

**REDACTED, FOR PUBLIC INSPECTION**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**FILED/ACCEPTED**

**JUN - 4 2009**

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
)  
)

Telecommunications Relay Services and Speech- )  
to-Speech Services for Individuals with Hearing )  
and Speech Disabilities )

CG Docket No. 03-123

To: The Commission

**APPLICATION FOR REVIEW**

Thomas D'Aurio  
Chief Financial Officer  
STi Prepaid, LLC  
1250 Broadway  
26th Floor  
New York, NY 10001  
(212) 660-2720  
(212) 660-2709 (fax)

Chérie R. Kiser  
Susan Kurkowski  
CAHILL GORDON & REINDEL LLP  
1990 K Street, N.W.  
Washington, D.C. 20006  
(202) 862-8950  
(202) 862-8958 (fax)  
ckiser@cgrdc.com

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**APPLICATION FOR REVIEW**

STi Prepaid, LLC (“STi Prepaid”)<sup>1</sup> hereby submits this request for action on the pending Application for Review filed June 26, 2006 by STi Prepaid’s predecessor company, Telco Group, Inc. (“Telco Application”),<sup>2</sup> in response to the Declaratory Ruling on Reconsideration of the Consumer and Governmental Affairs Bureau (the “Bureau”), issued May 25, 2006 in the above-captioned matter (the “*Telco Ruling*”).<sup>3</sup> Although the law requires the Commission to act upon all such applications, this application has never been acted upon.<sup>4</sup>

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<sup>1</sup> STi Prepaid is an interexchange carrier providing interstate and international long distance services, on a one-plus, dial-around, and prepaid calling card basis. The Commission granted STi Prepaid approval to acquire the assets of Telco Group, Inc. on March 8, 2007. See *Domestic Section 214 Application Filed for Acquisition of Certain Assets of Telco Group, Inc., to STi Prepaid, LLC*, WC Docket No. 07-11, DA 07-551 (rel. Feb. 5, 2007); *Application for consent to assign international section 214 authorization*, ITC-214-20010220-00085, held by Telco Group, Inc. (TGI), to STi Prepaid, LLC (STi Prepaid), Report No. TEL-01122, *International Authorizations Granted*, Public Notice, DA 07-1085 (rel. Mar. 8, 2007).

<sup>2</sup> Telco Group, Inc. Application for Review, *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Facility Id No. 74156, CG Docket No. 03-123 (filed June 26, 2006).

<sup>3</sup> *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 21 FCC Rcd 5247 (May 16, 2006), reconsidered on Bureau’s own motion Declaratory Ruling on Reconsideration, 21 FCC Rcd 5962 (May 25, 2006).

<sup>4</sup> 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.104(b) (“The application for review will in all cases

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### BACKGROUND

In 2004, Telco Group, Inc filed a Petition for Declaratory Ruling or Waiver to address the inequity of the current method of assessment of contributions to the Telecommunications Relay Service (“TRS”) Fund on international operators (“Telco Petition”).<sup>5</sup> It argued that in an analogous context, the Universal Service Fund (“USF”), the FCC issued regulations establishing a threshold amount of revenues from interstate end users be reached before international revenues would be subject to USF contribution obligations.<sup>6</sup> After pending nearly two years, the Bureau denied this petition in the *Telco Ruling*.

The Telco Application was timely filed on June 26, 2006. Since then, the TRS Fund has *more than doubled*, increasing from \$420 million in 2006 to a proposed \$891.2 million for 2009-2010.<sup>7</sup> STi Prepaid therefore respectfully submits this request for expedited action on the Telco Application, and specifically requests that the Commission:

- 1) reverse the *Telco Ruling* denying Telco Group’s request to exclude international end user revenues from the interstate contribution base for TRS;

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be acted upon by the Commission.”)

<sup>5</sup> Petition of Telco Group for Declaratory Ruling or Waiver, *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67 (filed July 26, 2004).

<sup>6</sup> See 47 C.F.R. § 54.706, 709.

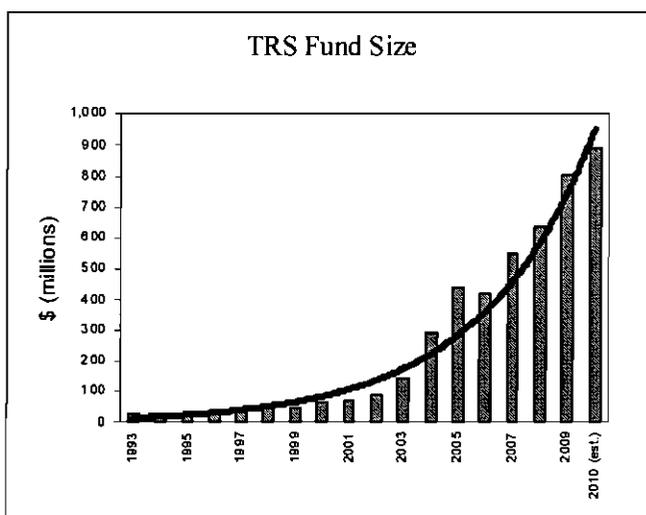
<sup>7</sup> This amount would be nearly \$981 million, but for the \$90,000,000 carry-over surplus from the 2008-2009 Fund year. See CG Docket No. 03-123, Public Notice and Notice of Proposed Rulemaking at n.35 (rel. May 14, 2009). The TRS funding requirement in 2004-2005 when Telco Group, Inc. made its initial filing was a mere \$289.4 million. *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, 19 FCC Rcd 12224, 12224 ¶ 1 (. June 30, 2004).

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- 2) reverse the Bureau holding that carriers whose end user international revenue comprise 89 percent or more of their total end user revenue must pay the same percentage of revenues into the TRS Fund as other carriers is equitable and non-discriminatory; and
- 3) grant any other relief it deems appropriate to remedy the inequitable burden on STi Prepaid.

### INTRODUCTION AND SUMMARY

The TRS Fund has increased dramatically in recent years. For the majority of the 1990s,



the Fund was in the \$25-50 million range. Around 2000, the Fund broke the \$100 million mark. By 2005 the Fund had increased roughly fivefold, to about \$500 million. The amount requested for the Fund today approaches the \$1 billion mark.<sup>8</sup> The near-exponential growth of the TRS Fund is demonstrated in the chart below.

<sup>8</sup> Sources for these figures are available at FCC, TRS Docket History, [http://www.fcc.gov/cgb/dro/trs\\_history\\_docket.html](http://www.fcc.gov/cgb/dro/trs_history_docket.html).

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The explosive growth of this Fund has led to extraordinary increases in the obligations of those required to contribute to the Fund. Congress specified that the Fund be collected from *only* intrastate and interstate revenues.<sup>9</sup> Regardless, in its regulation interpreting this statute (47 C.F.R. § 64.604(c)(5)(iii)(A)) the FCC defined “interstate” to include “international” revenues. By far, the vast majority — 97.4 percent — of STi Prepaid’s revenue is derived from international prepaid calling card services; only 1.1 percent comes from the provision of interstate telecommunications services.<sup>10</sup>

In 2004, STi Prepaid’s predecessor detailed the disproportionate application of the TRS funding obligations and the unreasonable financial burden placed upon carriers such as STi. Now, five years later, the amount imposed has multiplied to a point where it has become a significant impediment to the ability of STi Prepaid to conduct business in the United States. The amount STi will be required to contribute to the TRS Fund under the 2009-2010 contribution factor will comprise *almost the entirety* — 86 percent — of its end user interstate revenue and compels its request for expedited action on the pending Application. The following refreshes the arguments previously made in the Telco Application and reflects information relevant to the TRS Fund, STi Prepaid, and the Telco Application that has been made available over the interim three years for which the Telco Application has been pending.<sup>11</sup>

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<sup>9</sup> See 47 U.S.C. § 225(d)(3)(B).

<sup>10</sup> The remaining 1.5 percent of revenues is derived from intrastate telecommunications services.

<sup>11</sup> See 47 U.S.C. § 1.115(j) (allowing the Commission to consider newly discovered evidence on appeal).

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**I. THE PLAIN LANGUAGE OF 47 U.S.C. § 225 ONLY ALLOWS FOR ASSESSMENT OF TRS CONTRIBUTIONS ON INTERSTATE AND INTRASTATE REVENUES**

By the words of the statute itself, it is clear that Congress only envisioned contributions to the TRS Fund to be derived from interstate or intrastate revenues:

(B) Recovering costs. -- Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. . . .<sup>12</sup>

The term “interstate” has a very clearly understood meaning in the Communications Act, as elsewhere: between and amongst any of the various states of the United States.<sup>13</sup> Applicant knows of no context, communications or otherwise, in which the term “interstate” has been used to encompass things international.<sup>14</sup>

In the corresponding regulations, the FCC interpreted 47 U.S.C. § 225(d) to require that “[e]very carrier providing *interstate telecommunications services* shall contribute to the TRS

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<sup>12</sup> *Id.* § 225(d)(3)(B).

<sup>13</sup> *Id.* § 3(22):

The term “interstate communication” or “interstate transmission” means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country . . . .

*See also, e.g.,* Merriam-Webster Dictionary (2009) (defining “interstate” as “of, connecting, or existing between two or more states especially of the United States”).

<sup>14</sup> *Compare* definition of interstate, *supra*, with that of international. Merriam-Webster Dictionary (2009) (defining “international” as “of, relating to, or affecting two or more nations”).

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Fund on the basis of *interstate end-user telecommunications revenues* as described herein.”<sup>15</sup>

Despite the plain meaning of the statute, however, and without explanation or justification, the regulation goes on to state that “[c]ontributions shall be made by all carriers who provide interstate services, including, but not limited to . . . *international* . . . services.”<sup>16</sup>

“Interstate” is clearly not synonymous with “international.” Multiple courts have distinguished these terms easily and without process,<sup>17</sup> and the FCC itself acknowledges the difference.<sup>18</sup> In the *Telco Ruling*, the Bureau argued that contribution to the TRS Fund based on international revenues is appropriate because such revenues may be used to support international TRS.<sup>19</sup> This argument is inapposite. It is totemic that where the language of Congress has a commonly understood plain meaning, that meaning must be given credence.<sup>20</sup> It is equally well-established that where a regulation flies in the face of the plain meaning of a statute, courts are highly likely to overrule such regulations as arbitrary and capricious.<sup>21</sup> STi Prepaid asserts the

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<sup>15</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A) (emphasis added).

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> See, e.g., *Texas Office, Public Utility Counsel v. FCC*, 183 F.3d 292 (5th Cir. 1999) (differentiating between interstate and international revenues for the purpose of USF contributions) [hereinafter “*TOPUC*”].

<sup>18</sup> *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 22493 ¶ 779 (May 8, 1997) (“[W]e agree . . . that by definition, foreign or international telecommunications are not ‘interstate’ because they are not carried between states, territories, or possessions of the United States.”).

<sup>19</sup> See *Telco Ruling* ¶ 9.

<sup>20</sup> *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (“It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, the sole function of the courts is to enforce it according to its terms.”).

<sup>21</sup> See, e.g., *In re Old Fashioned Enterprises, Inc.*, 236 F.3d 422, 425 (8th Cir. 2001) (“Although substantial deference is due an agency’s interpretation of its regulations, no deference is due if the interpretation is contrary to the regulation’s plain meaning.”); *Delaware Division of Health and Social Services v. United States Department of Health and Human Services*, 665 F. Supp. 1104 (D. Del. 1987) (Where “the regulations unreasonably supersede” the plain meaning

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meaning of “interstate” in the statute is plain. Because there is no statutory basis for the collection of TRS Funds on international revenues, the Commission’s order allowing for such collection in the *Telco Ruling* should be reversed.

**II. THE CURRENT METHOD OF ASSESSMENT OF TRS CONTRIBUTIONS VIOLATES THE PRINCIPLES OF COMPETITIVE NEUTRALITY AND IS DISCRIMINATORY**

Assessing TRS contributions on revenues of carriers such as STi Prepaid, whose revenues are almost all international, in the same manner as those whose revenues are derived from interstate sources violates principles of competitive neutrality and is discriminatory.

As the Telco Application urged, the Commission should incorporate the same principles that guide the administration of the USF under section 254 of the Act. To this, the Bureau responded that 225 does not expressly incorporate these principles, and thus reached the astonishing conclusion that the TRS Fund is not required to be administered in a competitively neutral and nondiscriminatory fashion.<sup>22</sup>

Contrary to this extraordinary contention, it is clear that Congress intended the Commission to administer the TRS Fund — same with all its actions — in a manner that will promote competition amongst telecommunications providers.<sup>23</sup> To do so, its regulations must be “competitively neutral,” else they would necessarily favor one supplier over another.

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of the statute, the “attempted revision of the statutory language is not only unreasonable; it is arbitrary and capricious” and “must be overturned.”).

<sup>22</sup> See *Telco Ruling* ¶ 10.

<sup>23</sup> Congress’ intention that the promotion of competition should drive the Commission’s policies and regulations is reflected in several provisions. See, e.g., 47 U.S.C. § 160 (“[T]he Commission *shall* forbear” from imposing regulations where “forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications ser-

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The Commission itself has recognized that section 225 of the Act should be administered in a competitively neutral fashion. In a 1999 order, the Commission stated:

Even though there is no explicit statutory requirement to do so in section 225, we conclude that the principle of competitive neutrality is consistent with section 225 and that basing contributions to the TRS Fund on a competitively neutral mechanism would advance the intent embodied in the Congressional goal of “a pro-competitive, de-regulatory national policy framework.” See Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).<sup>24</sup>

Thus, the Commission has expressly determined to carry-over the principle of competitive neutrality from section 251(e) of the Act, requiring costs to “be borne by all telecommunications carriers on a competitively neutral basis,” to section 225. The Commission has interpreted the concept of competitive neutrality to mean that the cost “borne by each carrier does not affect

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vices.”) (emphasis added); Telecommunications Act of 1996, *codified at* 47 U.S.C. § 157 note (The Commission “shall . . . [employ] measures that promote competition” in encouraging the deployment of advanced telecommunications services) (emphasis added); *In re Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, CC Docket No. 96-98, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673, 12675 ¶ 2 (July 7, 1999) (“In the Telecommunications Act of 1996, Congress sought ‘to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.’”); *In re 1998 Biennial Regulatory Review — Testing New Technology*, CC Docket No. 98-94, Notice of Inquiry, 13 FCC Rcd 21879, 21881 ¶ 5 (June 11, 1998) (“[T]he Commission has increasingly adopted policies that reflect the view that open entry and competition bring greater benefits to consumers and society than traditional regulation of markets dominated by one or a few carriers. Moreover, Congress in the 1996 Act has advanced this trend by aggressively promoting a new, competition-driven marketplace.”).

<sup>24</sup> *In re 1998 Biennial Regulatory Review — Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 1999 WL 492955, at n.132 (July 14, 1999).

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significantly any carrier's ability to compete with other carriers for customers in the marketplace."<sup>25</sup>

As STi Prepaid has repeatedly informed the Commission, requiring international revenues to be tapped for TRS contributions to the same extent as interstate revenues creates a profoundly uneven playing field and substantially hinders its ability to remain competitive in the United States marketplace.

In the *Telco Ruling*, the Bureau countered that requiring contributions based upon an equal percentage on interstate and international revenues is nondiscriminatory because, as opposed to the USF context, which does not fund international service, the TRS Fund is applied to both interstate and international TRS service:

Unlike the Universal Service Fund, which does not directly support international services but only may be used only to support domestic services, the Interstate TRS Fund is used to support international TRS. Therefore, unlike the USF assessments at issue in *TOPUC*, excluding international revenues from the revenue base used for calculating TRS contributions would not serve the public interest. With the TRS Fund, it is not the case — as in *TOPUC* — that a provider of only *de minimis* interstate service may be required to bear a disproportionately heavy burden in subsidizing the provision of such services by other carriers.<sup>26</sup>

The Bureau's contention is disingenuous.<sup>27</sup> While it is true that some portion of the TRS Fund supports international TRS, this portion is **less than 1%**, as shown in Table 1 below.<sup>28</sup>

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<sup>25</sup> *In re Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8419 ¶ 131 (July 2, 1996); *see also Qwest Communications Int'l, Inc. v. FCC*, 240 F.3d 886, 890 (10th Cir. 2001).

<sup>26</sup> *Telco Ruling* ¶ 9.

<sup>27</sup> Here, the Bureau attempts to justify the assessment of international revenues for the TRS Fund, as opposed to the exclusion of revenues under a certain threshold from the USF, based on the fact that the USF does not support international service. A review of the history behind the exclusion of such revenues from the USF reveals that lack of support of international service was in no sense the justification for their exclusion. In fact, the Commission had argued ardently that

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Table 1  
International TRS as a Percentage of Total (Minutes)

	International	Total	% of Total
Traditional TRS	77,894	10,956,418	0.7%
Internet Protocol	0	67,558,520	0.0%
Speech-to-Speech	1,443	152,350	0.9%
Interstate Captioned Telephone Service	73,823	5,660,007	1.3%
Internet Protocol Captioned Telephone Service	17	667,658	0.0%
Video Relay Service	??	88,064,970	??
<b>Average</b>			0.6%

Thus the Bureau's contention is belied by the facts. Providers whose revenues are primarily international are clearly largely supporting interstate, not international TRS — in fact, international TRS is almost nonexistent. The current TRS funding methodology thus currently favors providers whose revenues are derived from interstate service and is not competitively neutral.<sup>29</sup>

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international revenues must be included in USF assessments, regardless of whether or not the USF supported international service, *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 22493 ¶ 779 (rel. May 8, 1997), and it was not until the Fifth Circuit found the Commission's practice to be arbitrary and capricious in *TOPUC* that the FCC adopted regulations establishing that a threshold percent of revenues be from interstate sources to be required to contribute to the USF. See *In re Federal-State Board on Universal Service*, CC Docket No. 96-45, Eighth Report and Order, 15 FCC Rcd 1679 ¶ 19 (rel. Oct. 8, 1999) (adopting the 8 percent threshold because it is "[c]onsistent with the [*TOPUC*] court's ruling"); *In re Federal-State Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 ¶ 125 (rel. Feb. 26, 2002) (adopting a 12 percent threshold under the same rationale). To rely upon such justification at this point would be to rewrite history. Moreover, in *TOPUC* the Commission attempted to argue that assessment of USF contributions was not inequitable because all carriers benefit from universal service; this argument was summarily rejected by the Fifth Circuit. 183 F.3d at 434.

<sup>28</sup> Data for this table is from *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Exs. 3-2 to 3-7 (filed May 1, 2009) ("*NECA Annual TRS Submission*"). Please note that NECA fails to provide a breakdown of international minutes for Video Relay Services.

<sup>29</sup> This lack of competitive neutrality is also reflected in the administration of the Fund, which is heavily dominated by incumbent local exchange carriers. The current makeup of the

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The disproportionate burden placed on STi Prepaid is readily apparent. In the 2009-2010 TRS Fund year, STi Prepaid alone will be required to contribute nearly [REDACTED]. [REDACTED] *international TRS Fund support*. Although an exact breakdown of all services is not available, it appears that all international TRS in 2008 may be estimated at roughly \$3.6 million.<sup>30</sup>

Table 2  
International TRS as a Percentage of Total

	Minutes			Cost	
	International	Total	% of Total	Total	International
Traditional TRS	77,894	10,956,418	0.7%	\$ 16,558,500	\$ 117,722
Internet Protocol	0	67,558,520	0.0%	\$ 87,137,729	\$ -
Speech-to-Speech	1,443	152,350	0.9%	\$ 378,051	\$ 3,581
Interstate Captioned Telephone Service	73,823	5,660,007	1.3%	\$ 9,317,135	\$ 121,523
Internet Protocol Captioned Telephone Service	17	667,658	0.0%	\$ 1,117,684	\$ 28
Video Relay Service	522,215	88,064,970	0.6%	\$ 563,177,364	\$ 3,339,578
<b>Total</b>			0.6%		\$ 3,582,431

Thus, the current TRS funding methodology requires that one carrier, STi Prepaid alone, contribute more to the TRS Fund than *all expenditures on TRS service in its category*. Such a requirement can hardly be consistent with the creation of a level playing field.

While acknowledging that the USF principles found in section 254(b) of the Act are not expressly contained in section 225, they have been specifically embraced by the Commission as

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TRS Advisory Council does not cure this inequity. There are three carriers on the Council, only one of which is an interexchange carrier. The other two have been acquired by two of the largest incumbent local exchange carriers SBC, (now at&t) and Verizon, both of which serve on the board of NECA, and are TRS providers/beneficiaries of the TRS Fund. See *NECA Annual TRS Submission* at Appendix E and [www.neca.org](http://www.neca.org).

<sup>30</sup> This estimate assumes that the percentage of Video Relay Service that is international is on par with the average percentage of all TRS services that are international (on average, 0.6%).

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a necessary byproduct for promoting the overall goals of the Act. Just as it was determined that assessing USF contributions on international providers was inequitable and discriminatory because such providers were made to shoulder a disproportionate amount of fund contributions, this same finding should apply to TRS Fund contribution obligations. Prior to the Commission's adoption of the now twelve percent threshold, the Fifth Circuit held the inclusion of international revenue to be "'discriminatory,' because the agency concedes that its rule damages some international carriers . . . more than it harms others." Thus, the court concluded that the FCC's interpretation, "allowing it to impose prohibitive costs on [international] carriers . . . is 'arbitrary and capricious and manifestly contrary to the statute.'"<sup>31</sup> In making such determination, the Fifth Circuit ruled that the international carrier's showing that it would be forced to pay more in USF contributions than it could generate in interstate revenues to be a dispositive violation of the language of § 254<sup>32</sup> — a result mirrored in this case, where the vast majority (86%) of STi Prepaid's interstate revenues are swallowed by its TRS contribution. Based upon the Fifth Circuit's ruling in *TOPUC*, the Commission enacted the new regulations requiring a base level of interstate revenues before contribution to the USF on international revenues was required.<sup>33</sup> Because the current method of TRS contributions also allows for a discriminatory burden to be placed on international carriers contrary to the principle of competitive neutrality, such a floor is justified in this case as well.

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<sup>31</sup> *TOPUC*, 183 F.3d at 434-35.

<sup>32</sup> *Id.* at 434.

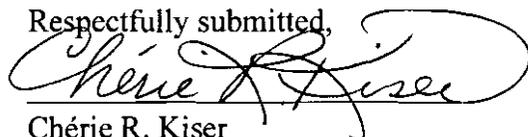
<sup>33</sup> *See* 47 C.F.R. § 54.706, 709.

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**CONCLUSION**

For the reasons described above, STi Prepaid respectfully submits this request for Commission action on its Application for Review and reverse the Bureau's Declaratory Ruling and declare that 47 C.F.R. § 64.604(c)(5)(iii)(A) does not include revenues from international services unless a threshold percentage of interstate revenue has been generated similar to that applicable to the USF contribution obligations, and grant any other relief it deems appropriate to remedy the inequitable burden on STi Prepaid and/or others whose revenues are primarily derived from international sources.

Thomas D'Aurio  
Chief Financial Officer  
STi Prepaid, LLC  
1250 Broadway  
26th Floor  
New York, NY 10001  
(212) 660-2720  
(212) 660-2709 (fax)

Respectfully submitted,  
  
Cherie R. Kiser  
Susan Kurkowski  
CAHILL GORDON & REINDEL LLP  
1990 K Street, N.W.  
Washington, D.C. 20006  
(202) 862-8950  
(202) 862-8958 (fax)  
ckiser@cgrdc.com

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