

December 12, 2011

Ex Parte Submission

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WC Docket No. 06-122, Universal Service Contribution Methodology

Dear Secretary Dortch:

On behalf of The *Compliance* Group (“TCG”), we are writing to inform the Federal Communications Commission (“Commission” or “FCC”) about a troubling Universal Service Administrative Company (“USAC”) policy which prevents service providers and their duly appointed representatives from obtaining guidance regarding the interpretation and application of Form 499 Instructions on an anonymous basis. This overly restrictive policy is unnecessary, lacks foundation, and ultimately creates the wrong incentive for the thousands¹ of small service providers across the country that seek to comprehend and comply with Commission Rules, but who are discouraged from doing so due to uncertainty regarding the Form 499 Instructions and fears that USAC will act unreasonably and beyond its limited authority in pursuit of its singular, myopic goal of generating increased Universal Service Fund (“USF”) contributions;² fears which were recently validated by the experiences of MeetingOne.com Corp.³

For reasons explained below, we ask the Commission to direct USAC to amend its policies in ways which create incentives for increased consultation and greater collaboration among USAC and industry participants, either directly or through designated representatives. Alternatively, we urge the Commission to adopt rules setting forth expedited procedures which would enable contributors (and potential contributors) a reasonable opportunity to obtain answers to their Form 499 reporting questions without enduring months, even years, of uncertainty and potential liabilities caused by the unreasonable delays which plague the current system.⁴

¹ As of October 2011, there were 6,437 carriers registered with USAC, of which 1,007 were identified as *de minimis*; this excludes the hundreds more unregistered service providers who continue to operate in the shadows, perhaps because they are unable to procure simple USAC guidance with respect to the Forms and Instructions this private corporation is responsible for administering. See *Universal Service Administrative Company Quarterly Report to the Commission*, Federal Universal Service Support Mechanisms Quarterly Contribution Base for the First Quarter 2012 (Nov. 2, 2011) at 6.

² See e.g., *The Mis-administration and Misadventures of the Universal Service Fund: a Study of the Importance of the Administrative Procedure Act to Government Agency Rulemaking*, 19 *CommLaw Conspectus* 343-393 (2011) (“Misadventures of the USF”).

³ See *MeetingOne.com Corp. Application for Review of Wireline Competition Bureau Order*, WC Docket No. 06-122.

⁴ See generally, *Misadventures of the USF*, *supra* at Fn. 2.

TCG is a consulting firm engaged in regulatory compliance reporting. Our mission is to make professionally-managed, software-enhanced regulatory compliance solutions available to telecommunications businesses of all sizes, from start-ups to Fortune 500 companies.

Affordability is a critical factor when it comes to regulatory compliance, particularly in today's dynamic communications industry which boasts of low entry barriers and unbridled competition – exactly what Congress envisioned when it passed the Telecommunications Act of 1996. Thanks to the Commission's continued effort to level the playing field between incumbent providers and new market entrants, the communications industry has attracted countless new entrants in recent years. These new companies help pave the way for the Commission's primary goals, increased competition, improved access to advanced communications services, and affordable deployment of basic telecommunications.

Even so, telecommunications service providers often encounter a dangerous thicket of complex and evolving regulatory compliance responsibilities which can trip up even the biggest corporations who can afford teams of attorneys to decipher the maze of regulations and shifting policies. It's no wonder small businesses, even those who enter the business with the best of intentions, find the coexistence of growing a business and fulfilling compliance objectives to be a challenge. Which is why many seek out affordable consulting firms like ours; and is precisely why USAC's policies should welcome our calls for assistance in comprehending the form instructions it is charged with administering (and enforcing). But even consultants are hamstrung by USAC's current policy, which mandates disclosure of the entity. No small business would knowingly subject itself to USAC's scrutiny and risk getting trapped into an intractable process which, all too frequently, results in draconian outcomes. To understand the dilemma, one must look no further than MeetingOne.com, a company which now "finds itself discriminated against [by USAC and the Wireline Competition Bureau] for having done the right thing – stepping forward in good faith" and openly seeking guidance.⁵

Taking proactive action in the interests of not exposing clients to unnecessary risks, on October 18, 2011, TCG filed a Request for Guidance with USAC asking for clarification and guidance. See [Exhibit 1](#). Our request sought guidance with respect to several reporting issues which are not readily answered either by reference to the FCC's published regulations or the plain language set forth in the Form 499 Instructions. USAC is a private corporation and, as such, its ability to respond to hypothetical questions or otherwise render guidance with respect to the form instructions it is tasked with administering (and enforcing) should not be unduly restrictive.

USAC responded to the Request for Guidance on November 2, 2011 ("USAC Response") and declined to answer any of our questions. See [Exhibit 2](#). USAC explained that "[b]ecause USAC must analyze each contributor question individually and its responses may vary depending on the specific factual circumstances of the particular contributor, USAC is not able to provide general responses to federal universal service reporting and contribution questions." USAC further stated "[t]o the extent that [TCG] inquires on behalf of its individual clients, [TCG] must be prepared to provide USAC with the Filer ID and/or company name of the client about whom it is inquiring."

⁵ *Supra* at Fn. 3.

Admittedly, telecommunications revenue reporting is an intricate and complex process in the current environment. It is no secret that the communications industry is evolving rapidly, and the Commission and USAC are struggling to keep pace. As communications services develop and incorporate new technologies, both start-up companies and legacy providers struggle to determine how the FCC's rules and the Form 499 Instructions apply to their services. It is imperative that these providers – whether directly or through their representatives – are able to seek guidance from USAC when questions arise and do so anonymously. These providers should not be required to implicate themselves when requesting guidance. Yet that is precisely the message that is sent by the experiences of providers like MeetingOne.com. Perpetuating this policy will discourage all providers from seeking guidance in the first place, thereby increasing the potential for incorrect revenue reporting, erroneous contributions and avoidance of compliance responsibilities.

To increase compliance and concurrently lay the foundation for a more even playing field, USAC's policies should create incentives and opportunities for all industry participants, not just the largest corporations, to achieve more accurate revenue reporting. The FCC can facilitate these positive changes by directing USAC to amend its policies in ways which stimulate collaboration and cooperation between the agency and the professionals whose primary objective is to help their clients achieve and maintain regulatory compliance.

If you have any questions or comments please feel free to contact the undersigned directly.

Respectfully Submitted,

/s/
Christopher A. Canter
Managing Consultant

Attachments

Exhibit 1

October 18, 2011

Richard Belden
Chief Operating Officer
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

Robert D. Binder
Director of Industry Support for the High Cost and Low Income Program
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

Re: Request for Guidance on Universal Service Contributor Filing Requirements

Dear Messrs. Belden and Binder:

I am writing on behalf of The *Compliance* Group, Inc., which provides regulatory compliance administration and consultative services to a wide range of companies registered with the Federal Communications Commission ("FCC") as Interstate Telecommunications Service Providers. We assist our clients in meeting regulatory reporting obligations, including filing the annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q).

Our clients – who represent practically all corners of the rapidly-evolving industry – have presented us with every revenue reporting issue imaginable. Most issues are easily resolved by consulting the Instructions to FCC Forms 499-A and/or 499-Q ("499 Instructions"). However, over the years we have encountered a number of non-routine reporting questions which are not readily answered by referencing either the 499 Instructions or the underlying FCC regulations. Because a number of these questions have come up repeatedly, we find it to be in the best interests of our clients and our firm to seek clarification and guidance from the Universal Service Administrative Company ("USAC"). We are presenting questions in a single request, herein, in the hopes that this will be more administratively efficient for USAC than if we submitted them piecemeal each time the question arises. Our specific questions follow:

- 1) Form 499-A Instructions provide that "gross revenues should exclude taxes and surcharges that are not recorded on the company books as revenues but are instead remitted to government bodies." Does the exclusion apply based on a billing method (i.e., do these charges appear as line items on a customer's bill) or an accounting method (i.e., are the amounts listed as separately identifiable components of revenue and netted out as liabilities or just listed as liabilities paid out of general revenues). In other words, under what circumstances would the exclusion apply?

- 2) We have advised clients who derive 100% of their revenues from international service that they are subject to indirect USF pass-through fees on all of those revenues, whereas carriers who qualify for the Limited International Revenue Exemption ("LIRE") (because over 88% of their combined interstate and international end-user revenue is from international service) will be designated as direct contributors, exempt from supplier pass-through fees and only subject to direct contributions on the interstate portion of their international and interstate end-user revenues, provided they exceed the *de minimis* exemption threshold. Is this understanding of the 499 Instructions correct? If not, how would each of these types of filers report revenues to avoid the discriminatory consequences of an indirect contributor being required to contribute nearly 10 times more than a direct, non-*de minimis* contributor merely by virtue of selling 100% international, as opposed to 88.1% international services?
- 3) What reporting option is available to a wholesale-only private carrier that is not required to contribute to TRS, support NANP and LNP, and pay annual FCC regulatory fees due to its status as a "private carrier" (i.e. not a "common carrier")? How can a private carrier whose only source of revenue is derived from other carriers use Form 499-A to: A) designate itself as a private carrier and B) exclude, or "back out," revenues derived from its non-common carrier services to avoid being invoiced for contributions and fees associated with TRS, NANP, LNP and FCC annual regulatory fees? Explained another way, does the Form 499-A permit a wholesale-only private carrier to report as end-user revenue the revenue it derives from carrier customers whose status as direct contributors cannot be established under the Carrier's Carrier Rule for purposes of its USF contributions, but exclude such revenue from being reported to the administrators of the other non-USF "Title II" programs (RLSA, Welch & Company, Neustar and FCC) applicable exclusively to common carriers?
- 4) Relatedly, if a reporting entity is exempt from contributing to TRS, NANPA and LNP by virtue of its status as a private carrier, must it also list these revenues on Line 511? And, if so, must a private carrier comply with the "carrier's carrier" rule with respect to the non-USF programs by obtaining its carrier customers' exemption certifications and verifying the continuing validity of a reseller's certification?
- 5) Can a *de minimis* telecommunications carrier opt to pay USF contributions directly on the basis of its end-user telecommunications revenue by stating that it is choosing to be a contributor on line 603 of FCC Form 499-A? If not, is there another method by which a *de minimis* carrier can elect to contribute directly to the USF?
- 6) May a private service provider use Line 603 to explain why it is exempt from contributing to the support mechanisms other than USF? If so, what is the process USAC undertakes to validate a Filer's designation in Line 603?
- 7) May a self-provisioning telecommunications provider use Line 603 to explain why a portion of its revenue is excluded from its gross revenues?
- 8) Should a provider of International Private Line services take into consideration the configuration of a circuit when determining the jurisdiction of traffic flowing over that circuit? A recent Petition for Review filed at the FCC seemed to indicate that it is USAC's

position that the physical location of all points in a private line circuit are not the only facts that should be considered to determine the jurisdiction of traffic carried over that circuit. This Petition seems to indicate that it is USAC's position that other factors, such as whether a circuit was configured as a closed network, whether the circuit interfaces with the carrier's POPs, and whether the circuit connects to the Internet should also be considered. Do these factors also apply to determine the jurisdiction of traffic carried over International Private Line Services?

- 9) In a recent decision concerning Clear World Communications, the Wireline Competition Bureau of the FCC indicated that 499 Filers would need sufficient evidence and documentation to support jurisdictional allocations of revenue, such as those derived from monthly recurring charges. The order mentions such evidence as tariffs, call detail records, rate plans, and usage reports, but states that other documentation could provide a basis to support a carrier's jurisdictional allocation of revenue. What other documentation would support linking monthly recurring charges to interstate, intrastate or international categories?
- 10) Does international-only services revenue (as listed on Line 412) encompass only traditional wireline telecommunications revenue, or does it also include satellite and wireless revenue? The Instructions indicate that international-only traffic "transmitted" over the United States should be identified on Line 412. What does USAC consider to be traffic transmitted over the U.S.? Is this traffic only over facilities physically located in the U.S. that the filer owns or controls? Or does this include all the underlying paths of the call?
- 11) We manage compliance services for several companies who provide wholesale IP-based transmission services. These companies transmit VoIP calls between other IP-enabled service providers and traditional telecommunications carriers, some of whom may provide service to end users and some who may interconnect with other telecommunications service providers. Traffic is transmitted entirely in Internet Protocol (IP) or Session Initiation Protocol (SIP) formats, and the wholesale companies have no ability to determine if voice traffic originates and terminates on the PSTN. How do these filers properly account for and report revenue for services that are "IP-in-the-middle" where the wholesale IP-based provider cannot determine the originating and terminating format of the call? For such IP-enabled services, what is the appropriate place to record revenue from these services on FCC Form 499? Where should companies report revenue for wholesale services that are known to originate and terminate on the PSTN?
- 12) How should a carrier whose only role in the transmission of a communication is to transmit a call in an IP format through the middle of a call path (without any knowledge of how the call originates, in what protocol it was initiated, and how the call terminates), source that revenue?

We understand also that some of these questions may relate to formal requests for guidance that USAC has already submitted to the FCC's Wireline Competition Bureau ("WCB"). Accordingly, we understand that USAC might only be able to respond to a portion of our questions. To the extent that any of the following questions is novel, and USAC cannot provide clarification, we respectfully request that USAC submit a letter request to the WCB seeking guidance.

If you have any questions about the changes described in this letter, please do not hesitate to contact me at mail@Compliancegroup.com.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Canter", with a long horizontal flourish extending to the right.

Christopher A. Canter
Managing Consultant, The *Compliance* Group, Inc.

THE
COMPLIANCE
GROUP

cc: Office of General Counsel
Universal Service Administrative Company

Exhibit 2



Via Electronic and Certified Mail

November 2, 2011

Christopher A. Canter, Esq.
Managing Consultant, The *Compliance* Group, Inc.
Associate and Compliance Division Counsel, The *CommLaw* Group
1420 Spring Hill Road
Suite 205
McLean, VA 22102

Re: Request for Guidance on Universal Service Contributor Filing Requirements dated October 4, 2011

Dear Mr. Canter:

The Universal Service Administrative Company (USAC) has completed its review of the letter you sent on behalf of the *Compliance* Group, Inc. (CGI), dated October 4, 2011. The letter states that the *Compliance* Group provides “regulatory compliance administration and consultative services to a wide range of companies registered with the [Federal Communications Commission (FCC or Commission)] as Interstate Telecommunications Service Providers” and describes CGI’s clients as representing “practically all corners of the rapidly-evolving telecommunications industry.” The letter further states that in the course of representing its clients, CGI has “encountered a number of non-routine reporting questions which are not readily answered by referencing either the [FCC Form] 499 Instructions or the underlying FCC regulations.” CGI informs USAC that because of the repetitive nature of these questions, CGI finds it to be “in the best interests of [its] clients and [its] firm to seek clarification and guidance” from USAC. CGI’s letter presents USAC with twelve detailed questions comprising approximately two full pages for which it seeks guidance.

As an initial matter, USAC wishes to advise CGI that it will be happy to answer any questions its individual clients may have regarding their federal universal service reporting and/or contribution obligations. USAC reviews the facts and circumstances around each contributor’s inquiry to provide a response. Contributors to the universal service support mechanisms are welcome to contact USAC staff at any time directly or through their counsel to request information or seek assistance with their federal universal service reporting and/or contribution obligations. Because USAC must analyze each contributor question individually and its responses may vary depending on the specific factual circumstances of the particular contributor, USAC is not able to provide general responses to federal universal service reporting and contribution questions. Moreover, USAC has limited resources that makes providing general advice (not specifically attributable to a particular USF contributor) infeasible.

Mr. Christopher Canter
The *Compliance* Group, Inc.
The *CommLaw* Group
November 2, 2011
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Please be advised that when contributors have engaged outside counsel to act on their behalf with respect to universal service matters, USAC has asked that these requests be directed to USAC's Legal department. This process will allow USAC Legal to work with the appropriate USAC employee(s) to obtain the requested information and/or answers in the most efficient and expedient manner possible. This process also ensures that the information USAC provides in response to inquiries from outside counsel remains consistent. To the extent that CGI inquires on behalf of its individual clients, CGI must be prepared to provide USAC with the Filer ID and/or company name of the client about whom it is inquiring.

Please do not hesitate to contact me or USAC's Office of General Counsel if you have questions regarding this letter.

Sincerely,

A handwritten signature in black ink, consisting of a long horizontal line that loops back up and over itself to form a stylized 'K' or similar shape.

Kristin K. Berkland
Assistant General Counsel

cc: Charles H. Helein, Esq., Partner, The *CommLaw* Group (via electronic and certified mail)
Johnathan S. Marashlian, Esq., Partner, The *CommLaw* Group (via electronic and certified mail)
Michael P. Donahue, Senior Associate, Esq., The *CommLaw* Group (via electronic and certified mail)