499-Qs to artificially inflate their retail interstate revenues above the de minimis threshold.

For example, return to carrier C above. Carrier C legitimately owes \$7,500 if it is entitled to reject de minimis status. However, because of the astounding pass-through rate exceeding \$1,000,000, the company may classify international revenue as interstate or even report that its interstate revenue totaled \$100,000 where, in actuality, it equaled but \$75,000. This small change would increase carrier C's contribution obligation to \$10,000 (10% of 100,000), placing carrier C outside of the de minimis exemption and triggering direct reporting obligations. Instead of the \$1,075,000 charge it would face based upon a report of \$75,000 in interstate revenues, carrier C would pay only \$10,000 into the fund. The result is unfair to both the Commission and the carrier. The carrier is forced to misstate its revenues as well as pay an additional \$2,500 than it would otherwise be required to pay if it could decline de minimis status. The Commission, likewise is faced with additional administrative costs in filtering out misrepresentations.

Clearly, Congress did not intend to incentivize carriers to distort reports to the FCC. Thus, USAC's current instructions, and the FCC's current policies, fly directly in the face of Congressional objectives. Absent a policy change, this manipulative behavior will continue as carriers seek to avoid astronomical penalties.

D. Qualifying Downstream Carriers Should be Entitled to Opt-Out of "De Minimis" Status

In order to remedy inequities accruing to exempt downstream carriers as a result of indirect contribution obligations, the Commission should allow qualifying carriers to elect either to accept pass-through charges or to pay USF fees directly. To the extent that downstream resellers accept pass-through charges, they should be entitled to pass along their obligations to end-user customers. To the extent that they are unable to shift their burden, qualifying downstream carriers should see a substantial reduction in their overall indirect burden. While not expressly provided for, the rules do not prohibit the application of the de minimis rule on an "opt-out" basis. Specifically, the rules note that a de minimis qualifying carrier "will not be *required* to submit a contribution" leaving the option open for voluntary contribution.²⁰ This "opt-out" system will lead to a more equitable contribution system.

Thus, the maximum contribution facing any de minimis carrier would equal its direct obligation if the exemption was non-existent. For example, carrier M above faced \$7,500 in contribution directly if it declined pass-through charges. Likewise, it faced the same \$7,500 if it accepted pass-through charges. Carrier C faced \$1,075,000 in pass-through charges, but opting-out of pass-through left it with \$7,500 in direct fees. Thus, the opt-out election capped both carriers' fees at \$7,500, the contribution amount accounting for the LIRE exception where applicable but ignoring de minimis status. Thus, under the new system, a reseller carrier's burden could never

²⁰ 47 CFR § 54.708.

exceed its contribution obligations based upon direct contribution, as determined by the general contribution factor calculation. This result is equitable as it results in de minimis carriers contributing according to the same formula as all other carriers.

IV. The Commission Should Declare that Distributor Revenue is Not End-User Revenue and Allow Reporting According to Actual Receipts

A. USAC Holds That Distributor Revenue is End-User Revenue

USAC is responsible for drafting instructions to the FCC's annual 499-A reporting worksheet, through which carriers detail their revenues. However, USAC is not authorized to substantively alter FCC regulations. The Administrative Procedures Act ("APA") mandates public notice and the opportunity to comment on substantive changes to FCC rules.²¹ However, USAC has accomplished this change by ordering PCCPs to report distributor revenues as end-user revenues without first subjecting its "rules" to the requisite notice and comment period. The instructions to the 2008 Form 499-A define Prepaid Calling Card Providers' services as follows: "selling prepaid calling cards to the public, to distributors or to retailers" recognizing that "[p]repaid card providers typically resell the toll service of other carriers."²² However, despite this acknowledgement of the resale nature of PCCPs' services, the instructions continue "[a]ll prepaid card revenues are classified as end-user revenues" and warn carriers that revenues "should not be reduced or adjusted for discounts provided to distributors or retail establishments."²³

B. FCC Rules Do Not Contemplate Distributors as End-Users and Should Declare that Revenue From a Distributor is Not End-User Revenue

²¹ 5 U.S.C. § 551, *et. seq.*

²² See 2008 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 14-15, available at <http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf>.

²³ *Id.* at 27.

As discussed above, the carrier's carrier rule restricts USF contribution obligations to end-user revenue.²⁴ Many PCCPs resell cards at a wholesale discount to distributors and resellers who, in turn, sell the cards to end-user customers. In this scenario, the distributor is not the end-user as contemplated by the FCC. In its First Report and Order clarifying USF responsibilities, the Commission states as follows:

End-user revenues would also include revenues derived from other carriers when such carriers utilize telecommunications services for their own internal uses because such carriers would be end users for those services... contributions will be assessed at the end-user level, not at the wholesale and end-user level. (emphasis added).²⁵

This language makes clear that the FCC did not intend USF assessment at the wholesale level. To further determine the Commission's intent, the language of the rules is relevant. While the Commission's rules relating specifically to universal service do not define "end-user," the term is defined elsewhere in the code as follows:

Any customer of an interstate . . . telecommunications service that is not a carrier except that a carrier . . . shall be deemed to be an 'end user' when such carrier uses a telecommunications service for administrative purposes and an . . . entity that offers telecommunications services exclusively as a reseller shall be deemed to be an 'end user' if all resale transmissions offered by such reseller originate on the premises of such reseller.²⁶

Wholesale PCCPs are resellers when they sell cards to distributors and other resellers. Likewise, distributors are also resellers as they ultimately sell cards to end-user customers. As resellers, neither wholesale PCCPs nor distributors originate transmissions on their premises. Thus, this definition is wholly inapplicable to both. Additionally, resorting to the plain language of the

²⁴ *Supra*, note 14; see also *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 F.C.C.R. 8776, 9207 ¶ 844 (1997) ("First Report and Order") ("[W]e conclude that contributions will be based on revenues derived from end users for telecommunications and telecommunications services.").

²⁵ First Report and Order at 9207 ¶ 844 & 9202 ¶ 850.

²⁶ 47 C.F.R. § 69.2(m).

term provides guidance. Where a term is not defined, the ordinary meaning governs.²⁷ Newton's Telecom Dictionary defines an end user as "an individual, association, corporation, government agency or entity other than an IXC that subscribes to interstate service provided by an Exchange Carrier and does not resell it to others."²⁸ (emphasis added). Reseller PCCPs and distributors would thus be excluded from the ordinary definition of "end-user." Therefore, the instructions should treat as end-user revenues only those PCCP sales that actually fit within the definition of "end-user" according to the Commission's intent and the ordinary and customary meaning of the term. Sales to distributors and resellers should be excluded as distributors and resellers are not end-users. Rather, distributors should rightfully be classified as resellers rather than end-users.

C. The FCC Should Declare That USAC Reporting Instructions Are Discriminatory and Contradict GAAP

USAC's reporting instructions err in yet another devastating manner. They require PCCPs to report revenues received from the sale of prepaid cards at "face value." However, the sale price to distributors reflects a deduction from the face value of the card. USAC requires PCCPs to ignore the discounted rate noting that revenues "should not be reduced or adjusted for discounts provided to distributors or retail establishments."²⁹ Therefore, wholesale PCCPs actually receive less than the value of the card, but must nonetheless report the entire value of the card as if it was actually received. For example, if the face value on a prepaid card listed as \$10.00 offers a \$3.00 discount, booking only \$7.00 of revenue, the instructions mandate reporting \$10.00 worth of revenue. Thus, assuming a contribution rate of 10%, the USF fees on a \$7.00 card would amount to \$0.70 and to

²⁷ *FDIC v Meyer*, 510 U.S. 471, 476 (1994).

²⁸ See Harry Newton, *Newton's Telecom Dictionary: 22nd Expanded and Updated Version* at 335 (2006).

²⁹ See 2008 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 27, available at <http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf>

\$1.00 on a \$10.00 card, resulting in a \$0.30 increase in USF contribution fees on that card alone. Multiplied over hundreds of thousands of cards, this additional fee becomes very substantial.

In addition to substantially increasing a provider's total contribution liability, it directly counters basic principals of GAAP accounting. GAAP accounting does not permit the recognition of revenue on the books unless the revenue is actually earned.³⁰ Because PCCPs never actually "earn" the difference between face value and the discounted sale value (in the above example \$3.00), reporting the entire face value as revenue does not comport with GAAP. To properly comply with both GAAP and USAC's instructions, a PCCP would be required to maintain two sets of books, an expensive, time-consuming and unnecessary venture.

D. USAC Should Not Require Reporting at "Face Value"

The current rules discriminate exclusively against PCCPs as they are the only group that must report as USF-contribution-eligible revenues that they never collect. Other carriers are entitled to deduct uncollected debt from their total reported revenues.³¹ Ultimately, therefore, PCCPs are charged a higher effective USF rate than all other carriers. In the above example, the actual USF rate, rather than the 10% contribution factor, is 14.2%. This is because the PCCP must pay \$1.00 rather than \$0.70 per card into the fund.

There is one clear, simple solution to remedy this problem - allow PCCPs to report revenues actually received. This can be accomplished in one of two ways: (1) PCCPs can deduct the discount as an "uncollectible" item on Line 422 like other carriers; OR (2) PCCPs can report only revenues actually received. Again, this simple solution would result in significant savings to overburdened

³⁰ GAAP authorizes revenue recognition when income is actually realized and earned. See Concepts Statement 5, PP 83-84; Accounting Research Bulletin 43, Chapter 1A, P1; Accounting Principles Board's (APB) Opinion 10, P 12; *SEC v Lucent Techs., Inc.*, 363 F. Supp. 2d 708, 712 (D. N.J. 2005); *Sparling v Daou (In re Daou Sys.)*, 411 F.3d 1006, 1016 (9th Cir. 2005).

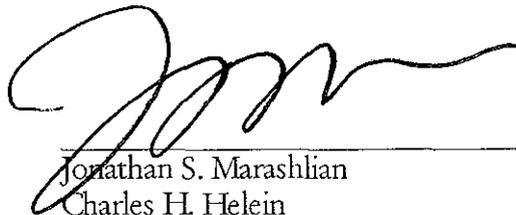
³¹ See 2008 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 30-31, available at <http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf>.

PCCPs with little or no administrative cost or difficulty. The Commission should, therefore, reject USAC's reporting instructions with respect to PCCP distributor discounts and adopt a non-discriminatory rule allowing PCCPs to report only revenues actually received.

V. In the Alternative, the Commission Should Initiate a Rulemaking Proceeding

If the Commission does not issue a Declaratory Ruling that significantly reduces the burden of pass-through USF charges on qualifying downstream carriers and treats PCCP distributors as resellers and allows them to report only revenues actually received from "end users," it should, in the alternative, initiate a Rulemaking Proceeding to consider new rules to eliminate, clarify or modify these, and other, inequitable USF contribution obligations which have been illegitimately enforced by USAC. Treatment of exempt carriers and distributors as end-users presents a unique problem that acutely threatens international carriers, generally, and international prepaid providers, in particular. To ensure the Universal Service Fund is administered in the non-discriminatory and equitable manner intended by Congress and FCC Rules, the Commission must promptly act on this Petition.

Respectfully submitted,



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