HELEIN & MARASHLIAN, LLC
THE COMMLAW GROUP

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September 13, 2010

VIA HAND DELIVERY

FILED/ACCEPTED

SEP 13 2010

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
445 12 Street, SW
Room TW-A325
Washington, DC 20554

Re: ***Compass Global, Inc.***
Form 499 Filer ID No. 826216
Petition for Special Relief and Waiver

Dear Ms. Dortch:

Enclosed please find an original and nine (9) copies of the Application for Review of the DA 10-1514, August 13, 2010 decision ("Order") issued by the Federal Communications Commission's Wireline Competition Bureau.

An additional copy of this filing is also enclosed for date-stamp and return in the postage-prepaid envelope provided. To the extent you have any questions concerning this submission, please do not hesitate to contact the undersigned.

Respectfully Submitted,

Compass Global, Inc.

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Its Attorney

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

In the Matter of Form 499 Filer ID No. 826216 Petition for Special Relief and Waiver	)))))	Application for Review of Order of Wireline Competition Bureau DA 10-1514, August 13, 2010

APPLICATION FOR REVIEW

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September 13, 2010

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Executive Summary

Pursuant to Section 1.115 of the rules of the Federal Communications Commission ("FCC" or "Commission"), Compass Global, Inc. ("Compass Global"), hereby respectfully requests that, inasmuch as novel questions of fact, law and/or policy are raised herein, the full Commission review *de novo* Compass Global's appeals addressed in the Administrator's[1] Decision on Contributor Appeal, dated June 2, 2008, and the August 13, 2010 decision of the FCC's Wireline Competition Bureau ("WCB" or "Bureau"), which rejected Compass Global's Request for Review ("Bureau Order").

As explained herein, Compass Global filed its original FCC Forms 499-A ("Form 499-A") for 2005 and 2006 under a threat of enforcement action from the Investigations & Hearings Division ("IHD") of the FCC's Enforcement Bureau.[2] Indeed, but for the IHD's threatened enforcement action, Compass Global would not have filed these forms on September 5, 2006, more than a year and a half after the original April 1st due date for the 2005 Form 499-A and over six (6) months after the 2006 Form's due date. The coerced filing of an original Form 499-A for *prior periods* pursuant to an Enforcement Bureau directive is a unique circumstance not contemplated by the FCC in its *One-Year Deadline Order.*[3] As described in its underlying appeals and as restated herein, the Administrator and WCB determined that, despite being filed within one-year of their submission, Compass Global's revisions to its 2005 and 2006 Forms 499-A were untimely because they were filed over one-year after the original due dates of the forms. These determinations have caused Compass Global severe financial hardship, are discriminatory in the application of the One-Year

[1] The Universal Service Administrative Company ("USAC").

[2] Compass Global strongly believes that the nature of its service offerings do not require it to register with USAC and/or report revenues via FCC Form 499. However, Compass submitted Forms 499-A for 2005 and 2006 as directed by the IHD and has continued to file Forms 499-A and 499-Q on a timely basis thereafter while it awaits a decision from the Commission regarding the nature of its service offerings.

[3] *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.,* CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012, 1016, ¶ 10 (WCB 2004) *("*FCC Form 499-A One-Year Deadline Order*").*

Deadline rule, and deprive Compass Global of its due process rights. The question of whether the 12-month "deadline to deadline" revision window established by the *One-Year Deadline Order* is applicable in the unique circumstance described herein is a new and novel issue which only the Commission can decide.

Compass Global contends that it filed its original 2005 and 2006 Forms 499-A pursuant to the IHD's waiver of the original filing deadlines. Consequently, the one-year revision period applicable to each of these original filings was implicitly waived. While the Commission has ruled that Form 499-A revised filings should not be accepted more than 12 months after the due date of the original filing in question, it is clear that the Commission did not contemplate the position of filers such as Compass Global who submitted filings not of their own volition, but under the threat of an enforcement action or other directive from the IHD. The WCB's denial of Compass Global's Request for Review fails to recognize this fact and fails to honor the intent of the *One-Year Deadline Order*, which clearly excluded consideration of such "out of time" original Form 499-A filings.

Even if the Commission finds that no implicit waiver of the revision deadline exists, the WCB should have granted one. The Commission's rules allow it to waive any provision of its rules for good cause shown, as clearly is the case here. To make such a determination, the Commission must examine considerations of equity, hardship, or more effective implementation of policy with respect to the individual situation presented. However, the Bureau's Order gives no consideration to the specific facts of Compass Global's situation and how those facts relate to the implementation of the policy the Commission intended in adopting the 12-month revision window period. Similarly, the Bureau's Order did not consider the hardship imposed on Compass Global. Lastly, the Bureau's Order did not explain why it chose to treat Compass Global differently than similarly situated entities.

The Bureau also exceeded the scope of its authority in several meaningful ways. First, in its Order, the WCB based its reasoning on as yet unresolved legal and factual issues currently being

disputed before the Enforcement Bureau in File No. EB-06-IH-3060. Second, the Bureau exceeded its authority by acting on novel questions of law and fact.

Accordingly, Compass Global seeks relief in the form of acceptance by USAC of the Company's revised 2006 Form 499-A, recalculation of any assessments based on the original filings, refund or credit of amounts already paid by Compass Global in excess of amounts rightfully owed, and to the extent any unpaid assessments have subsequently become debts to the U.S. Treasury pursuant to Debt Collection Improvement Act referrals, Compass Global seeks reversal of all penalties and interest.

Compass Global also respectfully requests the initiation of an inquiry into USAC's conduct during the course of this matter to determine the full extent of USAC's deviation from the legitimate scope of its authority. Finally, Compass Global respectfully requests that the Commission hold in abeyance all purported collection actions and/or attempts to transfer debt for collection pending full and final resolution of both this matter and the matters addressed in File No. EB-06-IH-3060.

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

In the Matter of Form 499 Filer ID No. 826216 Petition for Special Relief and Waiver	)))))	Application for Review of Order of Wireline Competition Bureau DA 10-1514, August 13, 2010

APPLICATION FOR REVIEW

Pursuant to 47 C.F.R. §1.115(a),(b)(2)(i),(ii) and (iv), Compass Global, Inc. ("Compass Global" or the "Company") files this application for review ("Application") of the August 13, 2010 decision ("Bureau's Order") issued by the Federal Communications Commission's ("FCC" or "Commission") Wireline Competition Bureau ("WCB" or "Bureau") rejecting Compass Global's "Request for Review of Decision Of the Universal Service Administrator And Request for Initiation of an Investigation Into the Policies and Procedures of the Universal Service Administrative Company" ("Request for Review").

Background

On June 2, 2008, USAC issued a decision ("Administrator's Decision") rejecting the Company's revised 2006 Form 499-A as untimely filed. On July 31, 2010, Compass filed its Request for Review asking the Commission to "overturn that portion of the Administrator's Decision on Contributor Appeal dated June 2, 2008 refusing to accept and process the Company's revised 2006 Form 499-A."[1]

[1] Compass Global also asked that the Commission "hold in abeyance all purported collection actions, pending full and final resolution of both this matter and the File No. EB-06-IH-3060; and initiate an investigation into the conduct of USAC over the course of the instant matter." *In the Matter of Request for Review of Decision of the Universal Service Administrator by Compass Global, Inc.*, Request for Review of Decision Of the Universal Service Administrator And Request for Initiation of an Investigation Into the Policies and Procedures of the Universal Service Administrative Company in this Matter, WC Docket No. 96-45 (Jul. 31, 2008) ("Request for Review") at 20; *see also* Attachment 1.

On August 20, 2008, the Commission placed Compass Global's Request for Review on Public Notice.[2] On August 13, 2010, the Bureau issued an order denying the Company's Request for Review along with several others.[3] In support of its decision, the WCB stated that it found "each petitioners' claim of good cause amounts to no more than simple negligence, petitioner error, or circumstances squarely within the petitioner's control."[4] With respect to Compass Global's Request for Review, the WCB apparently based its rejection of Compass Global's revisions on a mischaracterization that the Company's "initial filings were themselves *untimely*" [emphasis added].[5] In order to avoid any further mischaracterization of Compass Global's situation, it is necessary to provide a comprehensive recounting of the events leading to the Administrator's Decision and subsequent Bureau Order denying the Request for Review.

The events commenced in June 2006, when Compass Global was apparently included in a widespread Section 64.1195 "Compliance Survey" undertaken by the Investigations & Hearings Division ("HID") of the FCC's Enforcement Bureau. Compass Global received a form letter from HID advising the Company to register with USAC if it was providing any one of several enumerated telecommunications services to end-users for a fee.[6] Because Compass Global did not believe it was providing any of the telecommunications services referenced in the letter and did not provide any services, at all, to "end-users" — a term expressly used in the IHD letter — the Company did not understand why it had received the letter.

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[2] In its Public Notice, the Bureau described the relief Compass Global sought as follows: "[Compass Global seeks] review and reversal of a decision by the Universal Service Administrative Company (USAC), in which USAC found that Compass Global had failed to timely file revisions to its 2005 and 2006 FCC Form 499-A filings." *See Public Notice, Comment Sought On Compass Global Request For Review Of A Decision By The Universal Service Administrative Company,* WC Docket No. 06-122 (DA 08-1942) (Rel. Aug. 20, 2008).

[3] *See In the Matter of Universal Service Contribution Methodology Requests for Review of Decisions by Universal Service Administrator by Airband Communications, Inc. et al.*, Order, WC Docket No. 06-122, DA 10-1514 (Rel. Aug. 13, 2010) ("WCB Order").

[4] *Id* at ¶ 8.

[5] *Id* at ¶ 5.

[6] Letter from Hugh L. Boyle, Chief Auditor, Investigations & Hearings Division, Enforcement Bureau, "Re: Section 64.1195 Compliance Survey, Reference Number: DC 4-11", pp. 2-3. (June 9, 2006) (Attached as Exhibit 1 to Attachment 1).

To resolve any misconception about the nature and scope of Compass Global's services, the Company's President and founder, Dean Cary, contacted the IHD. Over the ensuing months, Mr. Cary responded to several IHD Staff requests for information regarding the services provided by Compass Global. Throughout this process, nothing convinced Compass Global that the nature and scope of its service offerings required it to register with USAC and/or report revenues via FCC Form 499.[7] IHD Staff adopted a contrary position, which became increasingly entrenched over time. By late summer 2006, IHD Staff made it clear to Mr. Cary that, in no uncertain terms, unless the Company filed FCC Forms 499-A and began contributing to the funding of federal support mechanisms, a formal investigation would be initiated.

On Wednesday August 30, 2006, Mr. Cary received an e-mail from Nand Gupta, the individual specifically identified in the compliance audit letters as IHD's contact point. Therein, Mr. Gupta first noted the pre-existing filing deadline. Mr. Gupta then established a final due date for the filing of Compass Global's Forms 499-A for 2005 and 2006 as the following Tuesday, September 5, 2006. In establishing this mandatory submission timeframe, Mr. Gupta stated that Compass would be considered in noncompliance with FCC rules if it did not complete its efforts to finalize these forms by that September 5th date. Compass submitted Forms 499-A for 2005 and 2006 as directed by Mr. Gupta and has continued to file Forms 499-A and 499-Q on a timely basis thereafter.[8]

The month after filing its original 2005 and 2006 Forms 499-A, Compass Global began receiving invoices from the various other Fund Administrators, and received its first USAC invoice in January, 2007. Shortly thereafter, on January 26, 2007, at the request of USAC personnel, Mr. Cary

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[7] Indeed, this remains Compass Global's position today; the issue is presently under consideration by the Commission in File No. EB-06-IH-3060, Compass Global Notice of Apparent Liability for Forfeiture Compass Global Notice of Apparent Liability for Forfeiture. *See Compass Global Response to Notice of Apparent Liability for Forfeiture*, File No. EB-06-IH3060, pp. 6-8 (Jun. 9, 2008) (attached as Exhibit 2 to Attachment 1). Because of the voluminous nature of the attachments to the Compass Global Response, only the text is included as Exhibit 2. To the extent any party requests full exhibits, however, Compass Global will make such materials available.

[8] Compass' original Forms 499-A for 2005 and 2006 are attached as Attachment 2 to Exhibit 4 of Attachment 1 and Attachment 2 to Exhibit 5 of Attachment 1 respectively. Notably, both Forms are signed and dated September 5, 2010.

forwarded to USAC additional hard copies of the original 2005 and 2006 Forms 499-A which had been filed the previous September.[9] At the time of USAC's request for additional hard copies of these documents, Compass Global was not advised of any problems with the receipt and processing of its 2005 Form 499-A.

In June 2007, notwithstanding that Compass Global had complied with IHD's demand that it file Forms 499-A, IHD nevertheless instituted a formal investigation against Compass Global. As a result, the Company retained telecommunications legal counsel. It was only upon the retention of counsel that the Company became aware of material reporting errors and inaccuracies in the Company's original 2005 and 2006 Forms 499-A (*i.e.*, the Forms 499-A filed on September 5, 2006).[10] It was only then the Company realized it was overpaying federal support assessments, not only for USF, but for each of the federal support funds, including Telecommunications Relay Services ("TRS") fund contributions.

Compass Global realized the need to submit revisions to its 2005 and 2006 Forms 499-A to USAC, which the Company did on September 4, 2007. Compass Global's revised 2005 Form 499-A and revised 2006 Form 499-A were sent via overnight courier and received by USAC the following day, September 5, 2007, as confirmed by "file stamps."[11]

In a letter dated September 11, 2007, USAC unequivocally rejected the revised 2006 Form 499-A, informing Compass Global that it had

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[9] Attached as Exhibit 3 to Attachment 1 is a copy of the overnight courier label, Mr. Cary's transmittal note to USAC transmitting additional copies of both Forms 499-A.

[10] Both the 2005 and 2006 initial 499-As erroneously identified the Company as a "prepaid calling card" provider and included revenue that was incorrectly reported based on regulatory classifications that are inaccurate, as a matter of law. USAC, NECA and other FCC Program administrators generated invoices which substantially overstated Compass Global's contribution obligations based on the incorrectly reported revenue figures. Therefore, a significant portion of the charges invoiced by each of the FCC Programs' administrators is incorrect and not lawfully owed. Absent acceptance and processing of the Company's revised 2006 Form 499-A (and confirmation that its revised 2005 Form 499-A was processed), the Company will be left without a remedy for recouping hundreds of thousands of dollars in regulatory assessments, late fees and penalties, which it has either paid in error or which have become debts to the U.S. Treasury pursuant to Debt Collection Improvement Act ("DCIA") referrals.

[11] Copies of Compass Global's revised 2005 Form 499-A "File-Stamp" and its revised 2006 Form 499-A "File-Stamp" are attached as Exhibits 4 and 5 to Attachment 1, respectively.

"completed a review of the revised FCC Form 499-A that you submitted for the purpose of revising revenue reported . . . for the period 2004. Based on the information provided, we are unable to accept the revision because it was not filed **within one year <u>of the original submission</u>**. [Emphasis Added]"[12]

On the same date, by separate letter, USAC advised Compass Global that it was also unequivocally rejecting the Company's revised 2005 Form 499-A, for similar reasons.[13]

USAC's rejection letters directed Compass Global to file any appeals within the next 60 days. Wherefore, on November 7, 2007, Compass Global appealed USAC's rejection of the Company's revised 2005 and 2006 Forms 499-A.[14] In its combined appeal, Compass Global explained that if USAC persisted in using revenue data as reported in the Company's original 2006 Form 499-A — rather than accepting and processing the revised version of the form — it would subject the Company to an overpayment for CY 2005 in the amount of $118,756.00.[15]

On April 9, 2008, the FCC released a Notice of Apparent Liability ("NAL") for Forfeiture in File No. EB-06-IH-3060.[16] Compass Global timely filed a response to the NAL, addressing therein the far-reaching implications flowing from USAC's refusal to process the Company's revised Form 499-As for 2005 and 2006, and USAC's protracted delay in providing any response to Compass Global.[17] For this reason and others, the issues addressed in the NAL, and the amounts of potential liability identified by the FCC therein, are also intertwined with issues in the USAC appeal underlying this Application for Review.

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[12] USAC's September 11, 2007, letter rejection Compass Global's revised 2006 Form 499-A is attached hereto as Exhibit 7 to Attachment 1.

[13] Exhibit 6 hereto, USAC September 11, 2007, rejection letter re. 2005 form 499-A, p. 1. Thus, even as it unequivocally rejected the "revised" 2005 Form 499-A, USAC at no time advised Compass Global of its position, enunciated for the first time nearly a year later, that it had not received the Company's original filing in September, 2006. *To the contrary, the quoted language specifically references an "original submission" and refuses to permit revision of the revenue data already provided therein.*

[14] Compass Global's November 7, 2007, USAC Appeal is attached as Exhibit 8 to Attachment 1.

[15] *Id.*, p. 8. Compass Global also advised USAC that failure to accept and process its revised 2005 Form 499-A would subject the Company to a similar overpayment for that reporting period as well, the amount of the 2005 overpayment based upon its CY 2004 revenues would exceed amounts rightfully owed by more than $36,000. *Id.*, p. 7.

[16] Exhibit 12 to Attachment 1.

[17] Exhibit 12 to Attachment 1; Compass Global had been granted an extension of its response date up to an including June 9, 2008, and filed its response to the NAL on that date.

On June 2, 2008, USAC finally issued a decision regarding Compass Global's appeal.[18] By that time, nearly nine months had passed from the date Compass Global filed its revised 2005 and 2006 Forms 499-A; close to 20 months had passed from the date Compass filed its original 2005 and 2006 Forms 499-A, and yet in all this time, USAC had yet to notify Compass Global of any problems with receipt of its original 2005 FCC Form 499-A. In its decision, USAC claimed *for the very first time* that it had not received Compass Global's original 2005 Form 499-A.[19] In addition, the Administrator's Decision misstates the date upon which the Company's revised 2005 Form 499-A was submitted, placing that filing date at September 7, 2007, despite issuance by USAC of "file-stamps" indicating receipt on September 5, 2007.[20]

The Administrator's Decision also informs Compass Global that, contrary to USAC's unequivocal rejection of both the revised 2005 and 2006 Forms 499-A on September 11, 2007, USAC had inexplicably converted the Company's revised 2005 Form 499-A filing into a *de facto* original filing.[21]

What USAC's Decision does not say, but what the document which USAC posted to its website as Compass Global's "499A – April 2005 Filing" reveals, is this — USAC has not merely posted the Company's revised 2005 499-A filing to its website, it has actually *altered the document from its submitted form* without the knowledge or consent of Compass Global. Specifically, line 612 of the Form has been altered to reflect the nature of the filing as "Original April 1 filing for the year."[22] As Exhibit 5 to Attachment 1 demonstrates, when filed by Compass Global, line 612 reflected, "Revised filing with updated revenue data."[23]

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[18] Exhibit 13 to Attachment 1.
[19] *Id.*, p. 2.
[20] *Id.*
[21] *Id.*
[22] Exhibit 14 to Attachment 1, "499A – April 2005 Filing", printed from USAC's website: http://www.usac.org/fund-administration/forms.
[23] Exhibit 5 to Attachment 1, attachment 1, p. 7.

Application for Review – Questions Presented[24]

This Application presents the following questions:

1. Whether the unique circumstances giving rise to Compass Global's submission of original FCC Forms 499-A months after the passage of the deadline produces an implicit waiver of the 12-month "deadline to deadline" revision window involves a question of law or policy not previously resolved by the Commission?
2. Whether the Bureau's Order denying Compass Global an explicit waiver to the 12-month revision window was erroneous as a matter of law and contrary to fact?
3. Whether USAC's failure to notify Compass of the alleged non-receipt of its original 2005 FCC Form 499-A and subsequent conversion of its revised 2005 FCC Form 499-A into an original filing was a prejudicial procedural error?
4. Whether, in consideration of the responses to the foregoing Questions Presented, the Bureau exceeded its authority?
5. Whether *de novo* review of the Bureau's Order is required?
6. Whether Compass Global has been denied due process?

Responses to Questions Presented

1. Whether the unique circumstances giving rise to Compass Global's submission of original FCC Forms 499-A months after the passage of the deadline produces an implicit waiver of the 12-month "deadline to deadline" revision window involves a question of law or policy not previously resolved by the Commission?

[24] This Application for Review is submitted in accordance with 47 CFR §1.115(b)(1)and (2). In particular: Rule 1.115(b)(1) (requiring statements of the questions presented for review with reference to appropriate findings of fact or conclusions of law); Rule 1.115(b)(2) (requiring specification of the factors which warrant Commission consideration of the questions presented); Rule 1.115(b)(2)(i)(requiring specification of how the action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent or established Commission policy); Rule 1.115(b)(2)(ii)(requiring specification of how the action taken pursuant to delegated authority involves a question of law or policy which has not previously been resolved by the Commission); Rule 1.115(b)(2)(iii)(requiring specification of how the action taken pursuant to delegated authority involves application of a precedent or policy that should be overturned or revised); Rule 1.115(b)(2)(iv)(requiring specification of how the action taken pursuant to delegated authority is based on an erroneous finding as to an important or material question of fact).

Answer: Yes. The original filing was only made because of the threat of an enforcement action from the IHD. Coincidental with this type of coerced "out of time" filing is an implicit waiver of the 12-month "deadline to deadline" revision window. As noted above, on Wednesday August 30, 2006, Compass Global received an email from IHD demanding the filing of Compass' FCC Forms 499-A for 2005 and 2006 by the following Tuesday, September 5, 2006 — less than one week later. In establishing this mandatory submission timeframe, IHD threatened Compass Global that it would be considered in noncompliance with FCC rules if it did not complete the forms in those few short days. Compass worked as diligently as it could in the short amount of time allotted to it and submitted FCC Forms 499-A for 2005 and 2006 as directed by the IHD. However, *but for* the IHD's threat of enforcement, Compass Global would not have filed FCC Forms 499 for 2005 or 2006 in the first instance. The IHD-imposition of a filing deadline constitutes a unique circumstance not contemplated in the *One-Year Deadline Order*. And the IHD-imposed deadline coming after the passage of the original April 1st deadline for each of the respective Form 499 filings must therefore give rise to an implicit waiver of the revision window applicable to each of these filings. In either event, this is an issue not previously addressed by the Commission and therefore the WCB was without authority to issue its ruling.

Although the Commission has ruled that Form 499-A revised filings would not be accepted more than twelve months after the due date of the original filing in question,[25] it is clear that the Commission did not contemplate the position of filers such as Compass Global who submitted filings well after the original deadline and who did so, not of their own volition, but under the threat of an enforcement action or pursuant to other directive from the IHD. In its Order, the Commission reasoned as follows:

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[25] *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.,* CC Docket Nos. 96-45, 98-171, 97-21, Order, 20
FCC Rcd 1012, 1016, ¶ 10 (WCB 2004) *("*FCC Form 499-A One-Year Deadline Order*").*

> In our experience, twelve months is a sufficient period of time for contributors to revise their 499-A filings for the purpose of reducing their contribution obligations...**With the new deadline for filing revisions to the Form 499-A, carriers will have a window of one entire year in which to determine whether revenues reported and contribution amounts paid the prior year was too high**. Thus, any revised 499-A that is filed by the new deadline represents a third opportunity for carriers to review and file revenue information for the prior year. [Emphasis Added][26]

It is clear that the Commission intended to allow filers up to twelve months to review and make revisions to their initial 499-A filings for the year in question. The Bureau's denial of Compass Global's Request for Review fails to honor the Commission's intent.

To illustrate this point, in Compass Global's case, the IHD ordered Compass Global to submit its 2005 Form 499-A nearly 18 months after the initial April 1, 2005 deadline and its 2006 Form 499-A nearly six months after the April 1, 2006 deadline. Moreover, the IHD only provided Compass Global a few days to hastily prepare its filings. Thus, under the Bureau's interpretation of the 12-month revision period, Compass Global was forced to throw together its 2005 FCC Form 499-A — never having prepared one before — and would be provided absolutely no opportunity at all to correct mistakes because the original submission was filed more than 12 months after the original deadline. With respect to the 2006 filing, submitted six months after the original deadline, Compass would be given half the time to engage in revisions as all other filers. In either case, the outcome based on the WCB's reading of the *One-Year Deadline Order* is discriminatory, unjust and simply not reasonable.

Indeed, Compass Global filed its original 2006 Form 499-A solely at the insistence of the FCC's IHD, despite management's belief, still held today and as argued in its NAL Response in File No. EB-06-IH-3060, that the Company was neither required to register as an ITSP nor file *any* Form 499s. If the 12-month "deadline to deadline" rule was not implicitly waived due to the unique circumstances, then it was the height of irresponsibility for the IHD to insist on the filing of historic

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[26] *FCC Form 499-A One-Year Deadline Order* at ¶ 11.

Form 499-As without informing Compass Global that the reports had to be absolutely perfect because it would only have one bite at the apple. It is incomprehensible that Compass might at first be directed by the IHD to file its Form 499-As in the context of an open "audit" or "survey of compliance" (and subsequent formal investigation) and then be refused an opportunity to revisit and redress those filings based on strict application of a procedural regulation associated with a regulatory filing obligation which may or may have any application to the Company in the first place.

2. Whether the Bureau's Order denying Compass Global an explicit waiver to the 12-month revision window was erroneous as a matter of law and contrary to fact?

Answer: Yes. Even if the Commission finds that no implicit waiver exists, the WCB should have granted an explicit waiver. The Commission's rules allow it to waive any provision of its rules for good cause shown as clearly it is the case here.[27] When considering such a waiver, the Commission will consider whether strict compliance would be inconsistent with the public interest given the facts of a particular situation.[28] To make this determination, the Commission must examine considerations of equity, hardship, or more effective implementation of policy with respect to the individual situation presented.[29]

With respect to equity, the Commission is compelled to treat similarly situated entities in a consistent manner or, at the very least, provide a reasoned explanation to support any disparate treatment.[30] Disparate treatment of similarly situated entities is a hallmark of agency action that courts have held to be "arbitrary and capricious" under the Administrative Procedure Act ("APA").[31] Under the APA, reviewing courts must set aside any action that is shown to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[32] Thus, the Bureau should have

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[27] *See* 47 C.F.R. § 1.3.
[28] *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).
[29] *See WAIT Radio v. FCC* at 1159.
[30] *Verizon Telephone Cos. v. FCC*, 570 F.3d 294, 301 (D.C. Cir. 2009) (quoting *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
[31] *See* e.g., *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005).
[32] *See* 5 U.S.C. § 706(2)(A).

granted a waiver of the Form 499 filing deadlines for Compass Global in the manner that it has granted waivers of filing deadlines for similarly situated entities in the past.

In its *Aventure Order*, the WCB waived the Form 499-Q filing deadline for Aventure Communications Technology, Inc., an entity that missed the revision window for a Form 499 filing.[33] Like Aventure, Compass Global mistakenly categorized revenues as assessable on its FCC Form 499 over and above the amount that it should have. Unlike Compass Global, which was afforded absolutely no true-up opportunity and which was required to be perfect in its first attempt at reporting, Aventure would have eventually been made whole through USAC's "true-up" process.[34] Under the WCB's strict interpretation of the Commission's rules, Compass Global has been effectively left with no remedy to rectify its over-payment of regulatory assessments. Despite the requirements to provide a reasonable explanation for disparate treatment of similarly situated entities, the Bureau's Order makes no attempt to explain its differential treatment of Compass Global on one hand, and Aventure on the other. As noted above, such unexplained, disparate treatment of similarly-situated entities by an administrative agency is the hallmark of "arbitrary and capricious" behavior.

This is shocking, given if anything Compass Global has been left in a worse position in terms of hardship than Aventure. USAC's refusal to accept and process Compass Global's revised 2006 Form 499-A has subjected the Company to an overpayment in the amount of $118,756.00.[35] An overpayment that Compass Global may never recover, because, as noted above, Compass Global has been left with no effective remedy for the hardship imposed upon it. In contrast, Aventure was only faced with a several month delay in its inevitable recovery of an overpayment.[36]

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[33] *E.g., Federal-State Joint Board on Universal Service, Universal Service Contribution Methodology, Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, Order, 23 FCC Rcd 10096, ¶ 4, n.10 (WCB June 26, 2008) ("Aventure Order").
[34] *Aventure Order* at ¶¶ 5–6.
[35] Compass Global's November 7, 2007, USAC Appeal attached as Exhibit 8 to Attachment 1.
[36] *Id.*

With respect to implementation of the Commission's policies, even if it is the policy of the Commission that filers whose original filing was made after the deadline be subject to the 12-month limitations period on a "deadline to deadline" basis (April 1 to March 31 of following year), the WCB should grant waivers, when necessary, to accommodate a filer's ability to make a revised filing when their original filing wasn't made until after the deadline. The rigid enforcement of the 12-month "deadline to deadline" window does not achieve the FCC's goal of ensuring stability and predictability to the fund because by the time Compass Global's revision was made, indeed, by the time its original filings were made, the USAC had already determined its funding commitment for the years in question. The revisions, if accepted, would not result in sacrificing these objectives and would cause no harm to the programs.

Waiver of the 12-month limitations period is also appropriate in this circumstance because the underlying policy behind the limitations period would be in no way undermined by USAC's processing Compass Global's 2006 revision. As noted above, the FCC's underlying policy is to provide filers with a reasonable amount of time to correct errors (*i.e.* within 12 months of submission). Compass Global's actions have been fully in accord with this policy.

Due to circumstances beyond its control and contrary to its own understanding of its obligations, September 5, 2006 was the point in time where Compass Global accomplished the Commission's review and reporting function, because that was the date upon which the Company was directed to accomplish this review and reporting function by the FCC's IHD. The Company's submission of revisions to that data was also accomplished within the 12-month period which the Commission has deemed reasonable for this exercise.[37] As argued above, strict application of the 12-month limit under the circumstances presented here is inconsistent with the very reasoning and basis underlying the limitations period.

[37] *FCC Form 499-A One-Year Deadline Order* at ¶ 11 (stating that "... twelve months is a sufficient period of time for contributors to revise their 499-A filings for the purpose of reducing their contribution obligations").¶

In the Form 499-A Revision Order, the FCC stated that the underlying purpose of the 12-month limitations period is to promote "administrative efficiency and certainty for the contribution systems for universal service" and to "ensure the stability and sufficiency of the federal universal service fund."[38] Under normal circumstances, it might indeed make sense to impose a 12-month limit on downward revenue revisions; the timing of a filer's reported revenue might impact the amount of contributions collected and disbursed for a given funding period. In the *Form 499-A Revision Order*, the FCC also found that "[s]etting a twelve-month deadline for filing revisions to the 499-A [ ] gives contributors adequate time to discover errors, while providing incentive to submit accurate revenue information in a timely manner."[39] Given this backdrop, Compass Global submits that in approving the 12-month limit, the FCC did not intend to foreclose any and all opportunities to correct reports, particularly when, as here, the initial 499-A being revised was filed well after the applicable annual 499 revision deadline.

The Bureau Order gives no consideration to specific facts of Compass Global's situation and how those facts relate to the implementation of the policy that the Commission intended in creating the 12-month revision period. Similarly, the Bureau's Order did not consider the hardship imposed on Compass Global. Most egregiously, the Bureau's Order did not provide an explanation as to why it chose to treat Compass Global differently than similarly situated entities such as Aventure. Given the hardship imposed on Compass Global, given the WCB's past treatment of similarly situated entities, and given the policies underlying the implementation of the 12-month waiver period, the Commission should overturn the Bureau's Order and grant an explicit waiver of the 12-month revision deadline with respect to Compass Global's 2006 FCC Form 499-A filing.

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[38] *Id* at ¶ 10.
[39] *Id* at ¶ 11.

3. Whether USAC's failure to notify Compass of the alleged non-receipt of its original 2005 FCC Form 499-A and subsequent conversion of its revised 2005 FCC Form 499-A into an original filing was a prejudicial procedural error?

Answer: Yes. In the Administrator's Decision, USAC claims that "it accepted and processed the [revised] submission as Compass Global's original filing because USAC did not have a record of previously receiving a 2005 Form 499-A from the company."[40] USAC further states that it relied on the revenue reported on the 2005 Form 499-A to determine a contribution obligation, which was reflected on the Company's October, November and December 2007 invoices.[41] Given USAC's strict interpretation of the twelve-month filing deadline, USAC's acceptance of the Company's revised 2005 FCC Form 499A and rejection of the 2006 revised FCC Form 499-A makes absolutely no sense. It essentially accepted a 2005 revision 18 months after the relevant revision and rejected the 2006 revision 6 months after the relevant revision deadline.

Although USAC maintains that it never received the Company's original 2005 Form 499-A, it is unclear based on the existing factual record whether USAC also billed the Company based on its original 2005 Form 499-A filed in 2006.[42] To determine whether USAC accepted and processed Compass Global's original 2005 Form 499-A would require a full accounting of contribution and fee assessments arising from the original 2005 Form 499-A filing. Compass Global believes it has been subjected to both fees arising from its original 2005 Form 499-A filing and fees from its revised 2005

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[40] See Exhibit 13 of Attachment 1.

[41] Id.

[42] USAC's denials cannot explain the fact that Compass Global was billed as a result of its original 2005 Form 499-A filing in 2006. In fact, not only was Compass Global apparently billed by USAC for this filing. It was billed by NECA as well. In fact, NECA refused to honor the appealed status of Compass' 2005 revised Form 499-A. This procedural error has prejudiced Compass because by not honoring the appeal, amounts in excess of several hundred thousand dollars have been treated as debts and referred to the US Treasury pursuant to the DCIA. If USAC as a collector of data for fund administrators is going to revise data, it must ensure that these revision flow through to the other fund administrators. See Attachment 1, pp 1–15.

Form 499-A for the same reporting period. Wherefore, Compass Global incorporates, in their entirety, the circumstances surrounding its 2005 Form 499-A into this Petition for Review.[43]

4. Whether in consideration of the responses to the foregoing Questions Presented, the Bureau exceeded its authority?

Answer: Yes. The Bureau exceeded the scope of its authority in two ways. First, it exceeded the scope of its authority when it apparently held that Compass Global was merely "negligent" and that Compass Global's FCC Form 499's were not timely filed. This line of reasoning begs the question whether Compass Global needed to file such forms in the first place. As noted above, there has been no final determination whether Compass Global was required to file any FCC Form 499-A, at all.

As noted above, on April 9, 2008, the FCC issued a NAL against Compass Global.[44] On June 9, 2008, Compass Global timely filed its Response to the NAL.[45] The issues underlying this NAL are currently pending in File No. EB-06-IH-3060 and as of today, have not been resolved. The issues addressed in the NAL are intertwined with issues in the USAC appeal underlying this Application for Review. In particular, there has been no resolution with respect to the question of whether Compass Global is even an entity that is required to file FCC Form 499-As. Thus, it is wholly inappropriate for the WCB to issue an Order that rests on the conclusion that Compass Global had "untimely" filed said forms.

Assuming *arguendo* that the Commission (or a reviewing court) determines that Compass did not have to file its 2005 and 2006 FCC Forms 499-A in the first place, the WCB will essentially have found Compass Global to have been negligent in the "untimely filing" of forms that it was never required to file in the first instance. This absurdity results specifically because the WCB has overstepped the boundaries of its delegated authority and prematurely issued a ruling on matters

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[43] Id.
[44] Attachment 1 at Exhibit 12.
[45] Attachment 1 at Exhibit 2.; Compass Global had been granted an extension of its response date up to an including June 9, 2008, and filed its response to the NAL on that date.

that are currently being appealed. The WCB's decision-making should not be based on legal and factual foundations that are in dispute before the Commission outside of its delegated authority. The Commission should not allow this overreach of authority and should overturn the WCB's decision.

The second way in which the Bureau exceeded the scope of its authority was to act on a novel question of law and fact that is outside the scope of its authority. While the FCC has authority to delegate certain responsibilities to the WCB, those responsibilities cannot be exercised in contravention of Commission rules, policies and orders. As argued above, the Commission has not adopted a substantive rule establishing a clear interpretation of the 12-month limitations period with respect to a filer in Compass Global's particular situation. It is clearly a situation the Commission did not specifically consider when it adopted the *One-Year Deadline Order*. Because the Commission has not previously adopted such a rule, the Bureau acted on a novel question of law and fact that is outside the scope of its authority. The Bureau is not entitled to review "any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."[46]

5. Whether de novo review of the Bureau's Order is required?

Answer: Yes. *De novo* review of the WCB's Order is required. The Commission's rules state that the FCC:

> 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."[47]

The limitation on *de novo* review is not applicable to the WCB Order because the Order is invalid and beyond the scope of the Bureau's delegated authority. Because the WCB's decision does not fall within the WCB's delegated authority, the Commission must review that Order *de novo*. *De*

[46] 47 C.F.R. §0.291(2).
[47] 47 C.F.R. §54.723. (Emphasis added.)

novo review is required when mixed questions of law and fact arise as they clearly do here.[48] D*e novo* review is further required when novel questions of fact, law, or policy are presented as they clearly are here.[49] The Commission must review *de novo* Compass Global's request for waiver and consider the substance of Compass Global's Petition to ensure Compass Global is afforded due process.

6. Whether Compass Global has been denied due process?

Answer: Yes. As argued above, the Bureau's Order has exceeded the scope of its authority and deprived Compass Global of the opportunity to present its case to the full Commission. Compass Global's case presents novel questions of both fact and law, and its ultimate determination is intertwined with disputed issues currently pending in File No. EB-06-IH-3060. Pursuant to 47 C.F.R. §1.115, if the Commission grants this Application for Review, it may: Simultaneously reverse or modify the order from which review is sought; (ii) Remand the matter to the designated authority for reconsideration in accordance with its instructions, [or]... (iii) Order such other proceedings, including briefs and oral argument, as may be necessary or appropriate.

The Commission should go beyond mere reversal of the Bureau's Order and remand to the Bureau for reconsideration. Instead, the FCC should consider the merits of the original Request for Review to preserve Compass Global due process rights. Specifically, failure to consider the arguments raised with respect to the novel questions of facts and law presented by Compass Global's situation would deprive Compass Global of a meaningful opportunity to present its case to the agency with the proper authority to consider its request, the full Commission.

This result is further supported by public interest concerns. Compass Global is not the only petitioner that has likely has been required to file by the IHD in such a situation and has been subject to a clearly inequitable application of the twelve-month revision period. Commission review

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[48] *See, e.g., Parker v. Sec'y for the Dep't of Corrs.,* 331 F.3d 764, 765 (11th Cir. 2003).
[49] *See* 47 C.F.R. §0.291.

of the underlying legal injustices arising from this policy is required to ensure that parties understand and have the opportunity to avail themselves of their appeal rights.

Conclusions

Because mixed and novel questions of law and fact are involved, *de novo* review of the Bureau's Order is required. The Commission must review *de novo*: 1) whether the effect of an implicit waiver from the IHD regarding the 12-month window on revisions to FCC Form 499-A involves a question of law or policy not previously resolved by Commission; 2) whether the Bureau's Order denying Compass Global an explicit waiver to the 12-month window on revisions to FCC Form 499-A was erroneous as a matter of law and contrary to fact; 3) whether USAC's failure to notify Compass of the alleged non-receipt of its original 2005 FCC Form 499-A and subsequent conversion of its revised 2005 FCC Form 499-A into an original filing was a prejudicial procedural error; and 4) whether the Bureau exceeded its authority.

The Commission must review the Bureau's Order *de novo* and find it invalid and of no effect. Accordingly, in addition to seeking immediate relief in the form of acceptance by USAC of the Company's revised 2006 Form 499-A, recalculation of contribution assessments, and refund or credit of amounts already paid by Compass Global in excess of amounts rightfully owed, Compass Global also respectfully requests the initiation of an inquiry into USAC's conduct during the course of this matter to determine the full extent of USAC's deviation from the legitimate scope of its authority.

Finally, Compass Global respectfully requests that the Commission hold in abeyance all purported collection actions and/or attempts to transfer debt for collection pending full and final resolution of both this matter and the matters addressed in File No. EB-06-IH-3060.

Respectfully submitted,

Compass Global, Inc.

By _____

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