

April 18, 2012

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

In its most recent ex parte submission, the Ad Hoc Coalition of International Telecommunications Companies ("Coalition")¹ expressed its support for USTelecom's call for long-term, comprehensive changes to the Universal Service Fund ("USF") contribution system.² The Coalition also joined in USTelecom's call for interim reforms to address what USTelecom described as the "irrational and inefficient administrative processes that plague the current mechanism."³ By this letter, the Coalition directs the Commission's attention to the concerns and recommendations expressed by USTelecom specifically in regards to the Carrier's Carrier Rule.

USTelecom identified the Carrier's Carrier Rule as one of several irrational and inefficient processes in need of immediate reform, explaining that:

"The universal service processes surrounding wholesale/reseller situations are burdensome and ineffective. The current system effectively turns wholesale providers into enforcement agents of the Commission, requiring them to collect certifications from reseller customers attesting to USF contributions."⁴

USTelecom went on to explain that, "[i]t is unreasonable to place wholesale providers in the position of policing their competitors while requiring them to bear the financial risks associated with any disputes arising from the Commission's rules."⁵

¹ The Coalition is comprised of a wide variety of international long distance service providers, including domestic and non-U.S. corporations, wholesale carriers and retailers, subscribed and pre-paid providers, as well as Internet-based and IP-in-the-Middle providers that facilitate the transmission and routing of international communications over traditional switched networks and advanced, IP-based networks. For more information, visit: <http://www.telecomcoalition.com>.

² See Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from David B. Cohen, Vice President-Policy, USTelecom – The Broadband Association (Mar. 28, 2012) ("USTelecom Ex Parte").

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.* at 7.

USTelecom not only identified Carrier's Carrier Rule administration and enforcement as a specific problem, it offered the Commission a simple and practical solution:

"One way to improve the situation may be to eliminate the provider-to-provider certifications in favor a bright-line rule based on widely accessible information in a Commission-maintained database."⁶

By this submission, the Coalition expresses its enthusiastic endorsement of USTelecom's suggestion. Indeed, the Coalition presented a similar solution to the Commission in August 2010.⁷ The relevant portion of the Coalition's recommendation for reforming the Carrier's Carrier Rule is restated below for convenience:

A. STREAMLINED, SIMPLIFIED WHOLESALER VERIFICATION: Eliminate carrier-to-carrier exemption process in favor of a streamlined CCR with an improved verification process incorporating better technology and information.

NO FORMS, NO VARIATIONS. Simplify the process.

- Eliminate USF Exemption Forms, certifications and other attempts to enforce compliance and indirectly extract contributions through burdensome impositions on wholesalers;
- Abolish carrier-to-carrier/carrier-to-distributor industry-based enforcement, which has proven impossibly complex and which has resulted in imbalanced enforcement, opened doors to arbitrage and avoidance opportunities, and spawned countless private disputes, all of which threaten to dampen the dynamism of the robustly competitive international telecommunications market;
- Transition to all electronic Verification System which wields the combined power of technology, information and clear rules to achieve Congress' and the Commission's goals of ensuring a predictable, sustainable, and equitable USF.

CLEAR, BUT LIMITED DUTIES FOR WHOLESALE PROVIDERS. Impose limited, clearly defined responsibilities on upstream providers.

- Eliminate current system of complicated and shifting CCR obligations in favor of clearly defined rules with limited and defined responsibilities imposed on wholesalers; rules should be embodied in Code of Federal Regulations and clearly define wholesaler responsibilities with respect to:
 - Treatment of customers;
 - Recording and reporting of revenue; and
 - Consequences of non-compliance.(All to be assisted by improved technology and access to information (as explained below)).
- Clearly defined rules create certainty and facilitate the Commission's and the wholesale industry's shared interest in eradicating non-compliance, thereby ensuring sufficiency and greater predictability in funding the USF.

⁶ *Id.*

⁷ See Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Jonathan S. Marshlian, Coalition Counsel (Aug. 19, 2010) ("Coalition Recommendations Ex Parte").

BETTER TECHNOLOGY, BETTER INFORMATION, BETTER RESULTS. Provide wholesalers with better tools to determine how to treat each non-end-user customer.

- Replace current CCR with a technology-oriented approach which creates a simpler, more reliable carrier-to-carrier exemption process that no manual system can achieve;
- Develop a superior real-time database and online verification system to provide wholesale providers with information that goes beyond the basic “yes” or “no” indicator of a Filer’s contributor status;
 - Make available and publicize all applicable and claimed exemptions of all 499 Filers;
 - Establish rules which permit wholesalers to rely, with absolute certainty, on the validity of the public information for fixed timeframes;
 - Unless/until a customer notifies the wholesaler of a change in its publicized contributor status which would result in change to wholesaler billing practices, wholesaler should be lawfully permitted to rely on public information.
- Collect information on resellers from wholesalers on routine, confidential basis;
- Collecting information about wholesaler customers, infusing this information into a robust, reliable, real-time technology solution, and establishing clearly defined rules with clearly defined consequences which eliminate uncertainties can facilitate compliance from the top down, as well as the bottom up;

ELIMINATE UNCERTAINTY AND DEFINE CLEAR CONSEQUENCES.

- Require wholesalers to verify status of their resellers/distributors once, upon establishment of account (or, for existing accounts, upon implementation of new USF regime);
- Thereafter, limit consequences for wholesaler’s who demonstrate reliance upon customer status as reflected in enhanced Verification System;
- Define market-based consequences and mandate notice to resellers of the market-based consequences of a failure to register and/or promptly notify wholesaler of material changes in reseller status; thereby:

CREATE INCENTIVES FOR RESELLER/DISTRIBUTOR COMPLIANCE.

- Incentivize Reseller/Distributor compliance while decreasing burden on wholesale providers;
- Resellers/Distributors that fail to register and contribute directly will be assessed pass-through charges by wholesalers which may, in some cases, operate as penalties (*i.e. de minimis* by virtue of LIRE);
- Insulate wholesalers from vicarious liability.

IF ALL ELSE FAILS, AT MOST WHOLESALER LIABLE FOR ACTUAL RECEIPTS.

- On failure of downstream compliance, Commission must limit wholesaler contributions to actual receipts. Any other outcome is discriminatory and in violation of statute;
- Limiting wholesaler liability to actual receipts is consistent with FCC rules, simple to administer, and avoids problems faced by providers incapable of determining retail revenue.

As detailed above, the Coalition Recommendations Ex Parte lays out a plan for reforming the Carrier’s Carrier Rule which the Commission can readily and rapidly explore with the input of affected parties, all within the context of a fast-tracked “Interim Reforms” rulemaking proceeding. Adopting the measures suggested by USTelecom and the Coalition will provide much needed relief

and restore equity and competitive balance to a marketplace badly distorted by the current wholesaler/reseller regulatory scheme.

Should you have any further questions, kindly contact the undersigned at jsm@commlawgroup.com or (703) 714-1313.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JSM', written in a cursive style.

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