BINGHAM

Tamar E. Finn
Direct Phone: 202.373.6000
Direct Fax: 202.373.6001
tamar.finn@bingham.com

April 20, 2012

VIA ELECTRONIC FILING

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

Re: Notice of Ex Parte Communication, WC Docket No. 06-122

Dear Ms. Dortch:

On April 19, 2012, on behalf of U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific"), I met with Angela Kronenberg, Wireline Legal Advisor to Commissioner Mignon Clyburn. Nancy Lubamersky of TelePacific participated by phone. The purpose of the meeting was to discuss four principles the Commission should apply as it reforms the Universal Service Fund ("USF") contribution methodology.

First, the contribution methodology should not impose discriminatory obligations that vary based on ownership of facilities or type of leased facility (unbundled network element or special access). In April, 2010, the Wireline Competition Bureau reversed a USAC decision that would have imposed a direct USF obligation on the revenues from TelePacific's wireline broadband Internet access service because it incorporates T-1 transmission.[1] Although TelePacific showed that requiring an *indirect* USF contribution on the sale of the T-1 would violate the Act, rules and Form 499 instructions, the *Order* did not affirm TelePacific's right to certify a reseller exemption for T-1 circuits it purchases for use in its broadband Internet access service.[2] Imposing an indirect contribution on the sale of the transmission input — when TelePacific's ILEC and cable competitors are not subject to the same requirement — would violate Section 254 of the Act (which requires equitable and nondiscriminatory contributions), contradict the Commission's policy of a level playing field for cable and wireline providers of broadband Internet access services,[3] and violate the policy of competitive neutrality by imposing USF only on providers of broadband Internet access services utilizing certain

[1] *Universal Service Contribution Methodology; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, WC Docket No. 06-122, Order, DA 10-752 (WCB rel. Apr. 30, 2010).

[2] *Id.*, at ¶13.

[3] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶1-2 (2005).

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

leased local loop facilities.[4] TelePacific is a carrier that contributes directly to USF on those services that are subject to contribution. Requiring TelePacific to contribute to USF indirectly on a circuit-by-circuit basis where TelePacific uses a circuit as an input in wireline broadband Internet access, which is not subject to direct USF contribution, is inconsistent with Commission rules and FCC Form 499 Instructions that classify revenues as wholesale on an entity-by-entity basis. In short, the current carrier's carrier rule creates an exemption for telecommunications services used as inputs in broadband Internet access service when provided by a USF contributor such as TelePacific.[5] The Commission should review each proposed change to the contribution methodology to ensure that competitive neutrality is maintained, and should promptly remedy any unintended consequence that may result in USF obligations effectively picking winners and losers in the market.

Second, the Commission should ensure transparency in implementation of USF contributions. For example, the Commission should require USAC to publish generic descriptions of audit results and corrective actions required. The Commission cannot write 400 pages of USF regulations that govern each and every factual situation that may arise, but it can require USAC to make public how it applies the rules and Form 499 instructions in specific instances. The Commission should also put changes to the FCC Form 499 instructions out for notice and comment.

Third, both USAC and the Commission should resolve, on a timely basis, appeals and requests for guidance. While the current ninety-day timeframe for the Commission to resolve USAC appeals may be unrealistic, permitting appeals and requests for guidance to languish for years creates destabilizing uncertainty in the industry. The Commission should consider imposing a more reasonable deadline for resolving appeals and guidance, perhaps nine to twelve months, and enforce the deadline.

Fourth, the Commission should strive for administrative simplicity where possible, and in particular with respect to the reseller exemption process.

TelePacific looks forward to working with the Commission, USAC, and the industry to update the USF contribution methodology and make it a more rationale, equitable, and efficient system.

[4] Opposition of U.S. TelePacific Corp. d/b/a TelePacific Communications to Petition for Clarification or in the Alternative for Partial Reconsideration, Request for Review of a Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific d/b/a TelePacific Communications, WC Docket No. 06-122, at 5 (filed July 6, 2010).

[5] *Id.* at 10. While TelePacific is able to certify that telecommunications services it purchases to use as inputs in its broadband services are exempt from USF contributions under the Commission's rules, pure Internet Service Providers are unable to provide a similar certification since they are not providers of telecommunications or telecommunications services obligated to file a FCC Form 499. This disparity is ripe for the Commission's review and clarification.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

/s/ *electronically signed*

Tamar E. Finn

cc (by e-mail):

Angela Kronenberg