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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	**WC Dockt No. 06-122**
Requests for Waiver of Decisions of the	)	
Universal Service Administrator by Achieve	)	
Telecom Network of Massachusetts, LLC e*t al.*	)	

COMPTEL'S COMMENTS IN SUPPORT OF THE PETITIONS FOR RECONSIDERATION OF THE WIRELINE COMPETITION BUREAU'S ORDER DISMISSING REQUESTS FOR REVIEW OF USAC DECISION

COMPTEL respectfully submits these comments pursuant to the Commission's Public Notice released on March 19, 2009 (DA 09-635) in the above-referenced docket. The focus of COMPTEL's comments is the Universal Service Administrative Company's (USAC) implementation of its "pay and dispute" policy, which in certain circumstances, such as those presented by this petition for reconsideration, requires carriers that have inadvertently overstated their interstate revenues on FCC Form 499-Q and fail to realize the mistake until they receive their first invoice from USAC to make interest free loans to USAC for extended periods or pay late fees, interest and penalties on monies not truly owed to USAC. Ascent Media Group's petition for reconsideration highlights the inequity of the USAC's pay and dispute policy and presents an avenue for the Commission to direct USAC to revise the policy in a manner that is commercially reasonable for both USAC and the carriers who inadvertently overstate their revenues on the 499-Qs and miss the 45 day window to correct the filing.

On December 15, 2008 the Wireline Competition Bureau denied requests by Ascent Media Group, Achieve Telecom Network of Massachusetts, LLC and New Edge

Network, Inc. for refunds of late fees, penalties and interest charges that were assessed on their accounts for monies that were never owed to USAC as determined the annual true-up. The late fees, penalties, and interest charges were assessed because these carriers did not pay in full invoices received from USAC that were excessively high due to the carriers' inadvertent overstatement of their projected revenues on their FCC Form 499-Qs. Unfortunately, the carriers did not realize the error until they received their first invoice from USAC after the close of the 45 day window to correct their 499-Qs. In each case the assessable revenue amounts listed on the 499-Qs were significantly *higher* than they should have been, resulting in USF assessments that were significantly *higher* than what the carriers should have been assessed based on correct revenue projections. For example, New Edge mistakenly listed its interstate revenues on both the interstate revenue and the international revenue lines, thereby doubling its projected revenues for the quarter. This error resulted in a USF overcharge of $1,325,146. [1]

When the carriers attempted to correct the 499-Q worksheets after the 45 day correction window closed, USAC did not dispute the inaccuracy of the projected revenues reported, but stated that it was not responsible for carriers' revenue reporting errors, it did not have the authority to waive the Commission's 45 day revision deadline, and that any necessary adjustments could be made as part of the annual true-up process associated with the Form 499-A filing.[2] If the true-up shows that a carrier has overpaid, USAC's practice is not to refund the overpayment to the carrier, but to issue credits for any overpayments against future invoiced amounts. The credits, however, will not start

[1] November 9, 2007 Letter from Penny H. Bewick, New Edge Network, Inc. to Federal Communications Commission filed in WC Docket 06-122.

[2] Letter from USAC to Donna Cote, Vice President of Taxation, Ascent, p. 2, dated Jan. 11, 2008, filed in WC Docket No. 06-122 by Acent on .

appearing on the monthly invoices until the month of July following the filing of the 499-A. Depending on the timing of the 499-Q error, this means that it could take well over a year for the carrier to receive credits for its overpayments to USAC.

Neither Ascent nor New Edge refused to make *any* payments for the quarter in question. Ascent paid the full amount of the first monthly invoice it received from USAC -- an amount that was considerably more than what it owed for the entire quarter. New Edge made partial payments on each monthly invoice based on an estimate of what it actually owed. Although the annual true-ups revealed no underpayments, USAC assessed both carriers late fees, penalties and interest charges on the amounts USAC invoiced based on the inflated and erroneous projected revenues.

USAC's "pay and dispute" policy requires contributors to pay disputed invoices in full. USAC imposes late payments, interest and penalties on amounts that are not paid in full and these fees will not be waived unless the disputed charges are later found to be a result of an error by USAC.[3] The Bureau emphasized this policy in denying the carriers' requests for relief. Although the carriers inadvertently made the mistakes on the 499-Qs, USAC rebuffed their attempts to correct the mistakes outside the 45 day window and consequently invoiced them for amounts that were indisputably too high. In the case of Ascent, payment of the invoices in full would have amounted to an overpayment of nearly $2 million and in the case of New Edge, the overpayment would have exceeded $1 million. While it may be reasonable to enforce a "pay and dispute" policy where a carrier misses the 499-Q correction deadline, USAC's policy is patently unreasonable. Consistent with commercial practices, carriers should be permitted to pay the *undisputed*

[3] *See* USAC Website, Fund Administration, Contributors, File and Appeal, http://www.usac.org/fund-administration/contributors/file-appeal.

amount, dispute the balance and assume the liability for late fees, penalties and interest if the amounts they pay are determined to be insufficient after the annual true-up. It is unconscionable for USAC to assess late fees, penalties and interest charges on unpaid amounts of money to which it was never really entitled. The inequity of USAC's "pay-in-full" and dispute policy is compounded by the inordinate amount of time it takes to resolve disputes.[4]

In its Report and Order revising the rules applicable to penalties and interest for non-filing or late filing, the Commission stressed the need to bring its rules more into line with "commercial practices" in an effort to ensure that the universal service fund is adequately compensated for the time value of money lost when the 499s are not filed or "funds are not contributed in correct amounts."[5] USAC's "pay-in-full" and dispute policy is not consistent with commercial practices. In the commercial world, customers are expected to pay the undisputed amount of an invoice in a timely fashion, dispute the balance and assume the risk for late payments, penalties and interest if the dispute is ultimately resolved against them. They are not expected to pay the full amount while the dispute is pending or, if they decline to do so, pay late fees, penalties and interest on amounts they are ultimately found not to owe. USAC's pay and dispute policy not only denies carriers the time value of money lost when overpayments are made and not credited back for up to a year, but it also forces carriers to make interest free loans to a government administered fund for up to a year.

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[4] Ascent Media brought its dispute to the USAC's attention in November, 2007 and New Edge brought its dispute to USAC in January 2007.

[5] *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration and Oversight,* WC Docket No. 05-`95, Report and Order, FCC 07-150 (rel. Aug. 29, 2007), at ¶¶ 9-12.

The Commission has expressed concern that carriers' failure to make timely USF contributions "harm[s] the programs by denying the Administrator the use of the funds and by increasing the administrative costs of collecting the fund."[6] Neither of these concerns, however, is applicable to the situation where USAC demands that a carrier substantially *overpay* what it owes the universal service fund due to a mistake it made on its quarterly filing. USAC cannot suffer the "loss of its use of the money" or the "time value of money" if it was never entitled to the money. Nor does allowing USAC to collect substantial amounts of money that it will ultimately have to credit back to carriers who overstate their projected revenues support the stability to the fund or otherwise serve the public interest. The Commission analogizes carrier late payments to unilateral extensions of credit.[7] Forcing carriers to pay substantially in excess of what they owe is no different -- USAC is unilaterally receiving an interest free line of credit from carriers that inadvertently overstate their assessable revenues and are then required to pay USF fees on the inflated amounts..

The Commission's 45 day window for filing revised 499-Qs clearly poses a problem for many carriers who do not become aware that they have made mistakes on their statements of projected revenues until they receive the first USAC invoice after the window closes. In many cases, the monetary extent and/or timing of the error may be such that the annual true-up is a sufficient remedy for carriers. However, when the mistakes cause USAC to overbill carriers millions of dollars and the carriers must then wait as long as a year to receive credit for any overpayments or face substantial late

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6 *Id.*

7 *Id.*

payments, interest and penalties on sums they are ultimately determined not to owe, USAC's pay and dispute policy causes undue hardship,. is grossly inequitable. and is directly contrary to the Communications Act's requirement that contributions to the universal service fund be "equitable and nondiscriminatory." 47 U.S.C. §254(b).

For the forgoing reasons, the Commision should direct USAC to revise its pay and dispute policy and cease assessing carriers for late fees, penalties and interest where it is determined, upon the annual true-up, that the carriers have not underpaid the amounts they actually owe. When carriers realize they have made a reporting error after the correction window closes, they should be permitted to pay the undisputed amount of the USAC invoices, dispute the balance and assume the liability for any late fees, penalties and interest if the subsequent true-up determines that they have underpaid. Forcing carriers to make interest free loans to the government to avoid being assessed late fees, penalties and interest on amounts they do not owe USAC is neither commercially reasonable, nor equitable.

Respectfully submitted,

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April 20, 2009