

Ad Hoc Coalition of International Telecommunications Companies

Outline of USF Contribution Mechanism Reform Proposals Applicable to Prepaid Telecommunications and Wholesale International Carrier Markets

The Ad Hoc Coalition of International Telecommunications Companies ("Coalition") is a grassroots organization comprised of both U.S. and non-U.S. corporations, including prepaid calling service providers, international transport carriers, and a broad spectrum of entities engaged in the provision of predominantly international wholesale communications services. Our primary goal is to bring equitable relief to companies providing international telecommunications service in the United States.

As a non-membership grassroots organization, the Coalition's efforts are exclusively supported through donations. The Coalition is not beholden to the interests of any single member or group, but by the common cause shared by all members. The Coalition represents a clear voice for international telecommunications service providers seeking fair and equitable treatment under the law.

The Coalition supports a sustainable, effective Universal Service Fund that meets the goals of assuring affordable telephone service for all Americans. But the Coalition also believes the Fund should be fair and non-discriminatory to all participants, as Congress envisioned. Coalition members have long recognized what Congressmen Boucher and Lee recently acknowledged, "the Universal Service Fund is broken." The unbridled growth in demand on the distribution side coupled with the confluence of technological evolution, migration, and the unintended consequences of deregulation of broadband have conspired to derail the USF program from Congress' intent, as implemented by the Commission.

The Coalition seeks a return of the USF program to the original intent of both Congress and the Commission. A program governed by clear rules, adopted and implemented in conformance with the Administrative Procedures Act's strictures, with clearly defined consequences for all program participants, with equal treatment of all providers and technologies, and with respect for the jurisdictional limitations established by Congress. As evidenced by its proposal for reform, the Coalition is a strong believer in the power of information and technology to overcome the many complexities and inequalities which have troubled the USF program in recent years.

I. Problems with Existing Contribution System

- Unclear, ambiguous and conflicting rules of the road have arisen without public input or industry insight;
- Rules developed in this closed-door environment have proven to be deficient, often failing as a result of the drafter's failure to recognize, comprehend, and accommodate the complex, evolutionary nature of the modern communications industry ecosystem;
- Chief among the deficient rules is the Carrier's Carrier Rule ("CCR");
- Contrary to the FCC's original intent, current CCR imposes undue burdens and liabilities on wholesale and other upstream service providers (hereafter, "wholesale providers").

II. Proposed Reforms

A. **EXPAND THE CONTRIBUTION BASE: Expand the scope of the USF contribution base to include clearly-defined “Distributors” of prepaid calling cards and other prepaid calling services which depend on multi-level distribution.**

- The Commission must modernize the CCR, particularly as applied to the Prepaid Calling Services industry, endeavoring to return to the original intent of the rule, as enacted by the Commission;
- The Commission should focus on retail providers of telecommunications services;
- Where multi-level distribution interrupts the direct relationship between the service provider and end user, the entity with the most direct relationship with the end user should contribute based on revenue from actual telecommunications receipts;
- The Commission should prospectively declare that, with limited exceptions, unaffiliated and/or private label distributors (hereafter, “Distributors”) of communications services satisfy Section 254(d)’s broad definition of “providers of telecommunications”;
 - Distributors are closer in proximity to the ultimate consumers of “telecommunications services” than any wholesale provider in the supply chain; and
 - Distributors are capable of identifying actual, collected revenues (minus retail discounts);
- Limit regulatory burdens and financial consequences by declaring distributors to be private service providers, subject to Commission jurisdiction for the limited purpose of Section 254.
 - Distributors do not provide “telecommunications services” on a common carrier basis because, among other reasons, distributors do not offer service indiscriminately to the public and instead provide service through intermediate retailers pursuant to individually negotiated contracts.

B. **STREAMLINED, SIMPLIFIED WHOLESALER VERIFICATION: Eliminate carrier-to-carrier exemption process in favor of a streamlined CCR with an improved verification process incorporating better technology and information.**

NO FORMS, NO VARIATIONS. Simplify the process.

- Eliminate USF Exemption Forms, certifications and other attempts to enforce compliance and indirectly extract contributions through burdensome impositions on wholesalers;
- Abolish carrier-to-carrier/carrier-to-distributor industry-based enforcement, which has proven impossibly complex and which has resulted in imbalanced enforcement, opened doors to arbitrage and avoidance opportunities, and spawned countless private disputes, all of which threaten to dampen the dynamism of the robustly competitive international telecommunications market;
- Transition to all electronic Verification System which wields the combined power of technology, information and clear rules to achieve Congress’ and the Commission’s goals of ensuring a predictable, sustainable, and equitable USF.

CLEAR, BUT LIMITED DUTIES FOR WHOLESALER PROVIDERS. Impose limited, clearly defined responsibilities on upstream providers.

- Eliminate current system of complicated and shifting CCR obligations in favor of clearly defined rules with limited and defined responsibilities imposed on wholesalers; rules should be embodied in Code of Federal Regulations and clearly define wholesaler responsibilities with respect to:
 - Treatment of customers;

- Recording and reporting of revenue; and
 - Consequences of non-compliance.
- (All to be assisted by improved technology and access to information (as explained below)).
- Clearly defined rules create certainty and facilitate the Commission's and the wholesale industry's shared interest in eradicating non-compliance, thereby ensuring sufficiency and greater predictability in funding the USF.

BETTER TECHNOLOGY, BETTER INFORMATION, BETTER RESULTS. Provide wholesalers with better tools to determine how to treat each non-end-user customer.

- Replace current CCR with a technology-oriented approach which creates a simpler, more reliable carrier-to-carrier exemption process that no manual system can achieve;
- Develop a superior real-time database and online verification system to provide wholesale providers with information that goes beyond the basic "yes" or "no" indicator of a Filer's contributor status;
 - Make available and publicize all applicable and claimed exemptions of all 499 Filers;
 - Establish rules which permit wholesalers to rely, with absolute certainty, on the validity of the public information for fixed timeframes;
 - Unless/until a customer notifies the wholesaler of a change in its publicized contributor status which would result in change to wholesaler billing practices, wholesaler should be lawfully permitted to rely on public information.
- Collect information on resellers from wholesalers on routine, confidential basis;
- Collecting information about wholesaler customers, infusing this information into a robust, reliable, real-time technology solution, and establishing clearly defined rules with clearly defined consequences which eliminate uncertainties can facilitate compliance from the top down, as well as the bottom up;

ELIMINATE UNCERTAINTY AND DEFINE CLEAR CONSEQUENCES.

- Require wholesalers to verify status of their resellers/distributors once, upon establishment of account (or, for existing accounts, upon implementation of new USF regime);
- Thereafter, limit consequences for wholesaler's who demonstrate reliance upon customer status as reflected in enhanced Verification System;
- Define market-based consequences and mandate notice to resellers of the market-based consequences of a failure to register and/or promptly notify wholesaler of material changes in reseller status; thereby:

CREATE INCENTIVES FOR RESELLER/DISTRIBUTOR COMPLIANCE.

- Incentivize Reseller/Distributor compliance while decreasing burden on wholesale providers;
- Resellers/Distributors that fail to register and contribute directly will be assessed pass-through charges by wholesalers which may, in some cases, operate as penalties (*i.e. de minimis* by virtue of LIRE);
- Insulate wholesalers from vicarious liability.

IF ALL ELSE FAILS, AT MOST WHOLESALER LIABLE FOR ACTUAL RECEIPTS.

- On failure of downstream compliance, Commission must limit wholesaler contributions to actual receipts. Any other outcome is discriminatory and in violation of statute;
- Limiting wholesaler liability to actual receipts is consistent with FCC rules, simple to administer, and avoids problems faced by providers incapable of determining retail revenue.

C. MISCELLANEOUS RECOMMENDATIONS

Allow distributors choice in contribution status

- Distributors meeting *de minimis* exemption must be allowed to choose whether to accept *de minimis* status and resulting pass-through charges or to contribute directly to the Fund.

Define “prepaid” services clearly, broadly and honor distinctions in business form

- Prepaid services market includes more than “calling cards” and PINS;
- Define, recognize and honor the distinction between private services and common carrier services for purposes of USF contributions AND other programs funded by revenue-based system.

Honor jurisdictional boundaries

- The Act establishes clear, unequivocal limits to FCC jurisdiction over foreign communications;
- The FCC must not subvert these jurisdictional limits through direct or indirect assessments (whether USF or TRS);
- Failure to recognize jurisdictional limits threatens national sovereignty and unreasonably imposes burdens on the dynamic and robustly competitive international telecommunications market.

Establish expedited process for resolution of questions and disputes

- The Commission should establish process whereby responses to Filer questions and requests for clarity may be provided swiftly and publicly, while affording the industry protection from enforcement arising from disclosure;
 - Example of such a system is the anonymous taxpayer “Letter Ruling” process employed by countless state taxing authorities;
 - Consequences for those seeking clarification must be limited and of prospective-only impact;
- The Commission should also establish a mechanism inviting swift resolution of carrier-to-carrier disputes.

III. TRS Contribution Reform Must Accompany USF Reform

- The Act establishes clear, unequivocal limits to FCC jurisdiction over foreign communications;
 - The FCC must not subvert these jurisdictional limits through direct or indirect assessments (whether USF or TRS);
- By statute, Commission precedent, and decades of communications law jurisprudence the lines dividing private services from common carrier services are clear and must be recognized;
- Contributions in support of TRS must be equitable and fundamentally fair.