

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

Request for Universal Service)	
Administrative Company's Request)	WC Docket No. 06-122
For Universal Service Fund)	CC Docket No. 96-45
Policy Guidance)	

REPLY COMMENTS

U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific”) replies to comments submitted in response to the Federal Communications Commission’s (“Commission’s”) Public Notice seeking comment on a letter filed by the Universal Service Administrative Company (“USAC”) seeking Commission guidance on Universal Service Fund (“USF”) reseller contribution issues.¹

DISCUSSION

TelePacific supports XO Communications Services, Inc.’s (“XOCS’s”) comments filed in this proceeding.² TelePacific agrees that USAC is applying the Instructions to the Form 499 as narrow, binding rules instead of as “guidance” for the “reasonable expectation” standard on reseller certifications.³ A carrier may prove its reasonable expectations using “other reliable proof” in addition to, or instead of, the reseller certification in the Form 499 Instructions.⁴ The

¹ See Comment Sought on Universal Service Administrative Company’s Request For Universal Service Fund Policy Guidance, Public Notice, WC Docket No. 06-122, CC Docket No. 96-45 (rel. Mar. 7, 2011).

² Comments of XO Communications Services, Inc., WC Docket No. 06-122, CC Docket No. 96-45 (filed April 6, 2011) (“XOCS Comments”).

³ *Id.* at 12-13.

⁴ *Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, Order, 24 FCC Rcd 10824, ¶ 17 (Wireless Comp. Bur. 2009) (stating that “a wholesale

Commission must direct USAC to consider alternative evidence, including the confirmatory reseller certification used by XOCS, instead of or in addition to the standard reseller certification to support the wholesale carrier's reasonable expectation that the reseller is contributing to USF on assessable revenue.

XOCS stated that "USAC appears to suggest that it cannot determine from certifications such as those submitted by XOCS whether the resellers were incorporating the services purchased into their own telecommunications offerings and were contributing based on revenues derived from these offerings."⁵ XOCS concluded that USAC could verify contributions on a portion of a reseller's revenue, but not all revenues XOCS had received from the reseller.⁶ Although it is not entirely clear from the XOCS comments, it appears that USAC could not confirm the contribution amounts based on its own records at least in part because the wholesale carrier reported more in revenue from the reseller than the reseller reported as assessable on its Form 499. A reseller could report less in assessable revenue for multiple reasons, including having reseller customers of its own or incorporating the services purchased into a broadband Internet access service that offers "telecommunications" but is not subject to direct USF contribution.⁷ If the wholesale carrier meets the reasonable expectation standard through a timely reseller certification or other reliable evidence, such as a confirmatory reseller certification, USAC should pursue any such discrepancy in revenues reported by the reseller with

carrier may establish its reasonable expectation in ways other than those listed in the FCC Form 499-A instructions") ("Global Crossing Order").

⁵ XOCS Comments at 10.

⁶ *Id.*

⁷ *See, e.g.* Comments of U.S. TelePacific Corp. d/b/a TelePacific Communications, WC Docket No. 06-122, CC Docket No. 96-45 (filed April 6, 2011).

the reseller, not the wholesale carrier. Only the FCC, not USAC, has the authority to determine whether a Form 499 filer has the right to execute an exemption certification or provide other reliable proof of its reseller status under the existing rules. Therefore, in some cases USAC will be required to seek guidance from the FCC to resolve any such discrepancy.

The Commission has determined that double contribution on the same service is inconsistent with USF policy.⁸ USAC should not be allowed to use minor recordkeeping issues, such as the date on reseller certifications, as a justification to undermine this core USF principle.

CONCLUSION

For the reasons discussed above, TelePacific requests that the Commission instruct USAC to accept alternative evidence to support a carrier's reasonable expectation regarding its reseller customers, confirm that USAC should pursue any discrepancies in revenue amounts with the reseller and not the wholesale carrier, and direct USAC to seek guidance from the Commission in the event there is any question about whether a particular reseller is entitled to execute a reseller exemption certificate.

Respectfully submitted,

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⁸ XOCS Comments at 8; *see also Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 9206-9207, ¶¶ 845-847 (1997).