

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20544

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Federal Communications Commission
Office of the Secretary

IN THE MATTER OF)
)
APPLICATION FOR REVIEW)
OF THE DECISION OF)
THE UNIVERSAL SERVICE)
ADMINISTRATIVE COMPANY)
BY CLEAR WORLD)
COMMUNICATIONS CORPORATION)
AND ORDER OF THE WIRELINE)
COMPETITION BUREAU)
_____)

DOCKET NO.

WC DOCKET NO. 06-122

APPLICATION FOR REVIEW

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APPLICATION FOR REVIEW

Clear World Communications Corporation (“Clear World” or “Applicant”), by its attorneys and pursuant to 47 C.F.R. Sections 155 (c) (4), 1.104 (b), 1.115, and 54.723(b) applies to the Federal Communications Commission for de novo review of the Order of the Chief of the Wireline Competition Bureau released publicly on April 29, 2011 (hereafter “the Order”). A true and correct copy of the Order is attached hereto as Exhibit A.

On April 29, 2011, the Chief of the Wireline Competition Bureau denied, without hearing, Clear World Communications Corporation’s Request for Review of a 2009 Contributor Audit Decision of the Universal Service Administrative Company (USAC).¹

¹ Request for Review of a Decision of the Universal Service Administrator by Clear World Communications Corporation, WC Docket No. 06-122 (filed Oct. 15, 2009) (Clear World Request for Review); Supplement to Request of Clear World Communications Corporation for Review of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Mar. 25, 2010) (Clear World Supplement); 47 C.F.R. § 54.719.

This Applicant is aggrieved by such action in that the Audit Decision of USAC, as adopted by the Order of the Wireline Competition Bureau, seeks to impose an erroneous multi-million dollar additional assessment against Clear World Communications Corporation. The effect is a denial of the Limited International Revenues Exemption (“LIRE”) to Clear World Communications Corporation under 47 C.F.R. § 54.206 (c). The Order also erroneously requires Clear World to reimburse thousands of customers for approximately ten thousand dollars in contribution costs, deemed to be “excessive.”

The review period, set forth in 47 C.F.R. §§ 1.104(b) and 1.115(d), provides for review by the Commission when filed within thirty days of issuance of public notice of such action. This Application, filed on May 26, 2011, is therefore timely.

I.

QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

1. Whether the Wireline Competition Bureau’s Order was in error by imposing an arbitrary allocation methodology on monthly recurring charges, which Clear World only billed on its international calling plan.

The Order (Ex. A) at page 5, paragraph 10 found that Clear World should have allocated at least a portion of its monthly recurring charges to its interstate revenues.

2. Whether the Wireline Competition Bureau’s Order was in error as USAC waived its right to conduct a second audit after KPMG had voluntarily terminated the first audit.

The Order at page 8, paragraph 17 rejected this contention and failed to address the fact that two audits had already been performed and that Clear World had received a letter from USAC stating that there would be no monetary findings. (Record at 0017.)²

3. Whether the Wireline Competition Bureau's Order, which segregates Clear World's monthly recurring charges to 61% international and 39% domestic, is inequitable and discriminatory and violates 47 U.S.C. § 254 (d) where Clear World's MRC charges were billed only to customers on an international calling plan.

The Order found at page 7, paragraph 14 that USAC properly reallocated 16.19 percent and 18.20 percent of Clear World's revenues for 2005 and 2006 and affirmed USAC's determination that Clear World no longer qualified for the LIRE exemption.

4. Whether the Wireline Competition Bureau's Order regarding Clear World's treatment of Universal Service Recovery Charges was outside the scope of USAC's jurisdiction.

The Order found at page 9, paragraph 20 that Clear World, however miniscule the amounts, must refund these recovery charges. The Order ignores the fact that a portion of said charges related to State Universal Service fees billed.

5. Whether the Order of the Wireline Competition Bureau was in error by determining that USAC could unilaterally revise Clear World's FCC Form 499s.

² All references to the "Record" is to the Exhibits filed in support of Clear World's Request for Review.

The Order found at page 7, paragraph 15 that USAC had this authority to revise filings. This was performed by USAC tampering with Clear World's password.

Although the Wireline Competition Bureau had an opportunity to pass on each of the above questions of fact and law, it abused its discretion by failing and refusing to adequately do so, resulting in the erroneous adverse decision to Clear World.

II.

FACTORS WARRANTING REVIEW

The following factors warrant Commission consideration of the above questions:

- 1. The Actions Complained of Are in Direct Conflict with 47 U.S.C. § 254(d) and Applied to Clear World in a Discriminatory and Inequitable Manner to Manufacture the Erroneous Result.**

Pursuant to 47 U.S.C. § 254(d), carrier contributions must be equitable and nondiscriminatory to preserve and advance universal service. 47 U.S.C. § 254(d) states:

Telecommunications carrier contributions.

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. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the

preservation and advancement of universal service would be de minimis. Any other provider of interstate communications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

USAC erred in concluding that Clear World owes USF charges totaling \$1,054,861 (or 60%) on interstate revenues of \$1,748,598. (Record at 0220) If one took into account bad debt of 14.6% for Clear World in 2005, the net interstate revenue received was only \$1,493,303. Yet USAC wants 71% of every dollar. If one added the 7% (\$122,402) in billing fees that Clear World paid to its billing company BSG in 2005, the net receipts were only \$1,370,901. Therefore, USAC demands 77% in USF on every interstate revenue dollar (\$1,054,861 proposed USF vs. \$1,370,901 in net revenue).

For 2006, USAC determined that Clear World owes USF charges totaling \$969,677 (or 48%) on interstate revenues of \$2,000,542. (Record at 0220) If one took into account bad debt of 18.3% for Clear World in 2006, the net interstate revenue received was only \$1,628,441, and yet USAC wants 60% of every dollar. If one added the 7% (\$140,038) in billing fees that Clear World paid to its billing company BSG in 2006, the net receipts were only \$1,488,403. Therefore, the audit suggests taking 65% in USF on every net interstate revenue dollar (\$969,677 proposed USF vs. \$1,488,403 in net revenue).

These conclusions are inequitable and discriminatory, in violation of 47 U.S.C. § 254(d). In AT&T Corporation v. Public Utility Commission of Texas, 373 F.3d 641 (5th Cir. 2004), the United States Court of Appeals for the Fifth Circuit upheld a grant of summary judgment in favor of AT&T where the Texas Public Utilities Commission attempted to assess a

state imposed fee on interstate, intrastate and international revenues. The Court held that States could assess universal service on intrastate revenues only based on the equitable and nondiscriminatory language of 47 U.S.C. § 254(d).

The same Court has previously struck down a universal service regulatory funding scheme as inequitable and discriminatory in Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999). The Court determined that the FCC could not collect on both interstate and international calls because such a regulation was inequitable and discriminatory in violation of § 254(d). The plaintiff, COMSTAT, a small telecommunications carrier, sued the FCC for recovery of the fees the FCC had imposed on its international revenues. COMSTAT derived so little revenue from interstate calls that its Federal Universal Service Funds obligations exceeded its interstate revenues. The Court found that:

COMSTAT and carriers like it will contribute more in Universal Service payments than they will generate from interstate service. Additionally, the FCC's interpretation is "discriminatory," because the agency concedes that its rule damages some international carriers like COMSTAT more than it harms others. The agency has offered no reasonable explanation of how this outcome, which will require companies such as COMSTAT to incur a loss to participate in interstate service, satisfies the statute's "equitable and nondiscriminatory" language. Id.

The Order denying Clear World's Request for Review affirms USAC's decision requiring Clear World to operate at a loss. By assessing a USF fee of between 48% to 77% of every dollar generated on interstate service by Clear World, the decision is flawed, inconsistent with the law and destroys Clear World's ability to operate profitably. Such a ruling is discriminatory and violates Clear World's due process rights.

The proposal that Clear World arbitrarily alter its Monthly Recurring Charges across all of its product offerings is also a Constitutional infringement on Clear World's right of contract. Furthermore, it ignores the basic nondiscriminatory provisions of 47 U.S.C. § 254(d). It is difficult to conclude under any circumstances that a USF fee of 60% to 77% of interstate revenues for 2005 is equitable and nondiscriminatory. The same can be said for 2006 where a USF fee is assessed at 48% to 65% of interstate revenues.

This is precisely the type of misguided and discriminatory treatment Congress sought to prevent by adoption of 47 U.S.C. § 254(d). Clear World must be afforded the equal protection and nondiscriminatory treatment which the statute was designed to protect.

2. The Action Complained of Involves a Number of Novel Questions of Law or Policy Which Have Not Been Previously Resolved by the Commission Regarding the Proper Interpretation and Application of the Federal Communications Act, Specifically the Question of Whether a Carrier's Contractual Agreement with its Customers Can Be Ignored by Application of an Erroneous and Arbitrary Reallocation Methodology.

USAC erroneously concluded that a portion of Clear World's monthly recurring charges ("MRCs") are based on intrastate and interstate charges. (Record at 0219-0222) In coming to this erroneous conclusion, USAC ignored the undisputed evidence that all of Clear World's monthly recurring charges are tied to its international products only. (Record at 0043, 0046, 0054, 0060, 0066, 0072, 0079, 0085, 0091, 0097, 0106, 0111, 0116, 0121, 0127, 0133, 0139, 0145, 0151, 0157, 0163, 0169, 0175 and 0184) The majority of Clear World's customers

are Hispanic and Asian as reflected by its workforce. These segments of the population make a vastly higher percentage of international calls.

Clear World was authorized, and in fact, required to charge its customers the Federal Universal Service charges during 2005 and 2006. 47 C.F.R. § 54.712. Indeed, failure to do so would have subjected it to substantial interest and penalties. 47 C.F.R § 54.713. Clear World Communications later received a Limited International Revenue Exemption for each of those years. It was not until July of 2006 for the calendar year 2005 that Clear World determined that it qualified for the Limited International Revenue Exemption.

Clear World simply reported its revenues for those two years. The revenues reported in 2005 on 2006 Form 499-A, Line 414 were: \$1,748,598 interstate and \$13,578,212 international. These figures are 100% accurate based on the product offerings. The subsequent LIRE exemption does not alter these facts.

USAC also erroneously concluded that state tariffs are controlling. (Record at 0220) This is because the products offered on the Clear World website are tariffed under Federal Law which govern interstate and international classifications. USAC was directed to the Clear World website and also provided with descriptive product offerings. Clear World's 499-A Statements contain true and accurate statements of its revenues.

3. The Action Complained of Is in Conflict with Statute, Regulation, Case Precedent and Commission Policy as the Effect of the Order Is to Quash the Commission's Authorized LIRE Exemption Which Encourages International Calling at Competitive Rates

In its FCC Form 499 filings for the audit periods, Clear World allocated the Monthly Recurring Charges (“MRCs”) imposed as part of its international calling plans entirely as international revenue. This was lawful and appropriate since Clear World imposes MRCs only on its international calling plans. The fact that Clear World’s international calling plan customers may initiate domestic calls (interstate and intrastate) does not change the incontrovertible facts that only Clear World’s international calling plans include MRCs, and that the only Clear World customers who are subject to MRCs are its international calling plan customers. Clear World customers who do not use Clear World’s service for international calling or who do not wish to be on an international calling plan may – and do – sign up for Clear World service, initiate intrastate toll calls and are not subject to MRCs. Since MRCs are required only for Clear World’s international calling plans, there would have been no reason for Clear World to allocate any portion of the MRC revenue collected by it to interstate or intrastate service.

The entirety of the Final USAC Auditor’s Report’s legal basis for purporting to allocate those MRC revenues between the interstate and intrastate jurisdiction is the Commission’s 2008 Declaratory Order. Universal Service Contribution Methodology, et al, DA 07-231, released January 24, 2008 (“Declaratory Order”).³ However, that Commission Order should have no bearing on the USAC audit process or its results. As noted in Clear World’s initial Request for Review, the 2008 Declaratory Order had not been adopted by the Commission and was not in effect during any portion of the period covered by USAC’s audit of Clear World.⁴

³ Declaratory Order at ¶ 5.

⁴ Request for Review, pp. 12-16.

USAC had no authority to retroactively apply the 2008 Declaratory Order.⁵ Neither is there any indication in that order that the Commission intended to accord it retroactive effect.

Moreover, the issues addressed by the Commission in the 2008 Declaratory Order are wholly irrelevant to Clear World's treatment of MRCs imposed on customers of its international service plans. There are several reasons why the Declaratory Order is not relevant nor applicable to the USAC audit of Clear World, and why the Final USAC Auditor's Report's reliance on that ruling is misplaced.

First, by its express terms, the 2008 Declaratory Order establishes the manner in which certain telecommunications carriers, including commercial mobile radio service (CMRS) providers and interconnected Voice over the Internet Protocol (VoIP) providers report revenues from "toll services." Clear World is neither a CMRS provider nor an interconnected VoIP provider. More importantly, there is no dispute as to which portions of Clear World's revenues during the audit periods were toll revenues. All of Clear World's revenues during the audit periods were toll service revenues. Toll service is the only telecommunications service which Clear World provides. Clear World is a toll service reseller. It does not offer CMRS service; it does not offer local exchange service; it does not offer VoIP service. The only telecommunications services which Clear World provides are toll services. Accordingly, its only telecommunications service revenues are toll revenues.

Second, the purpose for the 2008 Declaratory Order was to provide reporting guidance for wireless providers and interconnected VoIP providers who report revenues based on traffic

⁵ Id., at 16.

studies.⁶ Not only is Clear World neither a wireless provider nor a VoIP provider, Clear World does not utilize traffic studies to report its revenues. Thus, Clear World is not within the scope of carriers to whom the 2008 Declaratory Order is either relevant or applicable.

Third, the 2008 Declaratory Order addresses how carriers subject to that order who offer bundled services (*i.e.*, service offerings which include both toll and non-toll services without separate toll charges being imposed) should allocate revenues from such services in a manner consistent with the statutory definition of “telephone toll service.”⁷ Section 3(48) of the Communications Act of 1934, as amended, defines “telephone toll service” as “...*telephone service between stations in different exchange area for which there is made a separate charge not included in the contracts with subscribers for exchange service.*”⁸ Clear World does not offer bundled services consisting of toll and non-toll (*e.g.*, exchange) service. All calls completed for customers by Clear World are subject to separate charges (*i.e.*, toll charges). Some of those calls are domestic interstate calls; a small percentage are domestic intrastate toll calls; the majority of those calls are international toll calls. Since all Clear World calls are toll calls and all service revenues received by Clear World are toll revenues, including the revenues derived from the MRCs associated with Clear World’s international calling plans, there would be no reason for Clear World to apply the allocation policies set forth in the 2008 Declaratory Order. Neither is there any requirement that it do so.

Equally unavailing is the assertion in the Final USAC Auditor’s Report that Clear World’s international MRCs should be allocated, in part, to the interstate jurisdiction because

⁶ Declaratory Order at ¶5.

⁷ *Id.*, at ¶ 8.

⁸ 47 U.S.C. § 153(48). That statutory definition of telephone toll service has remained unchanged since 1934.

they are referenced in Clear World's state tariffs.⁹ The Final USAC Auditor's Report states that, in response to a request by the auditors, during the week of August 25, 2008, Clear World provided documentation of its state tariffs but federal tariffs were never provided by Clear World.¹⁰

Clear World provided all of its product offerings as well as the customer welcome letter, which disclosed that the monthly recurring charge is for international service. USAC had also been directed to the Clear World web-site at www.clearworld.net, which contained all tariffs. USAC misunderstood the meaning and significance of the materials presented to them and the information available on the web-site.

In addition, the Final USAC Auditor's Report compounds the error of USAC's incorrect reallocation of Clear World's international MRC revenue in part, to the interstate jurisdiction, by purporting to deny Clear World its Limited International Revenues Exemption (LIRE). The LIRE provision is codified at Section 54.707(e) of the Commission's rules. That rule states, in relevant part, as follows:

Any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute only based on such entity's projected collected interstate end-user revenues, net of projected contributions.¹¹

Indeed, Clear World is precisely the type of entity for whom the Commission wisely enacted the LIRE rule. Its service is overwhelmingly international; its revenues are

⁹ Final Auditor's Report at 7.

¹⁰ Id.

¹¹ 47 C.F.R. § 54.707(c).

overwhelmingly derived from the provision of international service. Had USAC not disallowed Clear World's proper treatment of its international MRCs as international toll revenues, it would easily qualify for the LIRE rule.

In reviewing the lawfulness of the Final USAC Auditor's Report's purported disallowance of Clear World's LIRE status, the Commission is reminded of the reasons which underlied its promulgation of Section 54.707(c) -- the LIRE rule. That rule was enacted by the Commission in 1999.¹² The Commission deemed it necessary to promulgate the rule and codify the LIRE status in the wake of the decision rendered by the United States Court of Appeals for the Fifth Circuit in Texas Office of Public Utility Counsel, et al v. FCC, 183 F.3d 393 (1999). In Texas Office of Public Utility Counsel, the Court concluded that a Commission rule which required carriers whose service was predominantly international to contribute more to the USF than their total interstate revenue violated that statutory requirement that USF contributions must be equitable and nondiscriminatory.¹³

The Commission attempted to justify that result based on its "administrative discretion." The Court wisely concluded that such a disproportionately burdensome result on certain carriers based on the fact that those carriers' telecommunications services and their telecommunications revenues were overwhelmingly international could not lawfully be defended based on administrative discretion. As the Court stated, "[t]he heavy inequity the rule places on COMSTAT and similarly situated carriers cannot simply be dismissed by the agency

¹² Federal-State Joint Board on Universal Service, et al (*Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket 96-262*), FCC Red 1679 (1999).

¹³ 183 F.3d at 434; 47 U.S.C. § 254(b).

as a consequence of its administrative discretion.”¹⁴ Clear World, whose telecommunications business, like that of COMSTAT is overwhelmingly international, is a carrier which would be subject to inequitable and discriminatory USF assessments if it were required to contribute based on its international revenues -- which include the MRCs associated only with its international calling plans. If the Commission lacks administrative discretion to impose inequitable and discriminatory USF contribution burdens on carriers with overwhelmingly international revenues, then certainly, USAC, which has no authority to make policy or interpret law, lacks administrative discretion to require Clear World – a company whose telecommunications revenues are predominantly derived from international service -- to contribute to the USF based on its interstate and international revenues. Yet, that is precisely what USAC purports to do in a Detailed Audit Finding #1 of the Final USAC Auditor’s Report.

4. The Action Complained of Was Based on an Erroneous Finding as to an Important Question of Fact Regarding USAC’s Reallocation Methodology Being Appropriate. Such a Finding Was Unsupported by the Evidence and Wrongfully Denied Clear World Qualification under the LIRE Exemption

This finding, contained in paragraph 10 of the Order, overlooked the tariffs that disclose the MRC as an international calling plan and charge. It further ignored Clear World’s Welcome Letter (Record at 0043) to the customer as well as the Product Offerings which clearly outlined the fee as tied to the international calling plan. (Record at 0045-0190) These erroneous findings are not only unsupported by the evidence but are clearly contrary to the true facts.

¹⁴ 183 F.3d at 434; 47 U.S.C. § 254(b).

The result of these erroneous factual findings in paragraph 10 wrongfully denied Clear World's right to qualification under the LIRE exemption.

5. The Action Complained of Was Based on an Erroneous Finding as to an Important Question of Fact That Clear World Failed to Provide Sufficient Evidence to Support its Claim That Clear World's Monthly Recurring Charges Were Assessed on International Traffic Only.

The finding at paragraph 11 ignored evidence of the product offering to the customer, the tariffs provided and made available on the web-site [@www.clearworld.net](http://www.clearworld.net), and disclosure letter to the customer. As discussed above, the MRC was charged solely on the International product plan. (Record at 0043, 0045-0190) The Form 499's should not have been revised by USAC.

Subsequent to submitting its initial Request for Review, Clear World learned that USAC had unilaterally revised Clear World's FCC Form 499A for 2006 and 2007. See, each year's Form 499A as filed by Clear World, and as revised by USAC, attached to Clear World's Supplement. It appears that USAC, without color of authority, has taken it upon itself to revise Clear World's Form 499A's based on the positions taken by it in the Final USAC Auditor's Report. Remarkably, it appears that USAC did so at a time when Clear World's Request for Review of the Final USAC Auditor's Report was pending at the Commission; USAC did so with full knowledge that the very changes which it made in revising Clear World's forms were the subject of the pending Request for Review. This is a classic example of USAC taking the law into its own hands. Again, pursuant to the Commission's rules, USAC's responsibilities are to bill, collect and disburse. It is specifically precluded from making policy, interpreting

statutes or rules or enforcing rules. USAC may seek guidance from the Commission.¹⁵

However, it may not make and enforce its own interpretations of Commission rules or policies, and certainly has no authority to revise FCC Form 499s submitted to it by carriers, especially when the subject of those revisions involve issues before the Commission in pending requests for review of USAC audit reports.

6. The Action Complained of Was Based on an Erroneous Finding as to an Important Question of Fact That Clear World Assessed Universal Service Pass Through Charges in Excess of Amounts Permitted under the Commission's Rules. Such a Finding Was Contrary to the True Facts and Ignored a Combination of State and Federal Universal Service Arithmetic Calculations, Provided by Clear World.

The Order, at paragraph 19, erroneously found that Clear World assessed Universal Service Pass Through Charges in excess of amounts permitted under the Commission's rules. The Final USAC Auditor's Report criticized Clear World's treatment of Universal Service Fund ("USF") recovery charges. Specifically, it asserts that during several quarters in 2006 and 2007, Clear World charged certain customers USF recovery charges in excess of the contribution factor established by the Commission for those quarters.¹⁶ USAC's "remedy" for these asserted violations is to require Clear World either to refund to customers excess collected USF recovery charges or to "remit the money to USAC as a USF contribution."¹⁷

¹⁵ 47 C.F.R. § 54.702(c).

¹⁶ Final USAC Auditor's Report at 11.

¹⁷ Id. at 12.

As explained in Clear World's initial request for review, any excess USF amounts collected by it were inadvertent and were based on the fact that those charges were intended to recover state USF contributions as well as federal. Clear World is prepared to make appropriate adjustments to its rates so as to pass through to its base of customers' discounts and credits to ensure that the customers, not Clear World, derive any economic benefit which may have resulted from the manner in which it assessed USF recovery charges during those quarters.

Clear World vehemently disputes that such alleged violations have any place in a USAC audit. USAC was created by the Commission. As described in the Commission's rules, USAC is responsible for administering the various federal universal service programs. Specifically, USAC is responsible for billing contributors, collecting contributions to the USF support mechanisms, and disbursing USF support funds.¹⁶ Moreover, USAC is specifically prohibited from making policy, interpreting provisions of the Communications Act or the Commission's rules, or interpreting the intent of Congress.¹⁸ USAC's authority is limited to billing, collecting and disbursing. It is not authorized to make policy, interpret laws or regulations.

USAC has no authority to require any telecommunications carrier to refund money to customers, neither does USAC have authority to require any carrier to make USF contributions in excess of those set by the Commission based on the quarterly Commission-established USF contribution factors. In fact, any attempt by USAC to require any telecommunications carrier to contribute amounts to USAC as USF contributions above the amounts required by the applicable USF contribution factors would be a *de facto* change to the USF contribution factor -- and a retroactive increase. The Commission -- and only the Commission -- is authorized to

¹⁸ 47 C.F.R. § 54.702(c).

establish the USF contribution factor for any quarter. USAC has no authority to prescribe a different contribution factor or to require any carrier to remit contributions to the USF in excess of the then-applicable contribution factor multiplied by its interstate revenues.

Lastly, Clear World should not be required to reimburse those charges to its customers where the amount of individual reimbursements are minuscule (less than \$1). Here, the fees charged to each customer were not only minuscule but the customers are scattered around the country, many of whom are difficult, if not impossible to locate. The cost and burden to refund these charges far outweigh any benefit to the individual customers, which is insignificant. Nor would such a costly act result in any benefit to consumers or advance any public purpose of the Federal Communications Act.

7. The Action Complained of Was Taken as the Result of a Prejudicial Procedural Error by Permitting Two Audits for the Same Period Despite an Earlier Determination that Clear World Had No Monetary Deficiency

The action complained of was based on prejudicial procedural error. Specifically, the Order permitted two audits for the same time period, ignoring the fact that USAC had previously determined no monetary deficiency. (Record at 0017) The finding, at paragraph 17, entirely ignores this fact and fails to address the procedural error below.

A second audit, or reexamination of the books and records, is permitted only upon a determination and notification that it is “necessary.” Matthew Bender & Company (2009 Ed.), Federal Income, Gift and Estate Taxation § 76.01.26. USCS § 7605(b) provides:

Restrictions on examination of taxpayer. No taxpayer shall be subjected to unnecessary examination or investigations, and

only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

Here, USAC failed to give Clear World any written notice that a second audit was "necessary." Clear World had cooperated in the first audit and in view of KPMG's voluntary termination of the first audit and a subsequent finding that the 2006 audit was complete and there was "no monetary findings" (Record at 0017) any right to further audits was waived. The second audit by USAC was improper and a violation of Clear World's due process rights.

III.

RELIEF SOUGHT

Clear World respectfully requests that the action complained of be changed in the following respects:

1. That the Order of the Wireline Competition Bureau be vacated and reversed;
and
2. That the Audit's Report of USAC be disallowed with no monetary finding against Clear World, which is consistent with the letter from USAC found in the Record at page 0017.

Applicant respectfully directs the Commission to the Applicant's website for any additional tariff review as USAC had been directed to the site and the auditor claimed she had reviewed its contents. (Record at 0019)

A copy of this Application has been duly served on all parties to the above-captioned proceeding.

WHEREFORE, Clear World respectfully requests that the Commission:

1. Grant this Application for Review and review the complained of action by the Wireline Competition Bureau;
2. Stay the effect of such action pending completion of this review;
3. Set this Application for oral argument;
4. After completion of the review proceedings, reverse the action complained of, the April 29, 2011 Order of the Chief, Wireline Competition Bureau, and set it aside with a finding that Clear World was entitled to the LIRE qualification in 2005 and 2006.
5. Grant the Applicant such other and further relief as is deemed just and proper.

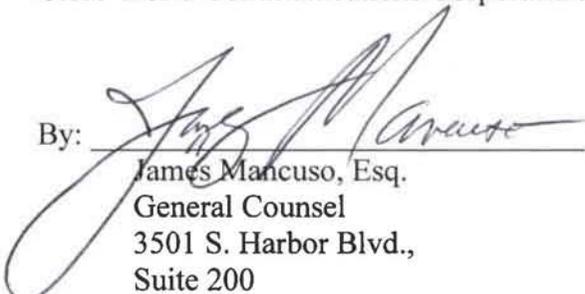
Dated: May 25, 2011

Respectfully Submitted,
Callahan and Blaine

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EXHIBIT A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Request for Review of Decision of the Universal Service Administrator by Clear World Communications Corporation)	USAC Audit CR2007CP005

ORDER

Adopted: April 29, 2011

Released: April 29, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny in part a request filed by Clear World Communications Corporation (Clear World) pursuant to section 54.719 of the Commission's rules.¹ Clear World requests review of a 2009 contributor audit decision of the Universal Service Administrative Company (USAC) finding that Clear World did not accurately report certain revenues on its FCC Form 499-A for calendar years 2005 and 2006. USAC revised Clear World's 2006 and 2007 FCC Forms 499-A consistent with the audit report findings. USAC also determined in the audit that Clear World collected universal service contribution costs through line-item charges in excess of amounts permitted under the Commission's rules and directed Clear World to refund the excessive charges to Clear World's customers. USAC also directed Clear World to remit to USAC any excessive charges not refunded to Clear World's customers.

2. As discussed more fully below, we find that USAC appropriately determined that, for calendar years 2005 and 2006, Clear World incorrectly allocated as international all of its revenue from monthly recurring charges, and that once a portion of those revenues were properly allocated to the interstate jurisdiction, Clear World no longer qualified for the limited international revenues exemption (LIRE) and thus understated its contributions to the Universal Service Fund (Fund). We also find that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules and requirements. We conclude, however, that USAC erred in directing Clear World to remit to USAC any amount of excessive line-item charges that Clear World does not refund to its customers. To the extent that Clear World cannot, or will not, reimburse its customers for the excessive amounts of contribution costs collected, we direct USAC to refer the matter to the Enforcement Bureau for further investigation.

¹ Request for Review of a Decision of the Universal Service Administrator by Clear World Communications Corporation, WC Docket No. 06-122 (filed Oct. 15, 2009) (Clear World Request for Review); Supplement to Request of Clear World Communications Corporation for Review of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Mar. 25, 2010) (Clear World Supplement); 47 C.F.R. § 54.719.

II. BACKGROUND

A. The Act and the Commission's Rules

3. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that 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.² To this end, the Commission has determined that any entity that provides interstate telecommunications services to the public for a fee must contribute to the Fund.³ The Commission further directed that contributions should be based on contributors' interstate and international end-user telecommunications revenues.⁴ Accordingly, pursuant to the Commission's existing rules and requirements, contributors must determine how much of their end-user telecommunications revenues are derived from the provision of intrastate, interstate and international services for purposes of universal service contribution assessment.⁵

4. The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms.⁶ Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) with USAC.⁷ Contributors report projected, collected interstate and international revenues on their FCC Forms 499-Q and actual revenues for the preceding calendar year on their FCC Forms 499-A.⁸ USAC reviews

² 47 U.S.C. § 254(d).

³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund. See, e.g., *Universal Service Contribution Methodology et al.*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Universal Service Contribution Methodology Order*) (requiring interconnected voice over Internet protocol providers to contribute to the universal service fund because they are providers of interstate telecommunications).

⁴ *Universal Service First Report and Order*, 12 FCC Rcd at 9707, para. 787; see 47 C.F.R. § 54.706.

⁵ 47 C.F.R. § 54.706(b). Telecommunications providers with purely intrastate or international revenues are not required to contribute to the universal service fund. *Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779; *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration and Eighth Report and Order, Sixth Report and Order, 15 FCC Rcd 1679, 1685, para. 15 (1999) (*Universal Service Eighth Report and Order*).

⁶ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Dockets Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd at 18400, 18423-24, para. 41 (1997) (*Universal Service Second Order on Reconsideration*); see 47 C.F.R. § 54.701.

⁷ 47 C.F.R. § 54.711(a) (setting forth reporting requirements in accordance with Commission announcements in the Federal Register). Contributors report historical revenue on the annual Telecommunications Reporting Worksheet (FCC Form 499-A), which is generally filed on April 1 each year. See USAC, Schedule of Filings, <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Feb. 17, 2011) (USAC Form 499 Filing Schedule). Contributors project future quarters' revenue on the quarterly Telecommunications Reporting Worksheets (FCC Form 499-Q), which are generally filed on February 1, May 1, August 1, and November 1.

⁸ See *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (*2002 Universal Service Contribution Methodology Order*).

these filings to verify the information provided by the contributors, and bills contributors for their resulting universal service contributions.⁹

5. *Limited International Revenues Exemption.* While telecommunications providers are generally required to contribute to the Fund on the basis of their interstate and international end-user telecommunications revenues, the Commission's rules limit the contribution obligation for entities providing predominantly international services.¹⁰ Specifically, a contributor need not contribute on its projected collected international end-user telecommunications revenues if that contributor's projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues.¹¹ This exemption, commonly referred to as the LIRE, is intended to exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user telecommunications revenues.¹²

6. *Recovering Contributions.* The Commission's rules allow contributors to recover the costs of universal service contributions by passing through an explicit charge to their customers. If a contributor chooses to do so, the amount of the federal universal service line-item charge may not exceed the assessable portion of that customer's bills times the relevant "contribution factor."¹³ Further, contributors are prohibited from recovering unrelated costs through universal service line-items and from averaging contribution costs across all end-user customers.¹⁴ In adopting rules governing the recovery of universal service contributions costs from end-user customers, the Commission concluded that elimination of mark-ups in contributors' universal service line-item charges would protect consumers and alleviate end-user confusion regarding the universal service line item and that such action would improve consumers' understanding of their telephone bills.¹⁵

B. Clear World's Petition for Review

7. Clear World is a reseller of intrastate, interstate, and international long distance service.¹⁶ In June 2009, USAC finalized an audit of Clear World's compliance with FCC Form 499-A contributor filing requirements for calendar years 2005 and 2006 (due April 1, 2006 and April 1, 2007, respectively). Consistent with the audit findings, USAC determined that Clear World had not properly allocated by traffic type monthly recurring charges assessed to the company's end-user customers, and that Clear World had not assessed universal service line-item charges in accordance with the Commission's rules and requirements.¹⁷ Specifically, USAC determined that Clear World provided its customers intrastate, interstate and international telecommunications services, but had allocated 100 percent of its monthly

⁹ 47 C.F.R. §§ 54.711(a), 54.702(b).

¹⁰ 47 C.F.R. § 54.706(c).

¹¹ *Id.*

¹² See *Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19.

¹³ 47 C.F.R. § 54.712. The quarterly universal service contribution factor is determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of prior period actual contributions. 47 C.F.R. § 54.709.

¹⁴ *2002 Universal Service Contribution Methodology Order*, 17 FCC Rcd at 24978, para. 51.

¹⁵ *Id.* at paras. 49–50.

¹⁶ Clear World Request for Review, Exh. E at 6 (USAC Audit).

¹⁷ USAC Audit at 3–17.

recurring charges to international revenues.¹⁸ Based on Clear World's actual call traffic percentages, USAC reallocated a portion of Clear World's monthly recurring charge revenue to the interstate category, which increased Clear World's interstate revenues above the 12 percent threshold needed to qualify for the LIRE. Accordingly, USAC determined that the company owed additional USF contributions and directed Clear World to resubmit its 2006 and 2007 FCC Forms 499-A.¹⁹ In addition, USAC determined that Clear World had recovered from its customers universal service line-item charges in excess of amounts permitted under the Commission's rules.²⁰ USAC therefore directed Clear World to refund the overages to its customers, or alternatively, to remit the overages to USAC.²¹

8. Clear World requests that the Commission reverse USAC's audit decision and find that Clear World does not owe outstanding universal service contributions for 2005 and 2006 based on its purported qualification for the LIRE.²² Clear World asserts, among other things, that it correctly reported its revenues from monthly recurring charges for its services as international revenues.²³ In so doing, Clear World disputes the methodology used by USAC to reallocate revenues from its monthly recurring charges and argues that USAC's additional contribution assessment violates section 254(d) of the Act because it is discriminatory and inequitable.²⁴ Clear World also argues that USAC lacks authority to direct Clear World to reimburse customers or remit to USAC universal service line-item overcharges collected from its customers.²⁵ Finally, because Clear World was the subject of a USAC audit in 2006, Clear World argues that USAC waived its right to conduct a second audit of the company in 2008, which resulted in the 2009 audit report.²⁶

III. DISCUSSION

9. Consistent with the Commission's rules and requirements and as discussed in further detail below, we find that USAC appropriately determined that, for calendar years 2005 and 2006, Clear World incorrectly allocated as international all of its revenue from monthly recurring charges for its service offerings, and that once a portion of those revenues were properly allocated to the interstate jurisdiction, Clear World no longer qualified for the LIRE and thus understated its contributions to the Fund. We also affirm USAC's finding that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules. We conclude, however, that USAC erred in directing Clear World to remit to USAC any amount of excessive line-item charges that Clear World does not refund to its customers.

¹⁸ *Id.* at 4–10.

¹⁹ *Id.* USAC submitted the initial draft audit findings to Clear World on January 27, 2009. Clear World responded on February 12, 2009 and USAC updated its findings with respect to the monthly recurring charges. Subsequently, USAC requested that Clear World respond to the updated findings by May 20, 2009. At the time the final audit was finalized, on June 6, 2009, USAC had not received a response to the updated findings. *Id.* at 3.

²⁰ *Id.* at 12–14.

²¹ *Id.* at 14.

²² Clear World Request for Review at 8–9; Clear World Supplement.

²³ Clear World Request for Review at 17–19.

²⁴ *Id.* at 20–23; *see* 47 U.S.C. § 254(d) (“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.”).

²⁵ Clear World Request for Review at 12–15, 22; Clear World Supplement at 8–9.

²⁶ Clear World Request for Review at 26.

A. Clear World's Reporting of Monthly Recurring Charge Revenues for Purposes of Universal Service Contribution Assessment

10. We find that USAC appropriately determined that Clear World incorrectly allocated 100 percent of its monthly recurring charges to its international revenues. As stated above, with limited exceptions, every telecommunications carrier that provides interstate telecommunications services must report and contribute to the Fund based on their interstate and international telecommunications revenues.²⁷ To ensure an accurate reporting of these revenues, the FCC Form 499 filing instructions have directed carriers since the inception of the Fund to separately identify the gross revenues derived from interstate and international service.²⁸ If carriers are unable to determine the interstate and international revenues directly from their corporate books of accounts, carriers can submit a good faith estimate of these revenues and must make their methodology for arriving at those estimates available to the Commission or USAC upon request.²⁹ The record indicates that although Clear World provides intrastate, interstate, and international telecommunications services, all of the monthly recurring charges associated with its service products were allocated to international revenues.³⁰ Pursuant to the Commission's long-standing contribution methodology and the FCC Form 499-A instructions, Clear World should have allocated at least a portion of its monthly recurring charges to its interstate revenues based on the services the company provides to its end-user customers.

11. We find that Clear World failed to provide sufficient evidence to support its claim that Clear World's monthly recurring charges were assessed on international traffic only.³¹ Rather, we find that the evidence submitted by Clear World in the record indicates that Clear World's monthly recurring charges were associated with calling plans that allowed Clear World's customers to make intrastate, interstate and international calls.³² Based on this evidence, USAC determined that the monthly recurring charges provide Clear World's customers with different per minute rates for intrastate, interstate and international calls.³³ Moreover, USAC analyzed the call usage reports submitted by Clear World and found that customers that made only interstate or intrastate calls in September 2005 were charged the

²⁷ See *supra* para. 5.

²⁸ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507-12 (Appendix A, Universal Service Worksheet FCC Form 457). The FCC Form 457 was the precursor to the FCC Form 499. See *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*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (consolidating the requirements of the FCC Form 457 with other regulatory forms and creating the Telecommunications Reporting Worksheet (FCC Form 499)); see also, e.g., 2007 FCC Form 499-A Instructions at 21 (directing carriers to “identify the part of gross revenues that arise from interstate and international service for each entry on Line 303 through 314 and Lines 403 through 417”).

²⁹ 47 C.F.R. § 54.711; see 2006 FCC Form 499 Instructions at 19–20; 2007 FCC Form 499-A Instructions at 21–22.

³⁰ USAC Audit at 4. For 2006, the audit found that 61% of Clear World's reported revenue was associated with call traffic and 39% was associated with monthly recurring charges. For 2007, Clear World reported that 55 % of its revenue was from call traffic and 45 % of its revenue was from monthly recurring charges. The call traffic revenue was allocated between intrastate, interstate and international jurisdictions, but the monthly recurring charge revenue was allocated at 100 % international. *Id.*

³¹ USAC noted that the fact Clear World advertises its international service or labels its monthly recurring charges as international is insufficient to establish that these fees were associated solely with international calls. USAC Audit at 60.

³² See, e.g., Clear World Request for Review, Exh. A at 151, 161. USAC determined that the per-minute rate for these calls vary for each calling plan, as well as do the monthly recurring charges. USAC Audit at 60.

³³ See, e.g., Clear World Request for Review, Exh. A at 44, 59, 71, 163.

monthly recurring charge for that month.³⁴ We therefore find that USAC correctly determined that the monthly recurring charges assessed by Clear World were associated with all of its service offerings and should be prorated accordingly.³⁵

12. Clear World challenges USAC's use of Clear World's state tariffs as a basis for its audit decision.³⁶ The record is clear, however, that USAC did not base its decision solely on Clear World's state tariffs. Instead, as reflected in the audit report, USAC noted that the tariffs in question described the services and rates that Clear World offers to its customers in each state, but did not indicate that the monthly recurring charges were strictly international.³⁷ USAC, however, also reviewed Clear World's call detail records and noted that Clear World's customers made intrastate, interstate, and international calls, indicating that the monthly recurring charges should be allocated to the intrastate and interstate jurisdictions as well as to the international jurisdiction.³⁸ Clear World never provided other documentation to USAC to support its claim that the monthly recurring charges were tied solely to its international service, despite multiple opportunities to do so.³⁹ USAC therefore appropriately relied on the evidence provided by Clear World, including rate plans and usage reports provided by Clear World, to develop an appropriate weighting methodology for reallocating a portion of Clear World's revenues from monthly recurring charges to the interstate category.⁴⁰

13. In the absence of evidence supporting the use of a different methodology, we find that USAC's decision to reallocate Clear World's monthly recurring charges based on Clear World's actual call usage reports was appropriate.⁴¹ The Commission has long endorsed the use of percentage of interstate usage (PIU) factors to determine the jurisdictional nature of traffic for access charge purposes.⁴² The instructions to the 2006 and 2007 FCC Forms 499-A that set forth Clear World's contribution obligations during the audit period clearly stated that carriers are required to identify the part of gross

³⁴ USAC Audit at 6.

³⁵ *Id.*

³⁶ Clear World Request for Review at 18; Clear World Supplement at 4–5.

³⁷ USAC Audit at 6.

³⁸ *Id.* at 5, 7.

³⁹ *Id.* at 3, 7. During the audit, Clear World stated to USAC that their monthly recurring charges were international since they filed those charges as such in their tariffs. USAC requested the referenced tariffs on August 12, 2008. *Id.* Clear World responded by providing its state tariffs to USAC but never submitted federal tariffs. *Id.* USAC noted that if Clear World provided additional documentation it would be evaluated during the post-audit process. *Id.*

⁴⁰ *See id.* at 7.

⁴¹ *See id.* at 5–8. USAC determined that on the 2006 FCC Form 499, Clear World reported 22.79% intrastate calls; 16.19% interstate calls; and 61.02% international calls. On the 2007 FCC Form 499, Clear World reported 29.89% intrastate calls, 18.20% interstate calls and 51.91% international calls. Based on these percentages, USAC allocated 16.19% of the monthly recurring charge charges to the interstate jurisdiction and 61.02% to the international jurisdiction for calendar year 2005 and allocated 18.20% to interstate and 51.91% to international jurisdictions for calendar year 2006. *Id.* at 8.

⁴² *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7302, para. 32 (2006); *see, e.g., Expanded Interconnection with Local Telephone Company Facilities: Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 91-141, 80-286, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7442–43, para. 137 (1993) (requiring IXCs to report PIUs for switched access traffic); *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, Fourth Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16459, 16501–02, para. 80 (1999) (allowing carriers to use PIU rather than revising their billing systems to implement terminating access revenue sharing in meet-point billing arrangements).

revenues derived from interstate and international service.⁴³ To the extent carriers are unable to determine those amounts from their books of account, they are permitted to use a reasonable methodology for reporting a good faith estimate of those revenues.⁴⁴

14. Having found that USAC appropriately determined that Clear World incorrectly allocated 100 percent of its monthly recurring charges to its international revenues, and that USAC's resulting reallocation of Clear World's assessable revenues was consistent with information in the record, we also affirm USAC's determination that Clear World's assessable revenues for the audit period exceeded the 12 percent threshold allowed for the LIRE.⁴⁵ Specifically, consistent with USAC's reallocation of 16.19 percent and 18.20 percent of Clear World's revenues for the 2005 and 2006 calendar years to the interstate jurisdiction, Clear World no longer qualified for the LIRE and thus understated its contributions to the Fund for those years. USAC therefore correctly assessed Clear World for the additional contribution amounts owed to the Fund. Pursuant to the Commission's rules and requirements, Clear World must therefore remit to USAC any and all additional universal service contributions owed.⁴⁶

15. We reject Clear World's claim that USAC exceeded its authority by revising Clear World's FCC Forms 499 based on the findings of the audit report.⁴⁷ Among other things, USAC is responsible for billing and collecting contributions to the USF and has the authority to verify any information reported in the FCC Forms 499.⁴⁸ Moreover, contributors are required to maintain records and documentation to justify information reported in their FCC Forms 499.⁴⁹ As stated above, the record indicates that Clear World did not provide justification for allocating 100 percent of its monthly recurring charges to the international jurisdiction. We therefore affirm USAC's decision to reallocate Clear World's monthly recurring charges based on a methodology that was supported by the evidence available in the record.⁵⁰

16. In addition, we reject Clear World's argument that USAC's assessment of additional contributions is inequitable and discriminatory.⁵¹ Specifically, Clear World argues that USAC failed to take into consideration Clear World's bad debt and that USAC's reassessment of contributions requires Clear World to contribute 60 percent to 77 percent of every dollar earned on interstate revenues in 2005 and 2006, respectively.⁵² We find that this claim is based on a factually erroneous assertion. Since, based on our findings above, Clear World did not qualify for the LIRE during the audit period, Clear World

⁴³ 2006 FCC Form 499 Instructions at 20–21; 2007 FCC Form 499 Instructions at 21–23.

⁴⁴ 2006 FCC Form 499 Instructions at 20–21; 2007 FCC Form 499 Instructions at 21–23.

⁴⁵ 47 C.F.R. § 54.706(c).

⁴⁶ 47 C.F.R. §§ 54.706, 54.713.

⁴⁷ Clear World Supplement at 9–10.

⁴⁸ 47 C.F.R. §§ 54.702, 54.706.

⁴⁹ 47 C.F.R. § 54.706.

⁵⁰ Clear World asserts that USAC improperly relied on the Commission's 2008 declaratory ruling describing how wireless carriers should use a weighted average methodology for allocating toll revenue to the proper jurisdiction. See Clear World Request for Review at 12–17; Supplement at 2–4. This argument is misplaced and we need not address it here: USAC cited the declaratory ruling in a footnote for illustrative purposes only and noted that it was not dispositive for the time period audited. See USAC Audit at 4 (citing *Universal Service Contribution Methodology; Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligation; Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket 06-122, Declaratory Order, 23 FCC Rcd 1411 (2008)).

⁵¹ Clear World Request for Review at 19–22.

⁵² *Id.*

should have contributed on both its interstate and international revenues. When properly compared to the total amount of interstate and international revenues, less allowable debt, the additional assessment amounts to only 10.4 percent of Clear World's telecommunications revenue for 2006.⁵³

17. Finally, we reject Clear World's unsupported claim that USAC lacked authority to conduct the audit in the first instance.⁵⁴ The Commission's rules provide USAC with the authority to audit contributors and carriers and to verify any information contained in the FCC Forms 499.⁵⁵ USAC was clearly within its authority in conducting an audit of Clear World's compliance with contributor reporting requirements.

B. Clear World's Recovery of Universal Service Contribution Costs through Line-Item Charges to Customers

18. We also affirm USAC's finding that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules and requirements. The Commission's rules expressly prohibit contributors from marking-up federal universal service line-item charges above the relevant assessment amount.⁵⁶ In addition, the Commission's rules require contributors to recover their universal service charges through a line item on the customer bills and accurately describe the nature of the charge.⁵⁷ USAC determined that Clear World had overcharged a number of its customers by applying a contribution factor that exceeded the factor allowed by the Commission and had combined federal and state universal service charges on the call detail records.⁵⁸ In its request for review, Clear World does not appear to challenge USAC's factual finding; rather, Clear World challenges USAC's authority to require carriers to refund overcharges to customers or in the alternative, to remit overcharges to USAC.⁵⁹ In particular, Clear World asserts that USAC's attempt to do so is an invalid interpretation of the Act.⁶⁰

19. We find that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules and requirements during the audit period. Accordingly, we reject Clear World's argument that the amount of overcharges involved is small and the cost and burden to refund the money to customers outweigh any benefit of a refund to individual customers.⁶¹

⁵³ USAC Audit at 7. In the audit report, USAC explained that its reassessment of Clear World's contribution obligation took into consideration Clear World's bad debt, but did not allow a deduction for amounts paid by Clear World to its billing company. *Id.*

⁵⁴ Clear World Request for Review at 1-4, 26 (arguing that USAC waived its right to conduct a second audit following an initial, but uncompleted, audit by KPMG).

⁵⁵ 47 C.F.R. §§ 54.707, 54.711 (a).

⁵⁶ See 2002 Universal Service Contribution Methodology Order, 17 FCC Rcd at 24978, para. 51 (stating that "[t]o the extent that a carrier recovers its contribution cost through a line item, that line item may not exceed the relevant assessment rate").

⁵⁷ *Id.* at 24975, para. 42.

⁵⁸ USAC Audit at 11.

⁵⁹ Clear World Request for Review at 22-24; see Clear World Supplement at 8 (arguing that USAC has no authority to require a carrier to make universal service contributions in excess of those set by the Commission). We note that although Clear World's argument appears to imply that USAC arbitrarily established a contribution factor, we find no basis to support this allegation and Clear World offers none.

⁶⁰ Clear World Request for Review at 24-25.

⁶¹ *Id.* at 26.

Taken to its logical conclusion, Clear World seems to suggest that a contributor may overcharge its customers in violation of the Commission's rules and retain those monies with impunity.

20. To the extent that Clear World cannot, or will not, reimburse its customers for the excessive amounts of contribution costs collected, we direct USAC to refer the matter to the Enforcement Bureau for further investigation. While the Commission's rules expressly prohibit marking-up federal universal service line-item charges above the relevant assessment amount and require contributors to recover their universal service charges through a line item on the customer bills and accurately describe the nature of the charge, nothing in the Commission's rules and requirements provide that universal service line-item overcharges should be remitted to the Commission or USAC. Accordingly, we conclude that USAC erred in directing Clear World to remit to USAC any amount of excessive line-item charges that Clear World does not refund to its customers. —

IV. ORDERING CLAUSES

21. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), the request for review filed by Clear World is hereby DENIED in part.

22. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

CERTIFICATE OF SERVICE

I, Elena Richards, a Legal Secretary with the law firm of Callahan and Blaine, hereby certify that on May 25, 2011, a true and correct copy of the foregoing Application for Review on Behalf of Clear World Communications Corporation was sent via U.S. Mail to the following:

Universal Service Administrative Company
Attn: David Capozzi, Acting General Counsel
2000 L Street, N.W.
Suite 200
Washington, DC 20036

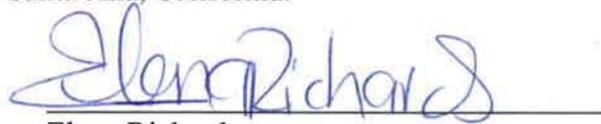
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 25, 2011, at Santa Ana, California.


Elena Richards