Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Request for Universal Service Fund Policy Guidance Requested by the Universal Service Administrative Company	))))	WC Docket Nos. 05-337, 06-122 CC Docket No. 96-45

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corporation ("TDS Telecom"), by counsel and pursuant to the Commission's *Public Notice* issued in the above-captioned proceeding, [1] hereby submits these comments to assist the Commission in responding to one of several requests for policy guidance filed by the Universal Service Administrative Company ("USAC"). More specifically, these comments respond to USAC's request for policy guidance on the appropriate application of the Commission's document retention rules in the context of High Cost Program audits.

In August 2007, the Commission released a *Report and Order* that, among other things, required all recipients of High Cost Program support to maintain for five years from the date of disbursement all records, including copies of invoices for the purchase and maintenance of equipment, that may be required to demonstrate that the support received was consistent with applicable law. [2] In doing so, the Commission noted that this five year record retention period

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[1] *See Comment Sought on Request for Universal Service Fund Policy Guidance Requested by the Universal Service Administrative Company,* DA 09-2117, rel. September 28, 2009.

[2] *In re Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight,* 22 FCC Rcd 16372, 16383-84 (¶ 24) (FCC 07-150) (2007) ("*Report and Order*"). It is TDS Telecom's understanding that, in practice, the five year record retention rule actually requires High Cost Program recipients to retain documents for a total of seven years. The rule states that documents must be retained "for at least five years from the recipient of funding." 47 C.F.R. § 54.202(e). Because funding is received by Program recipients in arrears, and because there is a two-year lag between the time recipients provide supported services and the time they (continued...)

was consistent with the five year record retention rule imposed on recipients of funding from the Schools and Libraries Program. [3] In fact, this same five year record retention period ultimately was adopted by the Commission for all Universal Service Fund ("USF") Program recipients and contributors. [4]

The Commission's intention in adopting the five year record retention rule in the High Cost Program context could not have been clearer. It was abundantly clear, for example, that the Commission promulgated this requirement because the absence of a record retention rule until that time impeded USAC and its USF auditors from evaluating Program compliance. [5] Indeed, in the *Notice of Proposed Rulemaking* that ultimately resulted in the promulgation of the five year rule for all USF Program recipients and contributors, the Commission explicitly asked whether it should adopt document retention rules for all USF Programs that are consistent with the five year rule adopted a few years earlier in the Schools and Libraries Program context, which it found "facilitate[d] improved information collection during the auditing process and . . . enhance[d] the ability of auditors to determine whether applicants and service providers have complied with program rules." [6] The Commission ultimately answered this question in the affirmative and promulgated Section 54.202(e), which specifies (in the context of the High Cost Program) that "[a]ll eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-

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receive Program funding for those services, adherence to the rule appears to require that recipients retain documents for a total of seven years.

[3] *Id.*

[4] *Id.* at 16383-85 (¶¶ 24-27).

[5] *Id.* at 16383 (¶ 23).

[6] *In re Comprehensive Review of Universal Service Fund Management, Administration and Oversight,* 20 FCC Rcd 11308, 11342 (¶ 83) (2005) ("*Comprehensive Five Year Rule NPRM*").

cost program rules" and that "[t]his documentation must be maintained for at least five years from the receipt of funding." [7]

Given this background, it was rather startling when, almost immediately after the five year document retention period was promulgated for High Cost Fund Program recipients, some USF program auditors, including some of those with whom TDS Telecom came into contact, began requiring Program recipients to, for purposes of demonstrating High Cost Program compliance, produce records, including invoices, containing cost information for equipment that in some cases were purchased as far back as 15 years ago. Even more startling (and problematic given the presumed goal of consistency across all Program audits) was that the activities of these auditors was inconsistent; some required High Cost Fund Program recipients to produce invoices for equipment that, in some cases, was more than five or seven years old, while others did not.

The actions of these auditors merit discussion and comment. In TDS Telecom's experience, at least two different auditors asked the company to produce invoices for equipment that already had been recorded in the company's Part 32 Continuing Property Records ("CPRs"). In some cases, that equipment had been purchased and recorded by TDS Telecom in its CPRs over 15 years ago. In these cases, TDS Telecom no longer possessed the underlying invoices the auditors were seeking. This is because neither Part 32 nor any other portion of the Commission's rules previously required the company to maintain these invoices in the ordinary course; and, although TDS Telecom as a matter of corporate policy generally happened to

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[7] 47 C.F.R. § 54.202(e). *See also id.* at §§ 54.516(a)(2) (Schools and Libraries Program), 54.619(d) (Rural Health Care Program) 54.706(e) (Contributions). The rules for High Cost Program recipients and contributors further specify that the record retention requirement applies to the following: "data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade of equipment; and any other relevant documentation." *Id.* at §§ 54.202(e), 54.706(e).

preserve (and still does) all invoices and supporting documentation for its equipment purchases for seven years (which is consistent with standard tax practices), it simply did not, in the absence of a regulatory requirement or some special need, take steps to preserve these materials for longer periods.

TDS Telecom (and presumably other similarly-situated carriers) did not take steps to preserve old invoices pertaining to equipment used in connection with the High Cost Program because it was not required and because doing so for such a long period of time did not make sense. In the first place, as explained more fully below, until the Commission promulgated its five year document retention rule, recipients of High Cost Program support simply were not required to retain invoices to demonstrate Program compliance. Moreover, as also explained more fully below, no other Commission rule required them to retain such documents. Retaining invoices, receipts and other such piles of paper for 10, 15 or even 20 years in the absence of a specific requirement, as some auditors suggested, simply would have amounted to a burdensome, costly and environmentally unsound practice.

It is against this backdrop that USAC has filed its "Request for Universal Service Fund Policy Guidance," which asks the Commission to clarify what document retention rules, if any, applied to High Cost Fund Program recipients prior to the Commission's promulgation of the five year requirement. [8] TDS Telecom appreciates that USAC is seeking guidance from the Commission but believes that the answer to this question has long been obvious. Other than the requirement that Part 32 carriers maintain CPRs, which, as explained more fully below, does not

[8] *See* Letter from Richard A. Belden, Chief Operating Officer, USAC, to Julie Veach, Acting Chief, Wireline Competition Bureau, Federal Communications Commission, dated August 19, 2009, at 3-4.

require the inclusion of original invoices, High Cost Program recipients were not subject to *any* document retention rules and certainly not for the purpose of demonstrating Program compliance prior to the Commission's promulgation of the five year record retention requirement. This is precisely why the Commission promulgated the five year record retention rule in the first place.

Every USF-related precedent of which TDS Telecom is aware supports the notion that High Cost Fund Program recipients were not subject to document retention requirements for the purpose of demonstrating their compliance with the Program prior to the Commission's promulgation of the five year rule. For instance, when the Commission first contemplated and subsequently imposed its five year rule on recipients of Schools and Libraries Program support in 2004, the Commission expressly acknowledged that, prior to its adoption of this requirement, the Commission's rules "d[id] not specify how long such records should be maintained nor d[id] they require entities or service providers to maintain records to demonstrate compliance with all program rules." [9] One year later, when the Commission proposed to impose this same five year rule on recipients of all USF Program support, including High Cost Program support, the Commission articulated the same rationale, seeking comment on whether it should "adopt document retention rules for all of the USF mechanisms that are consistent with the amended schools and libraries rule adopted in the *Schools and Libraries Fifth Report and Order*." [10] It is abundantly clear that the Commission would not have made such statements had document retention requirements already existed for High Cost Program and other USF funding recipients (and contributors).

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[9] *In re Schools and Libraries Universal Service Support Mechanism,* 19 FCC Rcd 15808, 15823 (¶ 45) (2004).

[10] *Comprehensive Five Year Rule NPRM*, 20 FCC Rcd at 11342 (¶ 84).

Despite the clarity of the Commission's actions (or perhaps because of it), auditors that focused on requiring High Cost Fund Program recipients to produce records beyond the five year period were forced to interpret the Commission's five year rule in an illogical manner. One of TDS Telecom's auditors, for example, seized on the Commission's passing reference in its *Report and Order* to certain Part 32 requirements to support a claim that regulated carriers always have been required to retain documents indefinitely to support entries in their books, records and accounts. That reference, which appeared in the same paragraph in which the Commission imposed its five year rule on all recipients of High Cost Program support, specified that

> [t]o the extent other rules or any other law require or necessitate documents be kept for longer periods of time (*e.g.*, to support account balances in the Part 32 Uniform System of Accounts, continuing property records, pole attachment calculations, plant equipment age, cost, or useful life, depreciation rates), we do not alter, amend, or supplant such rule or law. [11]

When the Commission made this statement, it cited as an example Section 32.2000 of its rules, which requires only that a carrier make appropriate reference to the sources of all account entries, and only when the source of those account entries are so complex as to require "drawings, computations or other detailed records" must copies of those drawings, computations or other detailed records be preserved. [12]

TDS Telecom does not dispute that Part 32 imposes a unique set of accounting rules on regulated carriers, and that some of those rules even may require some carriers to retain certain forms of records and other documentation under certain specified circumstances. But nothing in

[11] *Report and Order*, 22 FCC Rcd at 16384 (¶ 24).

[12] *Id., citing* 47 C.F.R. § 32.2000.

Part 32 requires carriers to retain invoices for the purpose of demonstrating compliance with the Commission's High Cost Program rules, and nothing in Part 32 requires carriers to retain detailed records to support account entries except where the source of an account entry is so complex that "drawings, computations or other detailed records" are needed to explain it. Account entries for ordinary equipment purchases, such as the purchases analyzed as part of High Cost Program compliance audits, seldom if ever involve such complexity.

But perhaps the clearest and most logical indication that the Commission did not intend this reference to mean that Part 32 requires regulated carriers to maintain copies of all invoices indefinitely is that, if it had, there would not have been a need for the Commission to promulgate so clearly for the first time a five year document retention requirement for all Program recipients in its *Report and Order*. And had the Commission intended to reconcile different existing rules for different types of carriers in connection with this development, it at least would have specified as much in its implementing *Report and Order.* The Commission did no such thing, and it made only passing reference to Part 32, presumably to acknowledge that its new five year rule did not affect other document retention requirements that might exist for other purposes in other contexts that have no bearing on High Cost Fund Program compliance.

Conclusion

TDS Telecom appreciates that USAC has sought guidance from the Commission on this important issue. TDS Telecom urges the Commission to respond to USAC's request by restating its prior conclusion that recipients of High Cost Program support are required to retain records such as invoices for only a five year period from the date of disbursement to demonstrate their compliance with High Cost Program rules; and that because this requirement became effective only on March 1, 2008, it can be used to assess Program compliance only from that date forward.

Respectfully Submitted,

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