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

JUN 15 2011

Federal Communications Commission
Office of the Secretary

In the Matter of

Request for Review by True Wireless, LLC of Decision of
Universal Service Administrator

CC Docket No. 96-45

**EMERGENCY REQUEST FOR REVIEW OF DECISION OF UNIVERSAL
SERVICE ADMINISTRATOR**

True Wireless, LLC ("True Wireless") hereby seeks immediate, emergency review of the failure by the Universal Service Administrative Company ("USAC") to respond to True Wireless's request for emergency relief from USAC's erroneous decisions on May 19, 2011 and May 26, 2011, which had the combined effect of cutting off True Wireless's disbursements from the Universal Service fund.¹

Relevant members of the Commission's staff are already familiar with the essential facts, which are set out below.² We emphasize that we are not, by this emergency request for review, seeking an FCC ruling on the merits of the underlying dispute with USAC. We are seeking a ruling that requires USAC to comply with the Communications Act and the Commission's rules relating to USAC's treatment of Eligible Telecommunications Carriers ("ETCs") in a situation where USAC has questions regarding the ETC's entitlement to disbursements. Specifically with

¹ This review is being sought generally under the terms of 47 C.F.R. § 54.719 *et seq.* The Commission's ongoing responsibility and authority with respect to the universal service program, however, empowers the Commission to take the actions requested here irrespective of the specific provisions of those rules.

² True Wireless has provided copies of all filings with USAC on these matters with the staff of the Telecommunications Access Policy Division ("TAPD") of the Wireline Competition Bureau simultaneously with the provision of those documents to USAC. In addition, counsel for True Wireless has addressed its immediate concerns regarding this matter in numerous emails and telephone calls with TAPD staff (beginning on May 27, 2011), with members of the Office of the General Counsel, and other members of the Commission's Staff. Moreover, TAPD staff members have confirmed via email that Commission staff have been actively addressing True Wireless's concerns.

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respect to the rules, USAC violated 47 C.F.R. §§ 54.201(d) and 54.707 by cutting off True Wireless's funds without first (a) asking True Wireless for information that would address and clarify whatever concerns USAC had about True Wireless's entitlement to those funds, and then (b) assessing whether True Wireless's answers to USAC's questions constituted an "adequate verification" of its entitlement to funding. Instead, USAC adopted a "shoot first, ask questions later" approach that has left True Wireless scrambling to respond to USAC's questions while facing an imminent destruction of its business due to lack of funds to pay vendors.

That said, it is also entirely clear that USAC's asserted basis for the funding cut-off – some supposed relationship between True Wireless and a company called ATMS – is both factually wrong (there is no such relationship) and legally unsupported (two legally completely separate limited liability companies cannot be held responsible for each other's liabilities without some factual basis for corporate-veil piercing, which is totally absent here). To the extent that any consideration of True Wireless's likelihood of success "on the merits" is relevant, therefore, the information already supplied (and attached hereto) shows that USAC's determination that True Wireless should not receive its normal distribution of funding is entirely erroneous.

If USAC's erroneous funding cut-off is not reversed immediately – which, in context, means money actually released to True Wireless by tomorrow, June 16, 2011 – the company will have to shut down, because its vendors will no longer extend it any more credit. True Wireless has repeatedly made the urgency of this situation clear to USAC, to TAPD, and to other members of the Commission's staff.³ USAC has made no indication at any time that it appreciates the urgency and gravity of the situation. Commission staff have repeatedly indicated to counsel for True Wireless that they *do* understand the gravity of the situation, but as yet have

³ See note 1, *supra*.

not acted to correct it. The purpose of this filing is to give the Commission an opportunity to correct the problem before seeking judicial relief. Unless such relief is immediately forthcoming, True Wireless will file at the D.C. Circuit for an order directing the Commission to cause USAC to immediately release the funds to which True Wireless is entitled (pending any audits that USAC may undertake pursuant to 47 C.F.R. § 54.707) no later than tomorrow, June 16, 2011.⁴

We emphasize that USAC has plainly and unequivocally violated its own procedural rules and associated legal requirements in its handling of this matter, which is what makes this emergency appeal necessary:

1. The Communications Act, 47 U.S.C. § 254(b)(5), requires universal service support to be “predictable” and “sufficient.” Depriving an ETC of the normal universal service support to which it is entitled without advance notice and without an advance opportunity to present information relevant to any concerns USAC might have violates this requirement.
2. The specific Commission regulation governing USAC oversight of payments to ETCs, 47 C.F.R. § 54.707, does not permit USAC to withhold disbursements without notice and without an opportunity to respond to questions. To the contrary, that regulation permits USAC to withhold support only *after* an ETC has failed to provide “adequate verification” of its support amounts after a “reasonable request” from USAC to do so. USAC’s actions in this matter are flatly inconsistent with this requirement.
3. Basic due process requires that a party be given notice and an opportunity to be heard prior to adverse action being taken against it. USAC utterly failed to follow that basic requirement here. Instead, USAC evidently reviewed certain incomplete and erroneous data provided by third parties and acted against True Wireless on the basis of misunderstandings arising from that data, with no notice or opportunity to be heard.

We are attaching copies of the filings we have made with USAC in this matter, which we incorporate by reference.⁵ We emphasize again, however, that all of this material has been

⁴ As discussed in note 1, True Wireless has actively engaged with Commission staff regarding this concern since May 27, 2011. No additional time to consider or review this matter is required or appropriate.

⁵ These were made on May 31, 2011; June 3, 2011; and June 15, 2011.

provided to the Commission's staff contemporaneously with its having been filed with USAC and that none of it is new to, or requires original review by, the staff members with delegated authority to decide this matter.

We note that 47 C.F.R. § 54.725(b) could be read to suggest that funds should not be available to True Wireless until review on the merits of the underlying decision is made. Any such reading cannot be applied in situations such as the one at hand, however, where USAC's withholding of funds was undertaken entirely in disregard of the procedures that USAC is required to follow before implementing a funding reduction. True Wireless has a fundamental due process right to be heard *before* an adverse decision is rendered against it, and that is required as well by 47 C.F.R. § 54.707, which plainly states that USAC has no discretion to withhold funds from an ETC such as True Wireless until such time as True Wireless has failed to provide adequate justification for its claimed disbursements *following* a "reasonable request" from USAC for information. To hold otherwise would permit USAC to destroy ETCs on a whim simply by withholding funding on any ground whatsoever and then delaying (even if not intentionally) its decision on the merits until after the ETC has been driven out of business. The only rational reading of Section 54.725(b) is that it applies after USAC has rendered a decision in accordance with basic procedural fairness, including the requirements of Section 54.707.

For all these reasons, we respectfully request that the Commission *immediately* direct USAC to release to True Wireless the funds which it would have received in the normal course, had USAC provided due process and followed 47 C.F.R. § 54.707 and first asked True Wireless to provide information relevant to USAC's concerns *before* USAC precipitously cut off True Wireless's funding.

Respectfully submitted,



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Counsel for True Wireless, LLC

June 15, 2011

June 3, 2011

Karen Majcher
Vice President, High Cost and Low Income Division
Universal Service Administrative Company
2000 Street, N.W.
Washington, DC 20036

**Re: Emergency Request For Reconsideration/Appeal Of USAC Action Described In Letter of
May 19, 2011 Regarding True Wireless, LLC (SPIN: 143034230)**

Dear Ms. Majcher:

This letter constitutes an emergency appeal and request for reconsideration of the erroneous action by USAC taken with respect to True Wireless, LLC ("True Wireless") referenced in a letter dated May 19, 2011.¹ By that letter USAC advised True Wireless, based on an investigation by a state regulator of "the companies **currently** owned by Associated Telecommunications Management Services, LLC (ATMS)," USAC would pay True Wireless Low Income support based on actual claims rather than projected claims, "beginning in May 2011" (emphasis added). The purported legal authority for this action is 47 C.F.R. § 54.707.

The USAC action in question is clearly erroneous and must be immediately set aside for several reasons.

First, True Wireless, LLC is not "currently owned by" ATMS. That fact is amply documented in the materials submitted on behalf of True Wireless in our response to and appeal of USAC's letter of May 26, 2011 ("May 31 Letter"). The entire May 31 Letter, and all of its attachments, is hereby incorporated herein by reference.² As a result, the factual premise on which the May 19 Letter is expressly based, is simply false.³

Second, the action that USAC actually took is not the action stated in the letter. The letter states that effective May 2011, True Wireless would be paid on the basis of actuals rather than projections. The May 2011 payment would have therefore been based on actual March 2011 data given the two month lag time between the data month and USAC payments. According to the Forms 497 submitted by True Wireless for March 2011 (submitted in April 2011), its actual support amount would have been \$3,134,563. Putting aside USAC's erroneous offsetting of the amounts that would have been due to True Wireless by

¹ Letter from Pamela Gallant to Mr. Chris Melton of True Wireless, LLC and Mr. Thomas Biddix of Conexion Wireless, dated May 19, 2011 ("May 19 Letter"), attached at **Exhibit 1**.

² This also applies to the request for confidentiality submitted in connection with that letter. That is, while we request that USAC consider the confidential materials submitted with that letter, those materials remain subject to our request for confidentiality.

³ In that regard, please do not send any further correspondence or communication regarding this issue to Mr. Biddix or anyone else at any other firm other than True Wireless. ATMS is separate from, and unaffiliated with, True Wireless. See our May 31 Letter.

liabilities that USAC believes are owed to the fund by an unrelated company (addressed in our May 31 Letter), USAC's distribution statement indicates that it would have paid True Wireless only \$936,909. While we cannot exactly reproduce USAC's arithmetic, it appears that this figure was derived by imposing an immediate retroactive true-up. Specifically, USAC reduced the "**actual support claims**" submitted by True Wireless by amounts USAC had previously paid based on USAC's own projections. Imposing an immediate retroactive true-up of past projection amounts is not the same as paying on actuals.

Third, the legal authority on which USAC relied plainly does not support the action in the May 19 Letter. 47 C.F.R. § 54.707 provides, in full (emphasis added):

The Administrator shall have authority to audit contributors and carriers reporting data to the administrator. The Administrator shall **establish procedures to verify discounts, offsets, and support amounts** provided by the universal service support programs, and may suspend or delay discounts, offsets, and support amounts provided to a carrier **if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request**, or if directed by the Commission to do so. The Administrator shall not provide reimbursements, offsets or support amounts pursuant to part 36 and § 69.116 through 69.117 of this chapter, and subparts D, E, and G of this part to a carrier until the carrier has provided to the Administrator a true and correct copy of the decision of a state commission designating that carrier as an eligible telecommunications carrier in accordance with § 54.201.

As a simple matter of administrative law, "establish[ing] procedures" means setting out rules of general applicability that would govern USAC's action in particular cases. Taking action against a specific company like True Wireless – what occurred with the May 19 Letter – is not "establish[ing] procedures." It is making an adjudicative decision, based on the (supposed) facts of a specific case. To the extent that USAC claims that it actually has "establish[ed] procedures" relevant here, True Wireless requests that USAC provide a copy of those procedures in writing, as soon as possible.

But more fundamentally, this rule makes perfectly clear that USAC's authority to "suspend or delay ... support amounts" is expressly conditioned on a situation in which a carrier "**fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request.**" The May 19 Letter does not remotely purport to take action based on any failure by True Wireless to provide adequate verification of any "discounts, offsets, or support amounts." USAC has never made any such request **at all** of True Wireless, much less a "reasonable request" that True Wireless ever failed to respond to.

In other words, 47 C.F.R. § 54.707 on its face envisions a reasonable, fair process: USAC first is supposed to set out the rules it will follow ("shall establish procedures") to verify provider support requests. If USAC is concerned that a provider might not have "adequate verification" of its support requests, USAC may make a "reasonable request" for information that would supply "adequate verification" of those support requests. If the provider **fails to provide** that "adequate verification," then USAC "**may**" suspend or delay payments. This orderly process allows for give-and-take between USAC and a provider to identify any concerns USAC may have, and gives the provider a reasonable opportunity to supply the information that USAC "reasonably requests." Only if the information is not forthcoming may USAC suspend or delay support payments.

The process required by 47 C.F.R. § 54.707 is utterly inconsistent with the process used in connection with the May 19 Letter. The May 19 Letter does not request any information at all from True Wireless, much less information to verify support requests. It asserts that USAC is taking action based simply on the pendency of an investigation of an unrelated firm by the Florida PSC. And then the action USAC actually took is different from the action stated in the letter.

Ms. Karen Majcher
June 3, 2011
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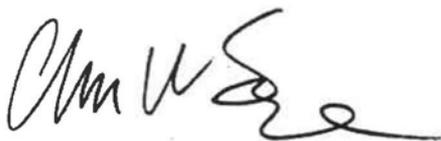
The only possible action for USAC to take at this point, consistent with the regulations governing USAC's operations – including the very regulation it cited – is to immediately reverse the action of the May 19 Letter and provide support to True Wireless in the same manner as it would have otherwise – based on USAC's normal projection process. If there is information that USAC wants from True Wireless in order to "provide adequate verification" of the support amounts True Wireless has projected, USAC should make a "reasonable request" for that information. Only if True Wireless fails to provide it would any suspension, reduction, or modification of True Wireless's support payments be warranted. As a result, we request that USAC not only restore to True Wireless the funding that was based on the March 2011 data, but that it provide immediate assurances that it will make timely and complete support payments to True Wireless based on the April 2011 data (which was filed on May 16, 2011).

For all these reasons, the May 19 Letter is plainly and on its face completely erroneous. It is based on a blatant mistake of fact (the notion that True Wireless is currently owned by ATMS). The legal authority it cites not only does not justify the procedures USAC used and the action it took, that legal authority directly contradicts both the procedures used and the substance of USAC's action. And the May 19 Letter does not even properly describe what USAC actually did.

Like the actions taken by USAC in its letter of May 26, 2011, the precipitous, unwarranted, and unlawful decision to deprive True Wireless of the funds to which it is entitled under the Low Income program has placed the company in severe financial jeopardy. The May 19 Letter, like the May 26 Letter, must be rescinded and reversed immediately – in a matter of days – in order to avoid the prospect of USAC's errors driving the company out of business.

Please feel free to contact undersigned counsel at any time if we can provide any additional information or assistance on this matter. Contact information is provided below that will allow reaching one or both of us at any time, and, given the extremely urgent nature of this matter, we authorize and request that you call one or both of us on our cell phones or at home, at any time (including early in the morning or late in the evening) that USAC is considering this matter, in order to avoid any possible delay in getting it resolved.

Sincerely,



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cc: David Cappozi
Johnnay Schrieber
Kimberly Scardino

EXHIBIT 1

Via Electronic Mail & Certified Mail

May 19, 2011

Chris Melton
True Wireless, LLC d/b/a Conexion Wireless
3124 Brother Blvd., Suite 104
Bartlett, TN 38133

Thomas Biddix
Conexion Wireless
6905 N. Wickham Drive
Suite 403
Melbourne, FL 32940

Re: Federal Low Income Program Support Payments for True Wireless, LLC d/b/a
Conexion Wireless (SACs 439038 and 449060)

Dear Messrs. Melton and Biddix:

The Universal Service Administrative Company (USAC) has been made aware that the Florida Public Service Commission is currently conducting an investigation involving the companies currently owned by Associated Telecommunications Management Services, LLC (ATMS) located at 6905 N. Wickham Drive, Suite 403, Melbourne, FL 32940. As a result of this investigation, pursuant to USAC's authority set forth in 47 C.F.R. § 54.707 to "establish procedures to verify ... support amounts." and consistent with USAC past practice, USAC will no longer pay True Wireless, LLC d/b/a Conexion Wireless projected federal Low Income Program support. Instead, beginning in May 2011, USAC will pay Low Income Program support based on actual support claims (i.e., the amount claimed on the FCC Form 497) made by True Wireless, LLC d/b/a Conexion Wireless. USAC will not pay this company based on USAC-generated projections that are later subject to a true-up with the company's submitted FCC Forms 497.

Please contact me if you have any questions.

Sincerely,



Pamela Gallant
Director, Low Income Program

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May 31, 2011

Karen Majcher
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**Re: Emergency Request For Reconsideration/Appeal Of USAC Action Described In Letter of
May 26, 2011 Regarding True Wireless, LLC (SPIN: 143034230)**

Dear Ms. Majcher:

This letter constitutes an emergency appeal and request for reconsideration of the erroneous action by USAC taken with respect to True Wireless, LLC ("True Wireless") in a letter dated May 26, 2011.¹ By that letter USAC advised True Wireless that it would not be receiving its normal payment from USAC at the end of May 2011 (which would have otherwise been close to a million dollars). Instead, purportedly because USAC has yet to complete arrangements with *another* company (Associated Telecommunications Management Services, LLC, or "ATMS") for the recoupment of approximately \$[xx], USAC stated that it was withholding payment from *True Wireless*.

This action is both procedurally and substantively flawed. It needs to be reversed *immediately* in order to avoid severe and entirely unjustified financial hardship on True Wireless – including a nearly certain need to shut down its business operations – while at the same time essentially immediately depriving more than 75,000 True Wireless subscribers of needed telephone service.

This emergency appeal and request for reconsideration is being filed on the second business day following USAC's action, and the first business day after undersigned counsel were able to contact USAC personnel, and personnel from the Federal Communications Commission ("FCC"), to discuss the situation.² Because this material is being assembled on an emergency basis and on short notice over a

¹ Letter from "USAC" (actually transmitted by email from Karen Majcher) to Mr. Chris Melton of True Wireless, LLC and Danielle Frappier of Davis Wright Tremaine LLP, dated May 26, 2011 ("May 26 Letter"), attached at Exhibit 1.

² Given the precipitous nature of the action described in the May 26 letter, we do not believe that any formal "appeal" is needed to simply rescind the erroneous block placed on payment of True Wireless's Low Income disbursements. The action was taken entirely informally and with no advance notice to True Wireless, and included no citation or explanation of any legal authority that would permit USAC to withhold funds from True Wireless based on issues USAC might have with another entity. For these reasons, the action noted in the May 26 letter was *ultra vires* and should be deemed void *ab initio*. That said, to the extent that it is appropriate to view this situation as one calling for an "appeal," this letter should be deemed to be True Wireless, LLC's initial appeal filing, pursuant to 47 C.F.R. § 54.719, of the action in question.

holiday weekend, True Wireless reserves the right to supplement this filing in the future. That said, with this letter (and its accompanying materials) True Wireless is setting forth the essential facts that demonstrate that USAC's action was erroneous and that there is no sound legal or factual basis for withholding *any* funds from True Wireless. This letter, therefore, constitutes a fully sufficient basis for USAC to correct its erroneous action, and True Wireless requests that USAC do so immediately.

I. True Wireless Is Unaffiliated With The ETCs As To Which USAC Seeks To Recoup Funds.

The essential fact that USAC failed to understand (and as to which it failed to seek proper clarification) is that there is no legal or business relationship between True Wireless and ATMS. ATMS is owned by an individual named Mr. Thomas Biddix. Mr. Biddix also owns another company, Three Dawg Mountain, LLC ("Three Dawg"). Prior to late 2010, Three Dawg (and, therefore, indirectly, Mr. Biddix), owned True Wireless. However, at that time, Mr. Biddix and Mr. Brian Cox entered into an agreement to sell True Wireless to Mr. Cox, and the sale closed on January 7, 2011. From January 7, 2011 forward, True Wireless is and has been a completely independent company with no ongoing ownership, management, or other relationships with ATMS, Mr. Biddix, or any of their affiliated companies. As a result, it is simply inappropriate for USAC to withhold funding from True Wireless as a result of potential liabilities to USAC that ATMS might have.

The key events relevant here are as follows:

1. In the fall of 2009, companies ultimately 100% owned and controlled by Mr. Biddix purchased five companies from a group of investors that included Mr. Cox. Those companies were: BLC Management, LLC, Ren-Tel Communications, Inc., Dialtone & More, Inc., SC TXLink, LLC, and Conexions, LLC (the "Previously Acquired Firms"). All of the Previously Acquired Firms (except Conexions) became subsidiaries of ATMS, and therefore ultimately 100% owned and controlled by Mr. Biddix. Conexions became a subsidiary of Three Dawg, which is not in the same corporate family as ATMS, but which is also 100% ultimately owned and controlled by Mr. Biddix. Prior to the negotiation and consummation of the sales of the Previously Acquired Firms, Mr. Cox had no personal, professional, or business relationship with Mr. Biddix or (as far as Mr. Cox is aware) any companies owned or controlled by Mr. Biddix.
2. Following the sales of the Previously Acquired Firms, Mr. Cox was employed by Three Dawg to oversee the effort to grow and expand the wireless ETC business of Conexions and True Wireless. (In addition, Mr. Cox provided advice and assistance on an ad hoc basis with respect to the landline ETCs that ATMS had acquired.)
3. By the fall of 2010, approximately one year after the original sale of the Previously Acquired Firms to entities owned by Mr. Biddix, Mr. Cox and Mr. Biddix agreed that they would go their separate ways. At that time it was agreed that Mr. Cox would purchase True Wireless from Three Dawg.
4. The contract providing for the sale of True Wireless to Mr. Cox was executed in November 2010. The sale closed on January 7, 2011. A copy of this contract is enclosed at **CONFIDENTIAL Exhibit 2**. It contains confidential information, and we are filing it under seal with a request (pursuant to FCC rules) that it be treated as a confidential document.
5. The closing was delayed because it was determined that True Wireless held an international Section 214 authorization from the FCC. True Wireless was not making use of that authorization, however, so it was determined to simply surrender it. The letter to the FCC surrendering the Section 214 authorization was sent on January 5, 2011. The FCC's Public Notice acknowledging the surrender of the Section 214 authorization was published on January 27, 2011 (reflecting an effective date of January 5, 2011). Copies of both the letter to the FCC, and the Public Notice, are attached at **Exhibits 3 and 4**.

6. On January 7, 2011, the sale of True Wireless to Mr. Cox was formally consummated. A copy of an email from ATMS's in-house counsel, Ms. Christine Sutch, to all affected parties (including Mr. Cox) indicating the consummation of the transaction, is attached at CONFIDENTIAL Exhibit 5.³
7. At the time of closing (and currently), True Wireless had operations only in Texas and Oklahoma. Counsel had previously determined that neither of those states required pre-approval of the transfer of True Wireless to Mr. Cox. However, following the transaction, True Wireless, through counsel, notified both of those states that the transfer had occurred. Copies of those notifications are attached at Exhibits 6 and 7. In addition, following the purchase of True Wireless by Mr. Cox, counsel updated the Texas limited liability registration of True Wireless to reflect the 100% ownership of Brian Cox. A copy of this registration is attached at Exhibit 8.
8. As of the closing of the sale of True Wireless to Mr. Cox, all ownership and management relationship between True Wireless and Mr. Cox, on the one hand, and ATMS, Mr. Biddix, and affiliated companies, on the other, came to an end. Mr. Cox has no ownership interest in, or role in the management of, any of Mr. Biddix's companies. Mr. Biddix and his affiliated companies have no ownership interest in, and no role in the management of, True Wireless.⁴
9. In connection with the sale of True Wireless to Mr. Cox, certain personnel who had worked with Mr. Cox at the Previously Acquired Firms (that is, the firms that ATMS had purchased in 2009) left ATMS-affiliated companies and became employees of True Wireless.

The lack of affiliation or other relationship between True Wireless on the one hand, and ATMS and Tom Biddix on the other, are further attested to by the attached Affidavit of Kevin Brian Cox, Exhibit 9 hereto.

In light of these facts, there is no valid basis on which USAC may withhold funds relating to True Wireless's current provision of supported services under the Low Income program, on the basis of USAC's need to work out with ATMS the recoupment of amounts that ATMS may owe.

The fact that the relationship, such as it was, between True Wireless and ATMS ended in January 2011 does not mean that no relationship existed in the past. As described above, from late 2009 through January 2011, both True Wireless and ATMS were ultimately owned by Mr. Biddix. As a result, it is not surprising that the May 26 letter can make reference to a variety of supposed "relationships" among Mr. Cox, certain other personnel now at True Wireless, Mr. Biddix, and the various companies he owns, directly or indirectly. The fact that those "relationships" may have existed, however, does not affect the separation of Mr. Cox and True Wireless from Mr. Biddix, ATMS, and Three Dawg that occurred as of January 7, 2011.

In this regard, during the period from December 2009 through January 2011, Mr. Cox's role at Three Dawg did not include responsibility for making regulatory and other filings by ATMS-affiliated companies. That was handled by a variety of different ATMS personnel and/or vendors. As a result, neither Mr. Cox nor True Wireless has full knowledge of nor can they attest to the accuracy of all filings made during that period. Regardless, the fact remains that all ownership interests or other relationships between Messrs.

³ The email and the transaction-related documents attached to it are confidential. The email also contains, as an attachment, the letter sent to the FCC surrendering True Wireless's international Section 214 authorization. That is a public document (in fact, it is Exhibit 3 to this letter).

⁴ Under the terms of the contract selling True Wireless to Mr. Cox, if Mr. Cox sells True Wireless to a third party, then a portion of that sales price is to be remitted to Mr. Biddix. Mr. Biddix, however, has no right of first refusal with respect to any such sale, no right to participate in the management of True Wireless, etc. Parallel terms exist entitling Mr. Cox to certain payments if a wireless entity retained by Three Dawg (named "Conexions, LLC") is sold to a third party. These terms, however, establish nothing more than a contract right to certain payments in the event certain contingencies occur.

Cox and Biddix ended with the January 2011 sale of True Wireless to Mr. Cox, and this was the intent of both parties.

We believe that these facts should be more than sufficient to demonstrate that USAC should not have withheld any Low Income funding from True Wireless, and indeed should be more than sufficient for USAC to immediately release the funds that were withheld. Such action is urgently required because True Wireless's only current business is providing supported services to customers in Texas and Oklahoma. Without funds from USAC, the company cannot continue to do business. Within a matter of weeks (at most), all of its more than 75,000 customers would lose telephone service as True Wireless became unable to pay its vendors (e.g., CMRS carriers, advertising vendors), who – given the prepaid nature of the business – require payment on a very current basis.⁵

II. USAC Has No Authority To Recoup Funds From Affiliates.

USAC asserts that True Wireless can be held responsible for reimbursements that ATMS supposedly owes to the fund, on the basis of a series of purported "relationships" between the two entities. As described above, any such relationships no longer exist. But even if they did, no FCC regulation of which we are aware – and certainly nothing mentioned cited or mentioned in the May 26 letter – provides is any legal or regulatory basis for withholding funding from *True Wireless* on the ground that *a different legal entity* (ATMS) may be subject to a recoupment obligation.

To the contrary, the FCC will normally respect the separate corporate existence of different entities, and will only "pierce the corporate veil" when circumstances indicate that the separate legal entities are not, in fact, operated as legally separate.⁶ This shows that USAC's action was unjustified even if the various "relationships" referred to in the May 26 letter were both current and accurately described. Indeed, under FCC precedent, in the normal course one firm's rights, responsibilities, and liabilities of one firm do not constitute rights, responsibilities, or liabilities even of another, even formally, currently *affiliated* firm. So, even if it turns out that one or more companies owned (currently or in the past) by ATMS, or owned (currently or in the past) by Mr. Biddix, might owe money to the fund, that does not constitute some sort of license to USAC to disregard the separate legal existence of those companies and seek to recover any amounts owed from other companies. In the absence of an established factual basis for disregarding the various entities' separate legal existence – which is not remotely set forth in the May 26 letter – the FCC (and USAC) is bound to respect that separate existence.

Thus, even prior to the sale of True Wireless to Mr. Cox, it would have been inappropriate for USAC to attempt to recoup funds supposedly owed by ATMS-owned ETCs from True Wireless – which was owned by Three Dawg, not ATMS. The fact that Three Dawg and ATMS were (and are) ultimately both owed by Mr. Biddix is not a sufficient basis for disregarding their separate corporate existence, and treating the liabilities of the subsidiaries of one of them, as liabilities of the subsidiaries of the other.

Finally in this regard, we note that serious and unfair consequences can arise from inappropriately ignoring the separate legal existence of different ETCs. Specifically, the May 26 letter presents not a shred of information that would suggest that there is anything amiss with the amount of reimbursement that True Wireless is requesting with respect to its own operations as an ETC. True Wireless's

⁵ Normally a wireless phone will continue to be able to access "911" even if service is otherwise terminated. While obviously important, that would be cold comfort to customers who cannot call their places of employment, their children's schools, their doctors, etc., with no explanation and through no fault of their own. Perhaps some extremely compelling situation regarding the administration of the universal service fund might justify subjecting 75,000 citizens to this inconvenience, but – as the discussion in the text makes clear – no such situation exists here.

⁶ See *APCC Services, Inc., et al., v. NetworkIP, LLC, et al.*, 22 FCC Rcd 4286 (2007) at ¶ 47 & n. 133 (noting conditions on when FCC will "pierce the corporate veil"; citing cases).

subscribers in Texas, for example, were all vetted for program eligibility through that state's database, and True Wireless has fully accessible electronic records regarding the eligibility of both its Texas and Oklahoma customers. When an ETC is operating in compliance with all applicable program rules and is receiving appropriate disbursements from the fund regarding those operations, it is simply abusive – and entirely inconsistent with the purposes of the universal service program – to withhold those disbursements based on concerns about the operations of a different legal entity, affiliated or not.

III. The May 26 Letter Was Procedurally Improper.

In addition to the substantive problems noted above, the May 26 letter was procedurally irregular in two critical respects. First, on May 19, 2011, USAC sent a letter to True Wireless proposing to convert True Wireless from payments based on projections, to funding based on actuals due to relationships that USAC saw between True Wireless and ATMS. See letter attached at Exhibit 10. In response to this letter, undersigned counsel sent a redacted version of the November 2010 purchase agreement to show that no such relationships existed. See email attached at Exhibit 11. In a subsequent email exchange between undersigned counsel and USAC's Assistant General Counsel on May 25, it was specifically agreed that True Wireless would have until Friday, June 3, 2011, to provide additional information to clarify the lack of on-going ownership or other relationship between True Wireless and ATMS/Mr. Biddix. See email attached at Exhibit 12. But then, *the very next day*, and essentially "out of the blue," USAC sent True Wireless the May 26 letter suspending disbursements based on the supposed "relationships" between True Wireless and ATMS/Mr. Biddix – *precisely the subject matter of the materials to be provided on June 3*. See email attached at Exhibit 13. It is completely inappropriate to first give True Wireless until June 3 to produce the materials in question, and then to cut off funding more than a week in advance of that date on the basis of precisely the same issues to be addressed by the June 3 materials. Obviously if USAC felt that it needed additional information from True Wireless *as a condition of continuing to receive funding*, simple procedural fairness required USAC to so advise True Wireless prior to cutting off funding. But when USAC's Assistant General Counsel had specifically given True Wireless until June 3 to provide the requested information, action prior to that date purportedly based on the fact that the information was not yet in USAC's hands, is entirely unwarranted.

Second, USAC is obliged to treat information regarding communications with, and disputes with, funding recipients confidentially. Here, however, USAC included in a letter to one entity (True Wireless) specific information regarding substantial adjustments USAC intends to make with respect to another entity (ATMS). Specifically, the May 26 Letter, USAC stated:⁷

[i]n March 2011, four ATMS owned companies, BLC Management, LLC; Lifeconnex, LLC; Triarch Marketing Inc.; and American Dial Tone f/k/a Ganaco Inc. filed downward revisions in their federal Low Income Support Mechanism claims for 2009 totaling over \$[xx].

After revealing this confidential information regarding these four ATMS subsidiaries, the May 26 Letter goes on to state that "[a]ll of these connections between Mr. Biddix, Mr. Cox and these above-referenced entities [e.g., Three Dawg Mountain, LLC, True Wireless, LLC and Conexions, LLC] *have not [been] fully addressed.*"⁸ If USAC had not yet fully investigated the relationships or lack thereof of the entities it was concerned about, then USAC had no basis for (1) revealing the confidential information regarding the true-up of the ATMS subsidiaries to True Wireless personnel in violation of its governing MOU with the FCC⁹ and (2) it certainly had no basis for seeking and immediately implementing without notice, a

⁷ May 26 Letter at 1.

⁸ *Id.* At 2 (emphasis added).

⁹ Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2009) at Attachment A available at <http://transition.fcc.gov/omd/usac-mou.pdf>.

Ms. Karen Majcher
May 31, 2011
Page 6

clawback of nearly a million dollars from any entity other than those specific ATMS entities that filed true-ups. See attached disbursement notice, specifically linking the clawback from True Wireless to monies owed by BLC in Exhibit 14.

As noted above, ATMS/Three Dawg and True Wireless are separate, unaffiliated entities. It was entirely inappropriate for USAC to provide information regarding ATMS to True Wireless based on supposed concerns about "relationships" between the two entities. In this regard, including information about ATMS in a letter to True Wireless is just as inappropriate as it would have been to (for example) provide AT&T information regarding disputes about Verizon's obligations to the fund. In this regard, it appears that USAC, based on outdated and inaccurate information, rushed to judgment with respect to the supposed relationships between True Wireless and ATMS and acted as though the two were identical, when in fact they are entirely separate.

Finally, we note that all of this confusion could likely have been avoided if USAC had done the obvious thing and directly contacted ATMS about the money that USAC believes that ATMS owes to the fund. In this regard, we note that the May 26 letter indicates that ATMS had not made any "arrangements" with USAC regarding the recoupment. Conspicuous by its absence, however, is any indication that any USAC personnel had made any effort to contact ATMS, either directly or through its counsel, to make such arrangements. If ATMS and USAC need to work out recoupment arrangements for money that ATMS needs to pay USAC, the appropriate course is to deal with such issues through direct contacts between ATMS and USAC, not to suddenly and without notice withhold funding from another company – whether or not formally affiliated with ATMS.

* * * * *

Please feel free to contact undersigned counsel at any time if we can provide any additional information or assistance on this matter. Contact information is provided below that will allow reaching one or both of us at any time, and, given the extremely urgent nature of this matter, we authorize and request that you call one or both of us on our cell phones or at home, at any time (including early in the morning or late in the evening) that USAC is considering this matter, in order to avoid any possible delay in getting it resolved.

Sincerely,



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cc: David Cappozi
Johnnay Schrieber
Kimberly Scardino

EXHIBIT 1



Via Electronic Mail & Certified Mail

May 26, 2011

Chris Melton
True Wireless, LLC
3124 Brother Blvd., Suite 104
Bartlett, TN 38133

Re: Federal Universal Service Low Income Support Mechanism Disbursements for True Wireless, LLC (SACs 439038 and 449060)

Dear Mr. Melton:

The Universal Service Administrative Company (USAC) has been made aware that the Florida Public Service Commission (PSC) conducted an investigation and recently settled litigation involving the companies currently owned by Mr. Thomas Biddix and Associated Telecommunications Management Services, LLC (ATMS) located at 6905 N. Wickham Drive, Suite 403, Melbourne, FL 32940. As part of this investigation, USAC also became aware that Thomas Biddix, Kevin Brian Cox (a/k/a Brian Cox), and Chris Watson are the co-owners of another company called Three Dawg Mountain, LLC, also incorporated in Delaware. In papers prepared in the Florida investigation by the Florida PSC staff, it was shown that Three Dawg Mountain, LLC was the 100% owner of True Wireless Acquisition Group, LLC, which in turn owns True Wireless, LLC d/b/a Conexion Wireless (in Texas). Additionally, the principal place of business for Three Dawg Mountain, LLC is at the 6905 N. Wickham Drive, Suite 403, Melbourne, FL 32940 address. The noted sale of Mr. Biddix's interests in True Wireless, LLC¹ does not fully address all of the known affiliations between Mr. Biddix; Mr. Cox; Three Dawg Mountain, LLC; True Wireless Acquisition Group, LLC; True Wireless, LLC; Conexion Wireless, LLC; and Conexion, LLC. Based on our review of corporate records and state utility commission filings, USAC has determined that the above-referenced companies are affiliated and/or are owned and/or under the control of Mr. Biddix and/or Mr. Cox.

In March 2011, four ATMS owned companies, BLC Management, LLC; Lifeconnex, LLC; Triarch Marketing Inc.; and American Dial Tone f/k/a Ganaco, Inc. filed downward revisions in their federal Low Income Support Mechanism claims for 2009 totaling over \$12 million. To date, this previously disbursed amount has not been repaid nor have any arrangements been made by these companies to repay this amount to USAC.

¹ USAC has requested a copy of the noted January 2011 sales agreement from True Wireless' counsel, but has not received the full unredacted version at this time.

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As explained above, there is conflicting information in the state corporate records regarding the affiliation, ownership and/or control of Three Dawg Mountain, LLC; True Wireless Acquisition Group, LLC; True Wireless, LLC; Conexion, LLC; and Conexion Wireless, LLC. USAC's review of corporate filings found that Three Dawg Mountain, LLC, True Wireless Acquisition Group, LLC, and Conexion Wireless, LLC may be located in Melbourne, FL and be managed by Mr. Biddix.² USAC's review also indicates that Mr. Cox may be the manager of Conexion, LLC and True Wireless, LLC and the companies may presently be located in Tennessee. Additionally, according to Texas corporate filings, True Wireless requested the use of "Conexion Wireless" as an assumed name in April 2010 and was granted use of this name until April 2020. It is not known whether True Wireless has ceased using "Conexion Wireless" for its business in Texas or when this change may have occurred.³ All of these connections between Mr. Biddix, Mr. Cox and these above-referenced entities have not fully been addressed. To date, based on the information collected by the Florida PSC staff and these corporate records and commission filings, USAC believes that Mr. Biddix and/or Mr. Cox remain in control of these entities and the entities remain affiliated.

Additionally, our review indicates that BLC Management, LLC was affiliated with, owned and/or controlled by Mr. Cox in 2008 and was located at 11121 Highway 70, Suite 202, Arlington, TN 38002. In August 2010, the address was changed to the 6905 N. Wickham Dr., Suite 403, Melbourne, FL 32940 location, and Thomas Biddix was added as a corporate officer. In the 2009 time period, it appears that Mr. Cox was the listed corporate officer in corporate records, and thus, would have been responsible for the errors that were reported in March 2011 that occurred during 2009. Commission rules require that "[a]n officer of the eligible telecommunications carrier in a state that mandates state Lifeline support must certify that the eligible telecommunications carrier is in compliance with state Lifeline income certification procedures and to the best of his/her knowledge, documentation of income was presented." 47 C.F.R. § 54.410(b)(1). In states that do not mandate state Lifeline support, the officer of the eligible telecommunications carrier "must certify that the eligible telecommunications carrier has procedures in place to review income documentation and to the best of his/her knowledge, the carrier was presented with documentation of the consumer's household income." *Id.* at § 54.510(b)(2). Mr. Cox, as an officer and owner of BLC Management in 2009 was responsible for ensuring that BLC Management, LLC was in compliance

² USAC's review indicates that Three Dawg Mountain, LLC and Conexion Wireless, LLC were previously located at 11121 Highway 70, Suite 202, Arlington, TN 38002, one of the former locations of ATMS' BLC Management, LLC. The records also show that Mr. Cox was listed as the manager for these limited liability companies. USAC has requested copies of the relevant sales agreements and schedules demonstrating that Mr. Cox sold his interest in these two companies to Mr. Biddix and the dates the transactions occurred.

³ Counsel for True Wireless explained on May 25, 2011, that although True Wireless may have requested the use of this assumed name in Texas, the Texas Public Utility Commission would not allow True Wireless to conduct business under an assumed name. USAC is waiting further information from counsel on this issue.

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with program rules.⁴ This fact further supports USAC's determination that Mr. Cox's new company, True Wireless, LLC, should be responsible for the reported downward revisions and associated recovery amounts due from BLC Management, LLC in 2009, and from possibly other ATMS companies.⁵

USAC has a general obligation to protect the federal Universal Service Low Income Support Mechanism from waste, fraud and abuse, which harms all support mechanism participants by reducing the amount of available funds.⁶ In fulfilling this obligation, USAC is required to recover the \$12 million plus that was overpaid to BLC Management, LLC, Triarch Marketing, Inc., American Dial Tone, and Lifeconnex, LLC.⁷ USAC has determined, based on a review of publicly available information, that True Wireless, LLC is either affiliated with or under common control and/or ownership by the same parties responsible for the ATMS companies, namely Mr. Biddix and Mr. Cox. Therefore, pursuant to the requirements of *FCC 07-150*, USAC is hereby suspending federal Universal Service Low Income Support Mechanism disbursements to True Wireless, LLC until the full amount owed by BLC Management, LLC has been recovered. In addition, USAC will apply current and future requested disbursements to these companies against the outstanding amount.

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/li/about/filing-appeals.aspx>

Sincerely,

//s// USAC

⁴ On May 5, 2011, counsel for ATMS explained that BLC Management, LLC and the other ATMS companies did not retain copies of the certification forms that resulted in the revised FCC Forms 497 that were filed by the companies in March 2011 for 2009. (Counsel for ATMS is Ms. Danielle Frappier of Davis Wright & Tremaine LLP). USAC records also indicate that Mr. Cox signed the 2009 verification forms on behalf of BLC Management, LLC in 2009.

⁵ Filings with the Tennessee Regulatory Authority also show that Mr. Chris Melton is currently employed with Capital Communications Consultants, LLC, another company that was formerly owned by Mr. Cox and is currently located in Bartlett, Tennessee. In a proceeding before the Tennessee Regulatory Authority, Mr. Melton's current resume was submitted in April 2011 as an exhibit and it noted that he was employed with "BLC Management/Angles Communications/SC TXLink" from 2006 to 2010. This is yet another affiliation between the current employees and/or officers of True Wireless, LLC and the ATMS company, BLC Management that is not resolved by the purported sale of True Wireless, LLC by Mr. Biddix to Mr. Cox.

⁶ See *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, CC Docket 97-21, FCC 07-150, ¶ 30 (2007) (*FCC 07-150*).

⁷ See *FCC 07-150*, at ¶ 7 ("USAC...performs numerous functions including, but not limited to,...recovering improperly disbursed funds."); ¶30 ("...funds disbursed from the...low-income...support mechanism[] in violation of a Commission rule[]...should be recovered.").

Chris Melton
True Wireless, LLC
May 26, 2011
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cc: Ms. Danielle Frappier, Esq. Davis Wright & Tremaine, LLP

EXHIBIT 2

REDACTED PAGES 1-15 OF EXHIBIT 2

EXHIBIT 3



Non-docketed Pleadings

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Confirmation

Thank you for your submission. Please make a note of your confirmation number: IB2011000031

The following information was submitted with this Pleading:

Type of Pleading
LETTER

Date
01/05/2011

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