

August 20, 2009

Via ECFS and Electronic Mail

Julie A. Veach
Acting Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Network Enhanced Telecom, LLP Request for Review of a USAC
Contributor Audit Decision (WC Docket No. 06-122)*

Dear Ms. Veach:

As you know, on June 29, 2009, Network Enhanced Telecom, LLP (“NetworkIP”) submitted a request for review of a 2008 contributor audit decision of the Universal Service Administrative Company (“USAC”).¹ Although the central issue in NetworkIP’s request for review is USAC’s misclassification of NetworkIP’s software service platform as prepaid calling card service, NetworkIP’s audit also presents some issues related to the classification of revenues as reseller or carrier’s carrier revenues. This week the Wireline Competition Bureau (“Bureau”) released an order resolving a request for review of a contributor audit of Global Crossing Bandwidth, Inc. (“Global Crossing”) which addressed some questions about Global Crossing’s classification of revenue in the reseller category.² I write today to point out the significant differences between NetworkIP’s case and Global Crossing’s on this issue.

Unlike Global Crossing, NetworkIP does not challenge its obligation to implement procedures to ensure that it reports as revenues from resellers only revenue from customers that “reasonably would be expected to contribute” to universal service themselves.³ Indeed,

¹ Network Enhanced Telecom, LLP, Request for Review of a Decision of the Universal Service Administrator in a Contributor Audit, WC Docket No. 06-122 (filed June 29, 2009) (“NetworkIP Request for Review”). *See also Comment Sought on Network Enhanced Telecom, LLP Request for Review of a Universal Service Contribution Decision of the Universal Service Administrative Company*, WC Docket No. 06-122, Public Notice, DA 09-1778 (rel. Aug. 10, 2009).

² *Request for Review of a Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45 Order, DA 09-1821 (rel. Aug. 17, 2009) (“Global Crossing Order”).

³ *See* NetworkIP Request for Review at 15-16, quoting FCC Form 499-A Instructions.

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NetworkIP specifically recognizes the importance of obtaining reseller certifications to support the classification of revenue in the carrier's carrier category.⁴ NetworkIP is not claiming reseller status for revenues from any customer from which NetworkIP did not have a reseller certification. Global Crossing, by contrast, formed its "expectation" about its customers' reseller status at an "aggregate level," "based on a combination of resale certificates, the presence of filer IDs, contractual representations, other statements to [Global Crossing], and the [wholesale character of the] products and services that the carrier purchased."⁵ Thus, there are significant differences between the two companies' procedures for establishing a reasonable basis to classify customers as resellers. While NetworkIP's certifications may have been signed by different customers at varying times, they all required the customer to certify that it would continue to file Form 499 revenue reports in the future and, in many cases, affirmatively obligated the customer to inform NetworkIP of any changes in the customer's filer status.⁶ Thus, even to the extent that Global Crossing's evidence was insufficient,⁷ the evidence of NetworkIP's reasonable expectation of its customers' reseller status is substantially more compelling.

If you or your staff have any questions about these issues or any other aspect of NetworkIP's request for review, please do not hesitate to contact me.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By: /s/
L. Charles Keller

cc (email): Vickie Robinson
Carol Pomponio

⁴ *Global Crossing Order* at ¶ 13 ("A current reseller certification allows the wholesale carrier to demonstrate that its customer is indeed a reseller,").

⁵ *Global Crossing Request for Review* at 19-20.

⁶ *NetworkIP Request for Review* at 16-17. *See also id.* at 17-20 (explaining why it would be illegal to apply an annual re-certification requirement before the OMB approval date of the 2007 Form 499-A, which was after the conclusion of NetworkIP's audit period).

⁷ *Cf. Global Crossing Order* at ¶ 14. NetworkIP expresses no opinion here about the sufficiency of the evidence that Global Crossing presented.