

2000 FCC Form 499A Telecommunications Reporting Worksheet

401 Filer 498 ID [from Line 101]		820411				
402 Legal name of reporting entity [from Line 102]		Alliance Group Services, Inc.				
Report Billed Revenue for January 1 through December 31, 1999 Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate & international.		Total Revenue	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	
		(a)	Interstate (b)	International (c)	Interstate Revenue (d)	International Revenue (e)
Revenue From All Other Sources (end-user telcom. & non-telcom.)						
403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions	0				
<b>Fixed local service</b>						
404	Monthly service, local calling, connection charges, vertical features, and other local exchange service charges except for federally tariffed subscriber line charges and PICC charges	0				
405	Tariffed subscriber line charges and PICC charges levied by a local exchange carrier on a no-PIC customer	0				
406	Local private line and special access service	0				
407	Payphone coin revenues	0				
408	Other local telecommunications service revenues	0				
<b>Mobile service (including wireless telephony, paging &amp; messaging, and other mobile services)</b>						
409	Monthly and activation charges	0				
410	Message charges including roaming but excluding toll charges	0				
<b>Toll service</b>						
411	Pre-paid calling card (including card sales to customers and non-carrier distributors) reported at face value of cards	0				
412	International calls that both originate and terminate in foreign points	0	0%	100%		
413	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.) other than revenue reported on Line 412	0				
414	Ordinary Long Distance (MTS, customer toll free 800/888 services, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)	989,268			352,081	75,382
415	Long distance private line services	0				
416	Satellite services	0				
417	All other long distance services	0				
418	Enhanced services, inside wiring maintenance, billing and collection, customer premises equipment, published directory, dark fiber, Internet and non-telecommunications service revenues	0				
419	Gross billed revenue from all sources (incl. reseller & non-telcom.) [Lines 303 through 314 plus Lines 403 through 418]	4,544,983			1,283,678	1,401,664
420	Universal service contribution bases [Lines 403 through 411 & Lines 413 through 417]	989,268			352,081	75,382

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

2000 FCC Form 499A Telecommunications Reporting Worksheet

501 Filer 499 ID [from Line 101]	820411
502 Legal name of reporting entity [from Line 102]	Alliance Group Services, Inc.

Most filers must contribute to LNP administration and must provide the percentages requested in Lines 503 through 510. Filing entities that use Line 603 to certify that they are exempt from this requirement need not provide this information.

Percentage of revenue reported in Block 3 and Block 4 billed in each region of the country. Round or estimate to nearest whole percentage. Enter 0 if no service was provided in the region.

		Block 3 Carrier's Carrier (a)	Block 4 End-User Telecom. (b)
503 Southeast:	Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee and U.S. Virgin Islands	%	24 %
504 Western:	Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	%	14 %
505 West Coast:	California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands, and Wake Island.	%	22 %
506 Mid-Atlantic:	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia	%	11 %
507 Mid-West:	Illinois, Indiana, Michigan, Ohio, Wisconsin	%	14 %
508 Northeast:	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	%	5 %
509 Southwest:	Arkansas, Kansas, Missouri, Oklahoma, & Texas	%	10 %
510 Total	[Percentages must add to 0 or 100]	%	100 %

511 Revenues from resellers that do not contribute to Universal Service support mechanisms are included in Block 4, Line 420 but may be excluded from a filer's TRS, NANPA and LNP contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues below.

	(a)	(b)
	Total Revenue	Interstate and International
Revenues from resellers that do not contribute to Universal Service	\$	\$

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

2000 FCC Form 499A Telecommunications Reporting Worksheet



601 Filer 499 ID (from Line 101) 820411  
 602 Legal name of reporting entity (from Line 102) Alliance Group Services, Inc.

Section IV of the Instructions provides information on which types of reporting entities are required to file for which purposes. Any entity claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. (The Universal Service administrator will determine which entities meet the de minimis threshold based on information provided in Block 4, even if you fail to so certify, below.)

603 I certify that the reporting entity is exempt from contributing to:

Universal Service

TRS

NANPA

LNP Administration

Provide explanation below:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

604 I certify that the revenue data contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.

I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year.

605 Signature Mark J. Thomas  
 606 Printed name of officer Mark J. Thomas  
 607 Position with reporting entity President  
 608 Date 4/11/01  
 609 This filing is:  Original filing  Revised filing

Do not mail checks with this form. Send this form to: Form 499 c/o NECA, 80 South Jefferson Road, Whippany New Jersey, 07981  
 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Information: (973) 580-4400 or via e-mail: Form499@neca.org

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

# **ATTACHMENT E**



**VarTec Telecom, Inc.**

August 28, 2000

**VIA OVERNIGHT DELIVERY**

**Mr. John Casey  
Alliance Group Services, Inc.  
1221 Post Road East  
Westport, Connecticut 06880**

**Re: Invoices and Reports for U.S. Republic Communications, Inc.**

Dear Mr. Casey:

Pursuant to your previous conversation with the Company, VarTec Telecom, Inc. ("VarTec") has enclosed herewith an invoice for a USAC payment as well as a report pertaining to U.S. Republic Communications, Inc. ("USRC"). VarTec has included the due date and other applicable information for each of the enclosed documents herein.

VarTec is invoicing Alliance Group Services, Inc. ("Alliance") for the December 1999 USAC assessment that the Company paid on behalf of USRC. Please note that the enclosed copy of the payment remitted by VarTec also includes the November 1999 assessment. VarTec requests that this invoice be paid in a timely manner. Contact information has been provided on said invoice if you have any questions regarding such or if you need additional information. Additionally, please find the enclosed 1999 Gross Intra-State Operating Revenue report to be submitted on behalf of USRC to the Pennsylvania Public Utility Commission ("PUC"). Please note that this report was due to the PUC on July 10, 1999; however, VarTec did not complete and submit the report as PUC staff instructed the Company to resubmit until further instruction was given. As such, this report is now being sent to Alliance for completion pursuant to instructions provided by PUC staff on August 24, 2000. VarTec has enclosed the original documentation herewith.

Once again, your attention to this matter is greatly appreciated. Please contact the undersigned directly at (214) 424-1512 with any questions regarding this correspondence.

Respectfully,

*Margaret Hume*  
Margaret Hume  
Regulatory Project Manager

**Enclosures**

cc: **Becky Gibson  
Director  
Regulatory Affairs**

**VerTec Telecom Inc.**

1500 Victory Drive  
Dallas, Texas 75225  
Phone (214) 424-1000  
Fax (214) 424-1344

**INVOICE**

INVOICE NO: 082000-01  
DATE: August 23, 2000

To:

Allstate Credit Services, Inc.  
1221 Post Road East  
Westport, Connecticut 06880

DATE	DESCRIPTION	AMOUNT
08/23/00	<p>Invoice for the December 1999 monthly contribution made to the Federal Universal Service Fund. This amount includes applicable late fees.</p> <p>VerTec Telecom remains obligated on behalf of US Bankable Communications, Inc. in the amount of \$182,916.00 on check number 782137 dated January 24, 2000. This check is unpaid and due to the December 1999 and December 2000 USF contributions. Allstate Credit Services is responsible for any late assessment fees and/or penalties if any of the checks attached.</p>	\$ 78,298.33
TOTAL DUE THIS INVOICE		78,298.33
TOTAL DUE		78,298.33

Please make check payable and send payment to:

VerTec Telecom, Inc.  
P.O. Box 19941  
Dallas, TX 75227-9941

If you have any questions concerning this invoice, call Mark Rhodes @ (214) 424-1344



# **ATTACHMENT F**



Universal Service Administrative Company

D. Scott Barash  
Vice President and General Counsel  
[sbarash@universalservice.org](mailto:sbarash@universalservice.org)

Administrator's Decision on Contributor Appeal

October 1, 2001

BY FEDERAL EXPRESS

Lawrence M. Brenton  
Early, Lennon, Crocker & Bartosiewicz, P.L.C.  
900 Commerce Building  
Kalamazoo, MI 49007-4752

Re: Alliance Group Services, Inc. (ID # 820411)  
Contributor Appeal

Dear Mr. Brenton:

After thorough review, the Universal Service Administrative Company (USAC) has completed its evaluation of the letter of appeal on behalf of Alliance Group Services, Inc. (Alliance) dated April 4, 2001 (Appeal). Your Appeal requests that USAC accept Alliance's late-filed FCC Form 499A reporting revenue for the period January 1 – December 31, 1999.

Decision on Appeal: Denied.

USAC hereby denies Alliance's Appeal.

Explanation of Decision:

Federal Communications Commission (FCC) regulations in force during the relevant time period required carriers to file a Universal Service Worksheet (FCC Form 499 or, previously, FCC Form 457) twice annually, in April and September, and required USAC to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54. USAC is required to estimate revenues for carriers that fail to file the required worksheets and to bill those carriers based on the estimated revenue. FCC regulations do not require USAC to accept any late-filed revisions to the Universal Service Worksheets. However, in order to improve the accuracy of the revenue reported, the USAC Board of Directors (USAC

Lawrence M. Brenton  
October 1, 2001  
Page 2

Board) has authorized staff to allow carriers to file new or revised worksheets after the original due date. The instructions to the worksheets have included various deadlines by which revisions could be made, the longest of which is eight months. In order to afford carriers an adequate opportunity to revise their reported revenues, the USAC Board has authorized staff to allow carriers a longer 12 month period for the filing of new or revised Universal Service Worksheets.

The Form 499-A at issue was due on April 1, 2000. Alliance submitted its FCC Form 499-A on April 13, 2001. In addition to submitting the revisions after the deadline, the revisions filed did not provide an "explanation of the cause for the change along with documentation showing how the revised figures derive from corporate financial records" as required by Section II.E. of the FCC Form 499-A instructions for which the revisions are submitted. Because Alliance's attempted submission was outside of the due date of the worksheet in question, USAC rejected the submission of this form consistent with its previously adopted policy.

USAC was able to estimate Alliance's 2000 universal service obligations based on US Republic's FCC Form 499-A submitted in September 2000. Therefore, USAC has determined it is not necessary for it to accept either the late-filed FCC Form 499-A submitted by Alliance dated April 11, 2001 nor the Form 499-A submitted with its Appeal in order to properly estimate 2000 billing.

Your Appeal states that "Alliance Group did not have any obligation to file a Form 499-A in 2000 in respect of U.S. Republic billings for 1999." As explained previously to representatives of Alliance, this is incorrect. Because Alliance acquired the assets of U.S. Republic in December of 1999, Alliance is responsible for reporting any and all 1999 revenue, including U.S. Republic's revenue. Universal service support mechanism obligations are incurred at the beginning of each quarter, therefore, U.S. Republic was responsible for payment of universal service obligations through the end of the last quarter of 1999. Alliance was responsible for filing an FCC Form 499-A reporting all of U.S. Republic's 1999 revenue for purposes of providing USAC with the information to properly estimate 2000 billing.

Thus, for the reasons set forth above, Alliance's appeal must be denied.

If you disagree with the USAC response to your Letter of Appeal, you may file an appeal with the Federal Communications Commission (FCC) within 30 days of the date of this letter. The FCC address where you may direct your appeal is:

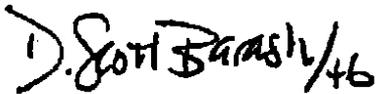
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Lawrence M. Brenton  
October 1, 2001  
Page 3

Please be sure to indicate the following information on all communications with the FCC:  
"Docket Nos. 96-45 and 97-21."

Sincerely yours,

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

Handwritten signature of D. Scott Barash in black ink, with a stylized 'D' and 'S' and a date-like suffix '12/46'.

By: D. Scott Barash  
Vice President and General Counsel

DSB:tb

cc: Anita Cheng, FCC Common Carrier Bureau  
James Shook, FCC Enforcement Bureau

# **ATTACHMENT G**



Universal Service Administrative Company

Administrator's Decision on Remand

June 3, 2005

BY REGISTERED U.S. MAIL

Brad E. Mutschelknaus  
Darius B. Withers  
Counsel to Alliance Broadband Corporation  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036

Re: Alliance Broadband Corporation (Filer ID # 820411)

Dear Messrs. Mutschelknaus and Withers:

On January 10, 2005 Alliance Broadband Corporation (Alliance) filed certain documentation with the Universal Service Administrative Company (USAC), in connection with the submission of a 2000 annual Telecommunications Reporting Worksheet (Worksheet or Form 499-A), reporting revenue for 1999 and originally due to USAC on April 3, 2000. Pursuant to an order issued on December 9, 2004 by the Wireline Competition Bureau (WCB) of the Federal Communications Commission (FCC),<sup>1</sup> USAC has reviewed Alliance's filing and supporting documentation. For reasons explained in detail below, USAC will not accept Alliance's 2000 Form 499-A due to Alliance's failure to establish good cause for its submission.

The FCC's *Form 499-A Order*, among other things, adopted a one-year deadline for revisions to Worksheets.<sup>2</sup> The *Form 499-A Order* also directed USAC to accept revised Worksheets from prior years, provided USAC received those revisions between the release date of the *Form 499-A Order*, December 9, 2004, and its effective date, January 10, 2005 (the Open Period), or prior to the release date of the *Form 499-A Order* where USAC had not yet acted on the filing. The *Form 499-A Order* also required companies to demonstrate "good cause" for submitting the revision beyond the one-year revision

<sup>1</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, DA 04-3669 (WCB rel. December 9, 2004) (*Form 499-A Order*).

<sup>2</sup> FCC Forms 499-A and 457.

Alliance Broadband Corporation, Inc.

June 3, 2005

Page 2

window and permitted companies with pending revisions to supplement the record during the Open Period.

To establish good cause, for each Worksheet revision submitted, a company must provide:

- A satisfactory explanation of the cause for any changes; and
- Supporting documentation reasonably sufficient to establish accuracy by showing how the revised information derives from corporate financial records.<sup>3</sup>

With respect to cases pending at the FCC that presented the Worksheet filing deadline issue, the FCC remanded those cases to USAC for limited re-consideration. As the FCC explained:

To the extent that a request for review encompasses issues in addition to revised 499-A issues, we remand to USAC only the portion of the request that deals with revised 499-A filings, and retain the remainder of the request for disposition by the Bureau or Commission.<sup>4</sup>

#### Procedural Background

Alliance filed the 2000 Form 499-A at issue on April 13, 2001, more than one year after the initial due date of April 3, 2000. On June 7, 2001, USAC rejected the form as untimely filed. On July 2, 2001, Alliance sought review of this rejection pursuant to 47 C.F.R. § 54.719(b) (USAC Appeal). On October 1, 2001, USAC affirmed the form rejection (USAC Appeal Decision) due to Alliance's failure to provide "an explanation of the cause for the change along with documentation showing how the revised figures derive from corporate financial records."<sup>5</sup> USAC also concluded that Alliance's filing improperly sought to exclude revenue associated with the customer base of a company that Alliance had purchased prior to the filing date for the form.<sup>6</sup>

On October 29, 2001, Alliance filed with the FCC a Petition for Review of USAC's Appeal Decision pursuant to 47 C.F.R. § 54.719(e) (FCC Appeal) where it remains pending. The *Form 499-A Order* partially remanded Alliance's FCC Appeal to USAC.

<sup>3</sup> See *Form 499-A Order* at § 13 ("USAC shall only revise contribution obligations to the extent that the carrier has provided accurate and legitimate reasons for filing late and for revising the obligation.").

<sup>4</sup> See *id.*

<sup>5</sup> See *USAC Appeal Decision* at 2 (citing 2000 Form 499-A Instructions at 8). USAC treated Alliance's filing as a "revised" filing due to Alliance's failure to timely file the original 2000 Form 499-A. As required by FCC regulations, USAC estimated Alliance's original 2000 Form 499-A. See 47 C.F.R. § 54.709(d) ("If a contributor fails to file a . . . Worksheet by the date on which it is due, [USAC] shall bill that contributor based on whatever relevant data [USAC] has available . . .").

<sup>6</sup> See *USAC Appeal Decision* at 2.

Explanation of Decision:

USAC rejects Alliance's 2000 Form 499-A for a second time because Alliance again seeks to exclude from its revenue base revenues associated with certain telecommunications assets owned by Alliance during the billing period covered by the 2000 Form 499-A. USAC also rejects Alliance's 2000 Form 499-A because Alliance has failed to provide any documentation "showing how [its] revised [revenue] figures derive from corporate financial records."

The 2000 Form 499-A was used to bill contributors' USF obligations arising from July through December 2000. Alliance does not dispute that it purchased the customer base of another company in December 1999 and thus Alliance owned and was receiving revenue (and possibly collecting USF fees) from those customers during the July through December 2000 billing period. Under the contribution methodology in effect in 2000, Alliance was required to report the historical revenue associated with all of the assets it owned during the billing period in order for USAC to determine the appropriate USF contributions due that period. (In contrast, under the current methodology, contributors are required to project the revenue of assets owned during the billing period.)

Alliance questions "whether USAC has authority to hold liable the purchaser of assets of another carrier, when the seller company continues to operate and the asset purchase agreement between the companies does not provide for the assumption of regulatory obligations." This question reflects an inaccurate understanding of when the USF contribution obligation arises. The obligation does not arise with the accrual of the historical revenue but arises during the billing period covered by the Form 499-A. Looking to historical revenue -- or looking to projected revenue as is done now -- are simply different methods established by the FCC to assess "current" obligations."

<sup>7</sup> See Form 499-A Order at 11 (citing 2004 Form 499-A Instructions at 11); see also 2000 FCC Form 499-A Instructions at 8 ("Revised figures must be accompanied by . . . documentation showing how the revised figures derive from corporate financial records.")

<sup>8</sup> See Letter from Brad E. Mutschellens and Darius B. Withers, Attorneys for Alliance, to Jeffrey A. Mitchell, USAC Associate General Counsel-1 (January 10, 2005) (Alliance Letter on Remand).

<sup>9</sup> The Commission has described the distinction between the accrual of revenue and the assessment of the USF obligation in the following manner:

[Under the old methodology] [c]ontributions were based on the reporting of billed end-user telecommunications revenues from the prior year. Therefore, the interval between the accrual of revenues by contributors and the assessment of universal service contributions based on those revenues originally was 12 months.

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[Under the new methodology], instead of assessing universal service contributions based on revenues accrued as much as six months prior, USAC will assess contributions based on projections provided by contributors of their . . . revenues for the following quarter. Because contributors will be assessed in the period for which revenues are projected, the modified methodology will eliminate the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues.

Alliance Broadband Corporation, Inc.  
June 3, 2005  
Page 4

In conclusion, USAC will not accept and process Alliance's 2000 Form 499-A filing due to Alliance's exclusion of required revenue from its contribution base. In addition, Alliance has again failed to provide documentation that would show how the reported revenue information derives from corporate financial records.<sup>10</sup>

Decision of the Administrator: Alliance's request that USAC accept Alliance's 2000 FCC Form 499-A filing is denied.

If you disagree with USAC's Decision, you may file a further appeal with the FCC. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/serviceprovider/contributorappeals.asp>

Sincerely,

USAC

Universal Service Administrative Company

cc: Regina Dorsey, FCC Office of Managing Director  
Warren Firschein, FCC Wireline Competition Bureau  
Hillary DeNigro, FCC Enforcement Bureau

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*See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost-Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 93-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Red 24952, ¶ 11, 29 (2003) (Interim Contribution Methodology Order) (citations omitted).*

<sup>10</sup> Alliance could, for example, have provided documentation that would have accurately reflected both the revenue from the purchased customer base that Alliance claims should not be reported and revenue from Alliance's previously owned assets. Indeed, because Alliance failed to timely file its 2000 Form 499-A, USAC based Alliance's billings for January through December 2000 solely upon the historic revenue of the purchased customer base (which the previous owners mistakenly reported to USAC). See fn. 5, above.

# **ATTACHMENT H**

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

Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
In the Matter of	)	
Request for Review by	)	
Alliance Group Services, Inc. of	)	
Universal Service Administrator's Decision on Remand	)	CC Docket No. 97-21
	)	
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**APPEAL OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY'S  
DECISION ON REMAND DENYING CONTRIBUTOR APPEAL**

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 54.719(c), 54.721 and 54.722, and the June 3, 2005 Administrator's Decision on Remand,<sup>1</sup> Alliance Group Services, Inc. hereby respectfully requests that the Commission reverse the Remand decision of the Universal Service Administrative Company ("USAC") denying Alliance's request that USAC accept Alliance's April 13, 2001 filing of its 2000 FCC Form 499-A. This is a timely filed Appeal of the Administrator's Decision on Remand ("*Remand Appeal*"), in full compliance with Section 54.720(d) of the Commission's rules.<sup>2</sup>

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<sup>1</sup> *In re Alliance Group Services, Administrator's Decision on Remand*, Letter Order from Universal Service Administrative Company to Brad E. Mutschelknaus *et al.*, Counsel to Alliance Broadband Corporation (sic), dated June 3, 2005, ("*Administrator's Decision on Remand*"), appended hereto as *Attachment A*. USAC mistakenly refers to Alliance as "Alliance Broadband Corporation." For purposes of clarity and accuracy, the Company will be referred as "Alliance" or "Alliance Group Services, Inc."; *see also* 47 C.F.R. §§ 54.719(c), 54.721, and 54.722.

<sup>2</sup> 47 C.F.R. § 54.720(d).

Specifically, Alliance requests that the Commission reverse and vacate the June 3, 2005 decision of USAC concerning Alliance's 2000 FCC Form 499-A submission.<sup>3</sup> Alliance also respectfully requests that the Commission order USAC to: (1) accept Alliance's revised filing of its 2000 FCC Form 499-A, which Alliance first attempted to submit on April 13, 2001, and (2) remove from Alliance's account all FUSF assessments based upon revenues reported by US Republic for services provided and billed prior to December 23, 1999, the date of sale of US Republic's customer base to Alliance (the "Sale Date"). Alliance further requests that the Commission clarify that Section 254(d) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), and Section 54.706(a) of its interpretive regulations require that providers of interstate telecommunications service contribute to the Federal Universal Service Fund ("FUSF") at such time as they provide and bill for such service.

#### **STATEMENT OF INTEREST**

Alliance's interest in the matter presented for review is direct and profound. Alliance is a contributor to the FUSF and received, after June 1, 2000, certain invoices from USAC that unlawfully sought to recover FUSF obligations associated with revenues previously generated by a company which sold its customer base to Alliance pursuant to an Asset Purchase Agreement. The terms of the Asset Purchase Agreement provided that US Republic, the seller company would remain obligated with regard to associated regulatory fees post-sale. Alliance's interest is in having the Commission resolve a matter in which USAC has adopted a policy absent sufficient legal basis and one that has exceeded the bounds of its delegated authority.

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<sup>3</sup> See *Administrator's Decision on Remand*. USAC released this item in the wake of the process initiated by the Commission's Wireline Competition Bureau's Order of December 9, 2004, *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service*; Order, DA 04-03669 (WCB, rel. December 9, 2004 ("December 9 Order").

It is Alliance's position that where adjustments made by USAC after the Sale Date are based upon revenues generated by services provided and billed prior to the consummation of the sale of a customer base, such revenues are properly categorized as pre-sales revenue. Stated another way, any universal service assessments against Alliance that are based upon services provided and billed by US Republic prior to the Sale Date, are pre-sale FUSF-eligible revenue for which Alliance is not liable under the terms of the Asset Purchase Agreement, applicable law, and sound regulatory policy.

Given USAC's rejection of Alliance's appeal of USAC's unlawful attempt to collect contributions based on pre-sale FUSF-eligible revenues, Alliance hereby asks the Commission to: (1) acknowledge that a telecommunications provider's obligation to contribute to the FUSF arises at such time as it provides interstate telecommunications services and bills for such services; and (2) determine, in accord with this conclusion, that Alliance's obligations in 2000 to pay FUSF fees were governed by the companies' Purchase and Sale Agreement, which provided for US Republic to be responsible for payment of associated regulatory fees.

#### **STATEMENT OF FACTS AND USAC PROCEEDINGS**

##### **The Alliance – US Republic Asset Purchase Agreement**

Alliance and US Republic, a subsidiary of VarTec Telecom Holding Company ("VarTec"), entered into an Asset Purchase Agreement ("Agreement") on December 23, 1999 ("Transfer Date").<sup>4</sup> Among other things, the Agreement provided that the sale of assets occurred on December 23, 1999.<sup>5</sup> As described in the Agreement, the assets at issue consisted of the long

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<sup>4</sup> See U.S. Republic and Alliance Group Services, Inc. Purchase and Sale Agreement ("*Agreement*"), Preamble and Section 1.1., attached hereto at *Attachment B*.

<sup>5</sup> *Agreement*, Section 1.2.

distance customer base of US Republic, as well as associated vendor agreements and trade names (the "Acquired Assets" or "Assets").<sup>6</sup> As is further described in the Appeal, the Agreement involved solely the sale of the specific Acquired Assets and was not a purchase of the stock of US Republic or its operating facilities. The transaction constituted a partial asset purchase.

Of particular importance are the terms of the Agreement with regard to regulatory fees. With respect to FUSF charges, the Agreement specifies only that Alliance is to reimburse US Republic for FUSF fees and charges relating to the December 1999 billing cycle. The Agreement states further that US Republic has complied with FCC laws and will remain responsible for any acts, actions or violations of such laws involving the long distance customer assets that arose prior to the transfer date.<sup>7</sup> The Agreement assumes that US Republic will continue to exist, as it obligates both US Republic and VarTec not to knowingly solicit, or "winback" those customers identified in the customer list sold to Alliance for a three (3) year period following the closing of the sale.<sup>8</sup>

Alliance's "Revised" Filing Efforts

On March 31, 2000, VarTec filed a 2000 Form 499A on behalf of US Republic, its subsidiary and selling party to the Asset Purchase Agreement. The 2000 Form 499A for US Republic reported US Republic's 1999 FUSF contribution base (e.g. interstate and international

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<sup>6</sup> Agreement at Section 1.1.

<sup>7</sup> Agreement at Section 8(e).

<sup>8</sup> As explained in Alliance's earlier Appeal to the Commission, based on available records, US Republic continued to operate through and into 2001. Per information previously submitted in the Appeal, documents from the Texas Secretary of State illustrates that US Republic did not dissolve itself in Texas until March 22, 2001; see Exhibit E to Appeal. A copy of this information is attached hereto at Attachment H.

end user) revenues as \$ 13,597,124.00 for 1999. USAC considers this filing to serve as the “original” filing attributable to Alliance’s revenue base.

Subsequently, Alliance filed a 2000 Form 499A (for its 1999 revenues) in April 2001, which USAC rejected for being submitted more than one year after the due date of the “original” Form. This filing included Alliance’s end user revenues in 1999 and did not include any revenues associated with the acquisition of US Republic’s long distance customer base. USAC considers this April 2001 filing to be a “revised” filing for Alliance’s revenues. This filing reports Alliance 1999 FUSF contribution base revenues as \$ 427,463.00. Thus, the difference between US Republic’s 1999 reported revenues (\$13,597,124.00) and Alliance’s 1999 reported revenues (\$427,463.00) is \$13,169,661.00.

USAC billed Alliance for FUSF obligations, beginning on September 22, 2000, based upon the 2000 Form 499A revenues reported by VarTec on behalf of its subsidiary, U.S. Republic. Thereafter, on October 22, November 22 and December 22, 2000, USAC billed Alliance for the remainder of what would have been US Republic’s FUSF obligation based on that company’s 1999 revenues (as reported in the April 2000 499A), a total of approximately \$763,717.56.

Most important, however, is the basis by which USAC made this change in its invoicing to Alliance. As determined in subsequent communications with USAC staff – and as described in detail and supported by a declaration in the prior *Appeal*<sup>9</sup> – USAC adheres to a theory that Alliance, as the purchaser of US Republic’s revenues in 1999, bears the responsibility to report and to contribute to the FUSF based upon all revenues – its own and US Republic’s –

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<sup>9</sup> See *Appeal* at 5, see also *Appeal Exhibit J*, entitled “Declaration of Lawrence M. Brenton.” A copy of this Declaration is attached hereto at *Attachment F*.

for 1999. With respect to Alliance in particular, this theory was implemented as USAC practice in an arbitrary and capricious manner by a USAC staffer due to a summary decisional process.<sup>10</sup> Furthermore, it has become apparent that USAC erroneously accepted the request in 2000 of US Republic's corporate parent VarTec that USAC credit US Republic's account and charge Alliance for revenues – revenues based upon US Republic's operation in 1999.<sup>11</sup>

Consequently, USAC contended and continues to maintain that Alliance was responsible for reporting and contributing on revenues generated by a customer base that it neither owned nor controlled. Alliance disagrees strongly with USAC's interpretation of its legal and regulatory obligations.

On October 29, 2001, Alliance filed an *Appeal* with the Commission concerning USAC's decisions. The substantive aspects of that Appeal remain for consideration before the Commission. Alliance hereby incorporates the arguments, relevant exhibits and citations of that *Appeal* to this submission.<sup>12</sup>

#### **QUESTIONS PRESENTED FOR REVIEW**

- 1) ***Whether USAC has the authority to hold liable the purchaser of assets of another carrier, when the seller company continues to operate and the asset purchase agreement between the companies does not provide for the assumption by the buyer of the seller's regulatory obligations?***
- 2) ***When does the obligation to contribute to the FUSF arise for a provider of interstate telecommunications services?***

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<sup>10</sup> See Attachment F.

<sup>11</sup> See Alliance's *Appeal* at 4; see also *Appeal Exhibit G*, Letter from Maggie Home, VarTec Regulatory Project Manager to John Casey, Alliance Group Services, Inc., dated August 28, 2000. A copy of this Letter is attached hereto at *Attachment G*.

<sup>12</sup> A copy of the entire *Appeal* is included in the Docket of this instant proceeding, having been filed on October 29, 2001 by Alliance's former Commission counsel.

3) *Whether the procedural requirements in effect at the time in which USAC rejected Alliance's revised FCC Form 499-A, or when Alliance submitted information in the wake of the FCC's December 9 Order, are arbitrary and capricious?*

The relevant statutory provision governing these issues is 47 U.S.C. § 254(d), which states:

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.<sup>13</sup>

The relevant regulation governing these issues is 47 C.F.R. § 54.706, which specifies:

Entities that *provide interstate telecommunications* to the public or to such classes of users as to be effectively available to the public, for a fee . . . must contribute to the universal service support programs.<sup>14</sup>

#### ARGUMENT

##### A. USAC MAY NOT HOLD THE PURCHASER OF AN ASSET LIABLE FOR REGULATORY OBLIGATIONS WHEN THE SELLER COMPANY HAS AGREED TO ASSUME THE OBLIGATIONS TO PAY INTO THE UNIVERSAL SERVICE FUND

It is reasonable policy, grounded in well-settled law, that the purchaser of an asset from a sale by a company which continues to do business does not make the purchaser liable or responsible for the regulatory obligations associated with that asset if the seller has agreed to assume those responsibilities.<sup>15</sup> This is especially true in a case where the regulatory obligations

<sup>13</sup> 47 U.S.C. § 254(d) (*emphasis added*).

<sup>14</sup> 47 C.F.R. § 54.706 (*emphasis added*).

<sup>15</sup> In short, there is generally no "successor liability" imposed on a purchaser of corporate assets. It is well accepted that a purchaser corporation, if purchasing all the assets of a corporation, does not ordinarily become liable for the general debts or on the general contracts of the selling corporation; here, there is less basis to imply that a corporation purchasing only a portion of

associated with an asset arise at the time when the regulated activity takes place, namely, during the provisioning of interstate telecommunications services.

Alliance agrees that a common carrier that purchases assets of a selling entity is not liable for the outstanding FUSF obligations of the Seller when the selling entity will continue to exist after the transaction closes. It is Alliance's position that the purchaser is responsible only for payment into the FUSF Program based upon revenues generated by the sum of the Purchaser's existing assets and the newly acquired assets, during the period of the Purchaser's ownership.

In March 2001, the Commission released the *Contribution Interval Order*, which directed carriers to make quarterly filings, rather than semi-annual filings, to reduce the interval between the accrual of revenues and the assessment of universal service obligations based on those revenues.<sup>16</sup> Prior to the rule changes announced in the Order, carrier contributions to the FUSF fund were based on revenues generated a year earlier (e.g., contributions based on carriers' revenues accrued in January through June of one year were assessed on carriers in January through June of the next year.) Under the revised methodology, a carrier's current contributions are based upon revenues accrued six months earlier. Therefore, for revenues

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assets is liable for the sellers debts and obligations; *see generally*, Cargo Partner AG v. Albatrans, Inc., 352 F.3d 3d 41 (2<sup>nd</sup> Cir. 2003); U.S. v. First Dakota Natl. Bank, 137 F.3d 1077 (8<sup>th</sup> Cir. 1998); Adams v. General Dynamics Corp., 405 F. Supp 1020 (N. Dist. CA, 1970).

<sup>16</sup> On March 9, 2001, the Commission adopted a rule change so that universal service contributions are based on quarterly Telecommunications Reporting Worksheet filings, with an annual true-up based on an annual Telecommunications Reporting Worksheet. *Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, FCC 01-85 (rel. March 14, 2001) ("*Contribution Interval Order*"). *See also 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*, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. July 14, 1999) (*Contributor Reporting Requirements Order*).