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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20544

In the Matter of	)	**Filer ID 818112**
Request for Review of the	)	
Decision of the	)	**Docket No.** PC: 06-122
Universal Service Administrative	)	
Company by	)	
Clear World Communications	)	
Corporation	)	
	)	
_____	)	

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TABLE OF CONTENTS

JURISDICTION 3

PROCEDURAL HISTORY 3

STATEMENT OF FACTS 6

QUESTIONS PRESENTED FOR REVIEW 8

STANDARD OF REVIEW 9

STATEMENT OF RELIEF SOUGHT 11

DISCUSSION 12

1. FCC DECLARATORY ORDER 07-231 DOES NOT APPLY TO CLEAR WORLD'S 2005 AND 2006 FILINGS 12

   A. USAC Does Not Have Authority to Interpret the Commission's Orders or Intent or To Apply its Orders Retroactively 12

   B. FCC 07-0231 Does Not Apply to Clear World Because it is a Seller of Long Distance Service Only 16

2. CLEAR WORLD ACCURATELY REPORTED ITS REVENUES FOR 2005 AND 2006, INCLUDING ITS MONTHLY RECURRING CHARGES WHICH ARE EXCLUSIVELY INTERNATIONAL 17

3. THE FINAL AUDIT REPORT VIOLATES THE REQUIREMENT OF THE TELECOMMUNICATIONS ACT OF 1996 LAW THAT CARRIER CONTRIBUTIONS MUST BE EQUITABLE AND NONDISCRIMINATORY 19

4. USAC HAS NO CONTINUING JURISDICTION OVER ANY EXCESS USF FUNDS PAID AND RELEASED TO CLEAR WORLD BASED ON ITS LIRE EXEMPTION 22

   A. USAC Has No Authority to Order Clear World to Reimburse or Remit Any USF Overages to USAC or to its Customers 22

TABLE OF CONTENTS (Continued)

B. Any New Interpretation of the Act Cannot Apply Retroactively to Clear World's 2005-2006 USF Overages 24

C. The Federal Communications Act Does Not Require Reimbursement of USF Overages Which Are Minuscule 26

5. USAC WAIVED ITS RIGHT TO CONDUCT A SECOND AUDIT 26

6. CONCLUSION 27

TABLE OF AUTHORITIES

California State Cases:

GTE Sprint Communications Board v. State Board of Equalization
(1991) 1 Cal.App.4th 827, 833-834 25

Pacific Bell Wireless, LLC v. Public Utilities Com.
(2006) 140 Cal.App.4th 718, 740 25

Federal Cases:

AT&T Corporation v. Public Utility Commission of Texas
373 F.3d 641 (5th Cir. 2004) 20

Bowen v. Georgetown University Hospital
(1988) 488 U.S. 204, 208. 16

Grayned v. City of Rockford
(1972) 408 U.S. 104, 108, 33 L. Ed. 2d 222, 92 S. Ct. 2294 25

Maynard v. Cartwright
(1988) 486 U.S. 356, 361,100 L. Ed. 2d 372, 108 S. Ct. 1853 25

Texas Office of Public Utility Counsel v. FCC
183 F.3d 393 (5th Cir. 1999) 21

Statutes:

47 C.F.R § 54.701 . . . . . 23, 24

47 C.F.R § 54.702 . . . . . 23, 24

47 C.F.R. § 54.702(a) 12

47 C.F.R. § 54.702(b) 12

47 C.F.R. § 54.702(c) 9, 12, 16, 23

47 C.F.R.§ 54.706(a) 9, 23

TABLE OF AUTHORITIES (Continued)

47 C.F.R § 54.712 18

47 C.F.R § 54.713 18

47 C.F.R.§ 54.719(c) 11

47 C.F.R.§ 54.720(a) 3, 6

47 C.F.R.§ 54.723(b) 9

47 U.S.C. § 222 3

47 U.S.C. § 254(d) 9, 19, 20, 21, 22, 23

USCS § 7605(b) 27

FCC Orders:

In the Matter of Universal Service Contribution Methodology,
FCC Order 07-231 (2008) (FCC Order 07-231),
23 FCC 141I; 2008 FCC LEXIS 832 . . . . . .5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17

Other Authorities:

Matthew Bender & Company (2009 Ed.), Federal Income, Gift and Estate
Taxation § 76.01. 26 26

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Clear World Communications Corporation, by its counsel, Stephen E. Blaine and Jill A. Thomas of Callahan & Blaine, and James Mancuso, General Counsel for Clear World Communications Corporation, hereby petitions the Federal Communications Commission and the Wireline Competition Bureau for review de novo of the August 18, 2009 Final Audit Report of the Universal Service Administrative Company. This Petition is made on the basis that the findings of the Universal Service Administrative Company are erroneous and not supported by the evidence, and the conclusions are not supported by the Statutes, Rules, Instructions and Cases related to Form 499A filings and violate Petitioner's due process rights. The USAC Final Audit Report should respectfully be reversed in its entirety.

Dated this 14th day of October, 2009.

Respectfully submitted,
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CLEAR WORLD COMMUNICATIONS CORPORATION

By: _____
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JURISDICTION

This is a request for de novo review to the Federal Communications Commission, or in the alternative, to the Wireline Competition Bureau, from the Final Audit Report dated August 18, 2009 and prepared by the Universal Services Administrative Company ("USAC"). The review period, set forth in 47 C.F.R.§ 54.720(a), provides for automatic review when filed within sixty days of issuance of a decision. This request, filed on October 14, 2009, is therefore timely.

PROCEDURAL HISTORY

USAC conducted an audit to determine the accuracy and completeness of the revenues reported by Clear World on Form 499-A for calendar years 2005 and 2006. In 2007, the accounting firm of KPMG was dispatched from Seattle, Washington to Santa Ana, California to audit Clear World's Form 499A for calendar years 2005 and 2006. Although KPMG had no experience with Form 499A audits and had an office in nearby Irvine, California, the Seattle team started the audit process by questioning Clear World on how it marketed its products, how it operated as a long distance carrier, and who its customers were.

These topics exceeded the scope of a financial audit for reported revenue figures as reflected on Form 499A. In light of the privacy protections for its customers' records pursuant to 47 U.S.C. § 222, Clear World suggested that KPMG sign a confidentiality agreement. On December 14, 2007, counsel for Clear World wrote to USAC, requesting the attached Non-Disclosure and

Confidentiality Agreement. (Exhibit B at 0194-0196.) KPMG stated that its management would decide whether to execute a confidentiality agreement. Instead, KPMG abruptly packed up its belongings from the Callahan & Blaine law firm, the situs of the audit, and ceased all communications. These events constitute the premise that USAC waived its right to conduct a second audit (the subject of this Petition) as it had started and concluded the audit process through KPMG.

Inexplicably, KPMG claimed it could not complete the audit due to derogatory information obtained on management. (See Exhibit 1 to Exhibit A at 0015.) This correspondence references that derogatory information was provided to KPMG. Such information was false and libelous data which tainted the audit process or suggests that someone attempted to manipulate the audit results.

On or about April, 2008, USAC, through its Internal Audit Division, undertook a second attempt at auditing Clear World's Form 499A for calendar years 2005 and 2006. Clear World objected to this second audit of the same time period. It appears that the USAC Audit team did not possess sufficient experience on telecommunications audits to reach an accurate or just conclusion.

On June 27, 2008, Chang-Hua Chen, notified Clear World that the 2006 audit was complete and "revealed no monetary findings." (Exhibit 2 to Exhibit A at 0017; emphasis added.)

On July 15, 2008, Clear World forwarded a letter to Colleen Grant satisfactorily addressing all of the remaining audit issues discussed with USAC in

person in California. It included the General Ledger information for Accounts 988 and 989/reconciliations for 2005 and 2006; support for the percentages in Block 5; and Refect Report (up-front) from Billing Concepts for calendar years 2005 and 2006. (Exhibit 3 to Exhibit A at 0019-0190.) Clear World noted that item four is not applicable to Clear World because it does not provide local exchange service and it does not bundle service as discussed in the 2007 Instructions at page 20. (Exhibit 3 at 0019.) In this correspondence, Clear World also outlined the fallacy of building any foundation or reliance on FCC 07-231, a Federal Communications Commission Declaratory Order, stating in pertinent part:

> [T]he gratuitous suggestion that I review FCC 07-231 demonstrates that you have not reviewed or understand the Clear World tariffs. First, Clear World does not offer wireless service. Second, Clear World does not sell plans on airtime that are the same for local or long distance calls. Third, Clear World does not offer plans that give customers fixed amounts of minutes for either local or long distance use. Fourth, Clear World does not estimate the revenues for its services.
>
> At Clear World, we do not use traffic studies to estimate interstate revenues. The call detail is based on duration, call origination and call termination. (Exhibit 3, at 0019.)

Clear World provided USAC with Transaction Details by Account (Exhibit 3 to Exhibit A) and all other pertinent documentation. (Exhibits 4-28 to Exhibit A, at 0021-0192.)

On January 27, 2009 USAC's Internal Audit Division wrote to Clear World regarding its conclusion of the audit fieldwork procedures, attaching an

overview of the audit findings and requesting a Carrier Response by February 12, 2009. (Exhibit C, at 0198-0207.)

On February 11, 2009, Clear World served its Response to USAC's draft Audit Report, which was received in USAC's office at 10:16 a.m. on February 12, 2009. (Exhibit D, at 0209-0213.) The Response attached voluminous documents supporting its position and the accuracy of the statements made in its 499A Reports. (Exhibits 1-28 to Exhibit A, at 0014-0192.)

On August 18, 2009, USAC issued its Final Audit Report. (Exhibit D, at 0215-0232.) USAC erroneously concluded that Clear World did not accurately report its revenues on Form 499-A for the calendar years 2005 and 2006, that it owes additional USF charges, and that any overage paid due to its LIRE exemption must be refunded to its customers or remitted to USAC.

Clear World timely filed this Request for Review within 60 days of mailing of the Final Audit Report. 47 C.F.R. §54.720(a).

STATEMENT OF FACTS

The Final Audit Report was a second attempt at auditing Clear World's Form 499A filings for 2005 and 2006, after having elected to terminate its first audit on April 20, 2007. The Final Audit Report USAC relied on FCC Order 07-231, In the Matter of Universal Service Contribution Methodology, FCC Order 07-231 (2008) (FCC Order 07-231), 23 FCC 1411; 2008 FCC LEXIS 832. (Exhibit 29, p.4, at 0219.) Its reliance on FCC Order 07-231 was misplaced. FCC

Order 07-231 relates to a wireless carrier. Clear World Communications is not a wireless carrier. Clear World is a reseller of long distance service only. Thus, the 2008 Order is inapplicable to Clear World. USAC also retroactively applied FCC Order 07-231 to Clear World's filings for 2005 and 2006 and without notice to Clear World. This retroactive application would require carriers, including Clear World, to speculate on what future opinions may impact its prior years' filings. Form 499A does not require a carrier to forecast the future.

In addition, Clear World tracks its calls by origination and termination (intrastate, international and interstate). It does not bundle service, nor does it offer local service. The wireless carrier referenced in the 2008 Order could not distinguish its minutes between local or long distance because it bundled its product and charged a flat monthly rate.

Clear World's monthly recurring charges ("MRC's") are billed only to customers who are on an international calling plan. Some customers did not have a monthly recurring charge. It has nothing to do with interstate or intrastate calls. Clear World's plans are clearly billed and outlined to customers. See Welcome Letter (Exhibit 4, at 0043.) and Product Offerings. (Exhibits 5-27, at 0045-0190.)

The reports filed by Clear World are accurate as set forth in the filings and exhibits herein and in accordance with the instructions to carriers. For 2005, Clear World reported on Line 414, $17,788,935 in revenues of which $1,748,598 was interstate traffic. For 2006, Clear World reported on Line 414, $20,088,110 in revenues of which $2,000,542 was interstate traffic.

USAC arbitrarily and capriciously segregated MRC's as being 61% international and 39% domestic. (Exhibit E, at 0219.) These flawed discriminatory allocations ignore the product offerings of the Company and the status of the law in 2005 and 2006.

USAC claims to have identified invoices that charged Universal Service Fund in excess of the quarterly rate. It ignores that many states impose a State Universal Service Fund, included in billings, which would explain the slight variation in calculations.

A carrier cannot determine in advance if it qualifies for a Limited Interstate Revenue Exemption (LIRE) which is based on annual revenues. Yet USAC concluded that Clear World must refund the excess USF funds collected to its customers or, if it is unable to do so, remit the money to USAC as a contribution to USAC. (Exhibit 29, p. 15, at 0230.) USAC had no authority to make such an Order as it is not statutorily clear what to do with an overage when there are one hundred thousand customers with amounts of less than one dollar billed in USF charges.

QUESTIONS PRESENTED FOR REVIEW

This Petition for Review presents the following issues:

1. Whether USAC waived its right to conduct a second audit after KPMG had voluntarily terminated the first audit;

2. Whether USAC erred in retroactively applying FCC Order 07-231

to Clear World's 2005 and 2006 revenues where such retroactive application violates Clear World's constitutional due process rights and FCC 07-231 is inapposite because Clear World is not a wireless carrier and does not bundle its services;

3. Whether USAC's segregation of Clear World's MRC's as 61% international and 39% domestic is inequitable and discriminatory and violates 47 U.S.C.§254(d) where the MRC recurring charges are billed only to customers on an international calling plan and the result is a USF fee of 60% to 77% of Clear World's interstate revenues for 2005, and 48% to 65% for 2006; and

4. Whether USAC erred in ordering Clear World to return the excess USF charges, collected prior to obtaining its LIRE exemption, to its customers or remit these overages to USAC where the amounts are minuscule and USAC has no express or implied authority to do so under 47 U.S.C. §254(d), 47 C.F.R. §54.702(c) or §54.706(a).

STANDARD OF REVIEW

Where a request for review involves novel questions of fact, law, or policy, the Federal Communications Commission shall conduct *de novo* review of USAC decisions. 47 C.F.R.§54.723(b) provides:

> (b) The Federal Communications Commission shall conduct de novo review of requests for review of decisions by the

> Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct de novo review of decisions issued by the Wireline Competition Bureau under delegated authority.

This matter involves a number of novel questions regarding the proper interpretation and application of the Federal Communications Act, the scope of authority of the Universal Services Administrative Company, the potential impact on the public policies of the Federal Communications Act, and constitutional due process rights of Clear World and other carriers. Petitioner is unaware of any reported cases addressing the specific issues raised by this Petition. Because these are novel questions of fact, law, or policy which have a significant impact on carriers subject to the Federal Communications Act, Petitioner respectfully requests that the Federal Communications Commission review this matter de novo under subpart (b) of 47 C.F.R §54.723.

STATEMENT OF RELIEF SOUGHT

Clear World requests that pursuant to 47 C.F.R.§54.719(c) the FCC reverse the August 18, 2009 Final Audit Report of USAC in its entirety as it is not supported by the Statutes, Rules, Instructions, Cases, and FCC decisions related to Form 499A filings or any statutes, rules or orders of the Federal Communications Act, and enter a new and different Order that Clear World does not owe any USF charges for 2005 and 2006 and is not required to remit any USF overages to USAC or to its customers, with findings that:

- USAC waived its right to conduct a second audit;
- Clear World is a reseller of long distance service only;
- Clear World's monthly recurring charges are billed only to customers who are on an international calling plan;
- Clear World's 2005 and 2006 Reports (Form 499 -A) are proper and accurate;
- Clear World does not owe any USF charges for 2005 and 2006 calendar years; and
- For any USF charges collected by Clear World prior to obtaining its LIRE exemption, Clear World is not required to refund any collected overages to its customers or to remit such funds to USAC.

DISCUSSION

1. FCC DECLARATORY ORDER 07-231 DOES NOT APPLY TO CLEAR WORLD'S 2005 AND 2006 FILINGS

A. USAC Does Not Have Authority to Interpret the Commission's Orders or Intent or To Apply its Orders Retroactively

Pursuant to 47 CFR 54.702(a) and (b), the Administrator is responsible for the interstate access universal service support mechanism and the interstate common line support mechanism describe in subparts J and K and is responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds. However, USAC does not have the legal authority to make policy, to interpret unclear provisions of the statutes or rules, or interpret the intent of Congress. Rather, USAC must seek the guidance from the Commission.

> The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission. 47 CFR 54.702 (c)

Here, USAC violated section 54.702(c) by relying on FCC 07-231, a Declaratory Order of the Federal Communications Commission released on

January 24, 2008 (the "Declaratory Order")[1], interpreting it and applying it retroactively to the audit of Clear World's 2005 and 2006 Form 499A filings. USAC determined that Clear World had failed to properly identify its revenues in Form 499-A which, for those years, provides:

> Columns (B), (c), (d) and (e) are provided to identify the part of gross revenues that arise from interstate and international service for each entry of Lines 303 through 314 and Lines 403 through 417. For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the per-minute revenues. Similarly if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account.

In coming to its conclusion USAC relied upon FCC Order 07-231 while acknowledging that the Order "is not dispositive for the time period audited."

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[1] In the Matter of Universal Service Contribution Methodology, FCC Order 07-231 (2008) (*FCC Order 07-231*), 23 FCC 1411; 2008 FCC LEXIS 832.

(August 18, 2009 Report of USAC, p.4, fn.1, at 0219, fn.1; emphasis added.) The Order upon which USAC relied was adopted by the FCC on December 26, 2007 and released on January 24, 2008. In a Supplemental Order, the FCC issued an Erratum to this Order stating:

> In paragraph 19, replace "IT IS FURTHER ORDERED THAT this Order SHALL BECOME EFFECTIVE thirty (30) days after its publication in the Federal Register" with "IT IS FURTHER ORDERED THAT, pursuant to sections 1.2 and 1.103(a) of the Commission's rules, 47 C.F.R. §§ 1.2, 1.103(a), this Order SHALL BECOME EFFECTIVE upon release."

Thus, the FCC made perfectly clear the effective date of the Order was the "release date," January 24, 2008. It cannot be disputed that this Order does not retroactively apply to the 2005 and 2006 filings of Clear World. More significantly, USAC does not have any legal authority to apply this 2008 Order retroactively in its attempt to "interpret" unclear provisions of the statutes, rules or intent of Congress or the Commission. Yet that is exactly what USAC did here in evaluating whether Clear World had properly stated its revenues in its 2005-2006 filings. USAC claimed that this Order helped to articulate the Commission's intent in the March 2006 Form 499-A Instructions and the 2006 Contribution Methodology Order, both of which were in effect during the time period under

audit. USAC noted that FCC Order 07-231, ¶ 13 describes a weighted average methodology for allocating fixed revenue amounts as follows:

> "In order to more accurately reflect the jurisdictional nature of toll service revenue, providers, including wireless and interconnected VoIP providers, must ensure that toll service revenues are accurately accounted for by appropriately weighting such traffic in the reporting methodology they choose." Paragraph 15 continues this discussion by explaining the requirements for a entity to comply with the 2006 Contribution Methodology Order: "For example, if on average a service provider derives five times as much revenue from an international minute as it does from an intrastate minute, then it would weight each international minute equivalent to five intrastate minutes in calculating a single traffic-based percentage to apply to all revenues. To the extent that a provider chooses to use a weighted traffic study, we again reiterate that such a study must meet the requirements for ensuring accuracy adopted in the 2006 Contribution Methodology Order. See 2006 Contribution Methodology Order, 21 FCC Rcd 7518, 7535, n. 115." (USAC Final Audit Report, August 18, 2009, p.4, fn.1, at 0219.)

USAC's interpretation and retroactive application of the 2008 Order exceeds the scope of its power and is therefore an impermissible interpretation of the law. First and foremost, USAC has no authority. 47 CFR 54.702 (c). If allowed to stand, carriers, including Clear World, would face constant uncertainty by having to guess at inconsistent interpretations made by USAC personnel. This is also a violation of Clear World's fundamental right to notice and due process. Clear World is entitled to rely on the laws, rules and regulations as they existed when it filed its 2005 and 2006 Form 499's. Retroactive rulemaking is generally not favored. Bowen v. Georgetown University Hospital (1988) 488 U.S. 204, 208.

Clear World is entitled to independent review of USAC's decision particularly where the interpretation and application of the FCC's Order is within the scope and authority of the FCC, not USAC.

B. FCC 07-0231 Does Not Apply to Clear World Because it is a Seller of Long Distance Service Only

Assuming the FCC would consider the 2008 Order in evaluating whether Clear World properly stated its 2005 and 2006 revenues, an examination of the 2008 case, In the Matter of Universal Service Contribution Methodology, FCC Order 07-231 (2008) (FCC Order 07-231), 23 FCC 1411; 2008 FCC LEXIS 832, reveals that Declaratory Order FCC 07-231 applied to a wireless carrier that bundled services and could not distinguish between local and long distance minutes. That carrier offered a flat rate for wireless service and could not

determine what was intrastate, interstate or international. As a result, the Order was specifically aimed at that unique situation to "ensure that revenues are accurately accounted for by appropriate weighting such traffic . . . " Id.

That analysis is inapplicable to Clear World because it is a reseller of long distance service only and does not bundle its services on local minutes. Clear World tracks call origination and call termination which govern intrastate, interstate and international traffic. (Exhibit 3, at 0019-0190.)

Subsequent case history reveals that FCC 07-231 has not been cited or applied in any subsequent published cases or decisions of the FCC. Thus, there are no other decisions to lend support for USAC's independent interpretation and retroactive application of FCC 07-231 to the facts of this case, which, in any event, is improper because it is inapposite.

2. CLEAR WORLD ACCURATELY REPORTED ITS REVENUES FOR 2005 AND 2006, INCLUDING ITS MONTHLY RECURRING CHARGES WHICH ARE EXCLUSIVELY INTERNATIONAL

USAC erroneously concluded that a portion of Clear World's monthly recurring charges ("MRC's") are based on intrastate and interstate charges. (Exhibit E, p. 4-5, at 0219-0222.) In coming to this erroneous conclusion, USAC ignored the undisputed evidence that all of Clear World's monthly recurring charges ("MRC") are tied to its international products only. (Exhibit A.) The majority of Clear World's customers are Hispanic and Asian as reflected by its

workforce. These segments of the population make a vastly higher percentage of international calls.

Clear World was authorized, and in fact, required to charge its customers the federal universal service charges charge during 2005 and 2006. 47 C.F.R §54.712. Indeed, failure to do so would have subjected it to substantial interest and penalties. 47 C.F.R §54.713. Clear World Communications later received a (LIRE) exemption for each of those years. It was not until July of 2006 for calendar year 2005 that Clear World learned of the (LIRE) exemption.

Clear World simply reported its revenues for those two years. The revenues reported in 2005 on 2006 Form 499-A, Line 414 were: $1,748,598 interstate and $13,578,212 international. These figures are 100% accurate based on the product offerings. The subsequent LIRE exemption does not alter these facts.

USAC also erroneously concluded that state tariffs are controlling. (Exhibit E, p.5, at 0220.) This is because the products offered on the Clear World website are tariffed under Federal Law which govern interstate and international classifications. As a result, state tariffs are irrelevant and inapplicable. Clear World's 499-A Statements contain true and accurate statements of its revenues.

3. THE FINAL AUDIT REPORT VIOLATES THE REQUIREMENT OF THE TELECOMMUNICATIONS ACT OF 1996 LAW THAT CARRIER CONTRIBUTIONS MUST BE EQUITABLE AND NONDISCRIMINATORY

Pursuant to 47 U.S.C. § 254(d), carrier contributions must be equitable and nondiscriminatory to preserve and advance universal service. 47 U.S.C § 254(d) states:

> Telecommunications carrier contributions.
>
> Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

USAC erred in concluding that Clear World owes USF charges totaling $1,054,861 (or 60%) on interstate revenues of $1,748,598. (Exhibit E, p. 5, at

0220.) If one took into account bad debt of 14.6% for Clear World in 2005, the net interstate revenue received was only $1,493,303. Yet USAC wants 71% of every dollar. If one added the 7% ($122,402) in billing fees that Clear World paid to its billing company BSG in 2005, the net receipts were only $1,370,901. Therefore, USAC demands 77% in USF on every interstate revenue dollar ($1,054,861 proposed USF vs. $1,370,901 in net revenue).

For 2006, USAC determined that Clear World owes USF charges totaling $969,677 (or 48%) on interstate revenues of $2,000,542. (Exhibit E, p.5, at 0220.) If one took into account bad debt of 18.3% for Clear World in 2006, the net interstate revenue received was only $1,628,441, and yet USAC wants 60% of every dollar. If one added the 7% ($140,038) in billing fees that Clear World paid to its billing company BSG in 2006, the net receipts were only $1,488,403. Therefore, the audit suggests taking 65% in USF on every net interstate revenue dollar ($969,677 proposed USF vs. $1,488,403 in net revenue).

These conclusions are inequitable and discriminatory, in violation of 47 U.S.C. §254(d). In AT&T Corporation v. Public Utility Commission of Texas, 373 F.3d 641 (5th Cir. 2004), the United State Court of Appeals for the Fifth Circuit upheld a grant summary judgment in favor of AT&T where the Texas Public Utilities Commission attempted to assess a state imposed fee on interstate, intrastate and international revenues. The Court held that States could assess universal service on intrastate revenues only based on the equitable and nondiscriminatory language of 47 U.S.C. § 254(d).