

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review by U.S. TelePacific Corp.)	WC Docket No. 06-122
d/b/a TelePacific Communications)	
Universal Service Administrator Decision)	

REPLY COMMENTS OF AT&T INC.

U.S. TelePacific Corp. (TelePacific or Petitioner) has sought Commission review of an adverse Universal Service Administrative Company (USAC) decision directing it to report revenue associated with the transmission component of its broadband Internet access service in its universal service contribution base.¹ TelePacific appealed USAC’s decision, arguing that, although it “is not a facilities-based provider”² and obtains last-mile transmission facilities from incumbent local exchange carriers (ILECs), it provides its customers with “broadband Internet access that is inextricably intertwined with the transmission” and thus it no contributions based on the transmission facilities are owed.³ Several commenters filed in support of TelePacific, arguing that USAC misapplied Commission precedent.⁴ AT&T Inc. hereby submits these reply

¹ Request for Review by U.S. TelePacific Corp. d/b/a TelePacific Communications of Universal Service Administrator Decision, WC Docket No. 06-122 (filed Jan. 8, 2010) (Petition).

² Petition at 7.

³ *Id.* at 6.

⁴ “Coalition for Fairness and Restraint in USAC Fund Administration” (Coalition); COMPTTEL and CALTEL Comments (CompTel); and New Edge Network, Inc. (New Edge). The commenters also make several claims regarding USAC’s authority, which we do not address in our reply comments

comments to make clear in the record what a broadband Internet access provider's universal service contribution obligations are.

In reviewing TelePacific's appeal, the Wireline Competition Bureau (Bureau) must adhere to the Commission's rules and, here, those rules are clear: if a *facilities-based* provider combines broadband transmission and Internet access service, it is providing an interstate information service and it owes no universal service contributions on the transmission component; if an ISP – affiliated or unaffiliated – obtains broadband transmission from another provider on a *common carriage* basis and combines it with Internet access service, the transmission component is a telecommunications service and the underlying provider is permitted to recover its contribution costs associated with that telecommunications service from its end-user customer (i.e., the ISP); if an ISP obtains broadband transmission on a *private carriage* basis and combines it with Internet access service, its underlying provider is not required to report its revenue associated with that transmission component in its assessable base and thus it would not assess the ISP a universal service fee.⁵ Any different interpretation advanced by the Petitioner and commenters must be rejected as an untimely request for reconsideration of the *Wireline Broadband Internet Access Order*.

As we stated in reply comments filed last year in response to a number of USAC requests for guidance,⁶ the *Wireline Broadband Internet Access Order* clearly states that, to the extent an ISP obtains transmission for its Internet access service offering on a common carriage basis (including from an affiliated provider), that transmission component remains a

⁵ *Wireline Broadband Internet Access Order*, 20 FCC Rcd 14853, at ¶¶ 103, 113 (2005); *Interim Contribution Methodology Order*, 21 FCC Rcd 7518, n.206 (2006).

⁶ Reply Comments of AT&T Inc., *USAC Request for Guidance*, WC Docket No. 05-337 (and related proceedings), at 13-15 (filed Nov. 12, 2009).

telecommunications service, the revenues from which are subject to federal universal service contribution.⁷ The order is equally clear that, after the expiration of a 270-day contributions freeze period,⁸ to the extent an ISP obtains transmission on a private carriage basis (including from an affiliated provider) or when the wireline broadband Internet access service provider self-provisions such transmission, no federal universal service contributions are owed on that transmission component.⁹ Specifically, the Commission stated in paragraph 103 of this order (which we provide in its entirety):

We address two circumstances under which the statutory classification of the transmission component arises: the provision of transmission as a wholesale input to ISPs (including affiliates) that provide wireline broadband Internet access service to end users, and the use of transmission as part and parcel of a facilities-based provider's offering of wireline broadband Internet access service using its own transmission facilities to end users. **First, we address the wholesale input [in this paragraph].** Nothing in the Communications Act compels a facilities-based provider to offer the transmission component of wireline broadband Internet access service as a telecommunications service to anyone. Furthermore, consistent with the *NARUC* precedent, **the transmission component of wireline broadband Internet access service is a telecommunications service only if one of two conditions is met: the entity that provides the transmission voluntarily undertakes to provide it as a telecommunications service;** or the Commission mandates, in the exercise of our ancillary jurisdiction under Title I, that it be offered as a telecommunications service. **As to the first condition, we explain above that carriers may choose to offer this type of transmission as a common carrier service if they wish. In that circumstance, it is of course a telecommunications service.** Otherwise, however, is it not, as we would not expect an "indifferent holding out" but a collection of individualized arrangements. As to the second condition, based on the record, we decline to continue our reflexive application of the *Computer Inquiry* requirement, which compelled the offering of a telecommunications service to ISPs. Thus, we affirm that neither the statute nor relevant

⁷ See *Wireline Broadband Internet Access Order* at ¶¶ 103, 113. In this scenario, it does not matter whether a *LEC*, and not its affiliated ISP, directly obtained the transmission component from the wholesale provider on a common carriage basis. The transmission that the ISP (affiliated or unaffiliated) is using to provide its end-user customers with Internet access was nonetheless obtained on a common carriage basis from a wholesale provider, and inserting another entity into the chain does not alter that fact.

⁸ This 270-day period ended on August 14, 2006.

⁹ *Wireline Broadband Internet Access Order* at ¶¶ 103, 113.

precedent mandates that broadband transmission be a telecommunications service when provided to an ISP, but the provider may choose to offer it as such.¹⁰

New Edge and the Petitioner ignore this paragraph and, instead, cite the paragraph that follows to support their view that, regardless of how the broadband transmission component was obtained, wireline broadband Internet access is an information service for which no universal service contributions are owed.¹¹ Paragraph 104 of this order discusses “the use of the transmission component as part of a *facilities-based provider’s* offering of wireline broadband Internet access service to end users *using its own transmission facilities.*”¹² By its own admission, TelePacific concedes that this paragraph does not apply to it.¹³ Several commenters contend that, because TelePacific does not, in turn, resell broadband transmission on a “standalone” basis (i.e., it does not offer resold broadband transmission on a common carriage basis), no universal service contributions are owed based on the revenues associated with that transmission component.¹⁴ That is not, however, the correct inquiry since TelePacific is not a facilities-based provider and it obtains broadband transmission facilities from other providers.

To determine whether TelePacific correctly reported its revenues associated with the transmission underlying its Internet access service, the Bureau or USAC must determine how TelePacific obtained the transmission input from its wholesale providers.¹⁵ That is, did

¹⁰ *Id.* at ¶ 103 (emphasis added) (internal citations omitted).

¹¹ New Edge Comments at 2 & n.5; Petition at 11 & n.30.

¹² *Wireline Broadband Internet Access Order* at ¶ 104 (emphasis added).

¹³ Petition at 7.

¹⁴ *See, e.g.*, Coalition Comments at 8; CompTel Comments at 7.

¹⁵ AT&T agrees with the commenters (and the Petitioner) that, under the *Wireline Broadband Internet Access Order*, it matters not what type of *broadband* transmission facility or technology is used to provide Internet access service (e.g., DSL, ATM, T-1, frame relay). *See Wireline Broadband Internet Access Order* at n.15.

TelePacific obtain this broadband transmission on a private carriage basis?¹⁶ If so, then TelePacific was correct in reporting all of its revenues associated with its broadband Internet access service on Line 418 (which is used to report non-telecommunications revenues) of the FCC Form 499-A. If, however, TelePacific (or any of its affiliates) obtained the broadband transmission facilities on a common carriage basis from ILECs *and* provided reseller certifications to those ILECs instructing them not to assess it federal universal service fees on those transmission facilities, then plainly TelePacific was obligated to report the revenues associated with the transmission component of any broadband Internet access service provided using those facilities in its assessable base.¹⁷

As we stated last November, while AT&T would be supportive of these commenters' efforts to persuade the Commission to change its rules so that, regardless of how it is offered, all broadband transmission that is incorporated into an Internet access service offering would be treated in the same manner from a universal service contribution perspective, AT&T disagrees with the self-help approach that these commenters appear to advocate, which is at odds with the Commission's rules. AT&T also would oppose any Bureau decision that essentially gives a free

¹⁶ To validate TelePacific's claim in this regard, the Bureau or USAC should ask TelePacific's ILECs (and any other wholesale provider that it uses) whether they provide the transmission facilities at issue on a private or common carriage basis. As an aside, contrary to the inference made by or understanding of the commenters, a service need not be tariffed in order to be considered a "common carrier service." Carriers may have a multitude of services that are not tariffed but that remain, nonetheless, common carrier services.

¹⁷ Beginning with its April 2007 FCC Form 499-A Instructions, resellers are required to include the following language in their reseller certifications: "I certify under penalty of perjury that the company is purchasing service for resale in the form of U.S. telecommunications or interconnected [VoIP]. I also certify under penalty of perjury that [] the company contributes directly to the federal universal service mechanisms" *See, e.g.*, 2009 FCC Form 499-A Instructions at 19.

pass to contributors that reported their revenue inconsistently with the Commission's clear requirements by "clarifying" these Commission rules on a prospective basis.

Respectfully Submitted,

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February 3, 2010

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