

June 25, 2012

Via Electronic Filing

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

**Re: Universal Service Contribution Methodology, WC Docket No. 06-122 and
GN Docket No. 09-51**

Dear Secretary Dortch:

On behalf of its member companies, supporters and countless service providers around the globe impacted by the Universal Service Administrative Company's ("USAC") administration of the Federal Communications Commission's ("FCC" or "Commission") universal service support mechanisms, the Ad Hoc Coalition of International Telecommunications Companies ("Coalition") hereby files its Comments in response to the Commission's Universal Service Contribution Methodology Further Notice of Proposed Rulemaking. The Coalition is a grassroots organization representing the interests of both U.S. and non-U.S. corporations, including international transport carriers, IP-in-the-Middle service providers, prepaid service providers, and a broad spectrum of entities providing wholesale communications services. The Coalition is committed to telecommunications regulatory reforms that achieve fairness and equality for companies providing international communications services to consumers in the United States through regulations that are balanced, clear and easy to implement, administer, comply with and enforce (*see www.telecomcoalition.com*).

The Coalition has been an active voice offering constructive criticisms focused on the administration of the Universal Service Fund ("USF") for several years. To date, the Coalition's comments have focused on improving the existing revenue-based system. At this juncture, the Coalition is not taking a position on the merits of retaining the revenue-based system or adopting an alternative USF contribution methodology. However, in the event the Commission maintains the revenue-based system (either during a transitional period or long-term), the issues the Coalition has raised in numerous filings must be addressed and resolved within the context of the Commission's initiatives announced in the FNPRM. In particular, the Coalition stresses the urgent need for the FCC to adopt the Coalition's recommendations for reforming the blighted Carrier's Carrier Rule and to resolve lingering uncertainties vis-à-vis wholesaler and carrier-to-carrier compliance duties.

The record is already replete with numerous ex partes, petitions and comments filed by the Coalition on USF contribution reform. Rather than re-file all of its pleadings which are already in the record, the Coalition has attached hereto summaries of all previous filings relevant to the Commission's USF Contribution Reform FNPRM. With this filing, the Coalition seeks to incorporate each submission, in its entirety, into the record of the FNPRM proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JSM', with a long horizontal flourish extending to the right.

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Ad Hoc Coalition of International Telecommunications Companies:

SUBMISSION FOR THE RECORD: WC DOCKET NO. 06-122

The following identifies and summarizes each substantive pleading filed by the Ad Hoc Coalition of International Telecommunications Companies ("Coalition") relevant to the Commission's USF Contribution Reform FNPRM.

Ex Parte Letters

[April 18, 2012 Ex Parte Letter](#)

On April 18, 2012, the Coalition filed an ex parte letter with the FCC expressing support for USTelecom's recommendations to improve the Carrier's Carrier Rule ("CCR"). The Coalition cited its August 2010 ex parte letter which presented a similar solution and summarized the key provisions of its proposal to eliminate the carrier-to-carrier exemption process in favor of a streamlined CCR with an improved verification process incorporating better technology and information. Specifically, the Coalition proposed that the FCC: (a) eliminate USF exemption forms in favor of an all electronic database; (b) adopt clearly defined rules with clear limited duties on wholesalers; (c) collect information on resellers and wholesalers on a routine, confidential basis and establish a real-time online database and verification system; and (d) require wholesalers to verify resellers' status only once and thereafter limit their liability at most to actual receipts.

[March 8, 2012 Ex Parte Letter](#)

On March 8, 2012, the Coalition filed an ex parte letter urging the Commission to immediately take action to prevent the inequitable and discriminatory consequences resulting from the Universal Service Administrative Company's ("USAC") policy forbidding *de minimis* contributors from electing to become direct USF contributors. As the Coalition explained, USAC enforces a policy that precludes *de minimis* contributors from voluntarily electing direct contributor status. This policy minimizes USAC's burdens, but foists excessive costs onto *de minimis* contributors (particularly those that are *de minimis* by virtue of LIRE) in the form of wholesale supplier USF surcharge pass-throughs. This consequence contravenes the FCC's original intent for *de minimis* providers to be wholly exempted from any contribution obligations.

The Coalition recommended that the FCC: (1) modify the Telephone Company Locator database to have a notation that indicates a particular Form 499 filer is *de minimis*, but only by virtue of the LIRE; (2) direct USAC to send a data field over to the FCC database that indicates a company is listed as a "NO" (non-contributor to the USF), but only by virtue of the LIRE; and (3) include in the next iteration of Form 499 instructions a notation that, for purposes of the CCR, any company that is a non-contributor by virtue of the LIRE should be treated by its suppliers as an end-user, but for the sole purpose of the U.S. interstate telecommunications revenue derived by the supplier from the end-user reseller, exempting any and all USF recoupment associated with international revenue.

[August 19, 2010 Ex Parte Letter](#)

On August 19, 2010, the Coalition submitted an ex parte letter outlining problems with the current USF contribution system. The Coalition pointed to unclear, ambiguous rules developed without transparency including the CCR as the chief offender. The Coalition proposed a number of

reforms. In addition to reforms identified in the April 18, 2012 ex parte letter (see above), the Coalition suggested: (a) expanding the scope of the USF contribution base to include clearly-defined "Distributors" of prepaid calling cards and other prepaid calling services which depend on multi-level distribution; (b) allowing *de minimis* distributors a choice to contribute directly to the Fund; (c) defining "prepaid" services and honoring distinctions between private and common carrier services; (d) honoring jurisdictional boundaries; (e) establishing an expedited review process for questions and concerns; and (f) following reform of the USF system with Telecommunications Relay Services ("TRS") Fund reform.

Of particular import in this letter is the call to the FCC to restore the common/private carrier dichotomy and honor the light touch regulatory treatment Congress intended for private service providers. The Coalition noted that the FCC has strayed from the principle, embodied in the Communications Act, that only common carriers are subject to all Title II obligations, and private service providers do not carry this heavy burden. For example, they are not required to contribute to the TRS Fund and should not be coerced into paying such contributions by USAC. Moreover, the FCC must address the complexities and uncertainties caused by the CCR due to the increased business interactions and transactions among carriers interconnected with the public network and the ever-increasing array and number of private service providers. While these issues are particularly important for international service providers (particularly wholesale only VoIP-in-the-Middle), they also impact domestic private network and private service providers.

[November 18, 2009 Ex Parte Letter](#)

In response to Reply Comments filed by Verizon and Verizon Wireless in the 06-122 Docket, on November 18, 2009, the Coalition submitted an ex parte letter to clarify certain mischaracterizations of its position on reporting and contributing to the USF based upon prepaid calling card ("PPCC") revenues. The Coalition clarified that it does not advocate exemption of all PPCC distributor revenues, but instead asks that the Commission instruct USAC not to treat revenues received from sales of PPCCs to third-party distributors as retail "end-user" revenues.

In addition, the letter advocates that any USF support system adopted by the FCC should achieve the objective of ensuring low cost, widely available international long distance. Furthermore, the Coalition showed its support for funding programs implemented consistent with basic concepts of fairness, thus imposing greater support burdens on those entities deriving the greatest benefits from the Public Switched Telephone Network ("PSTN"), consistent with Congress' intent, as affirmed in *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999)("TOPUC")("Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service."). As the TOPUC court intimated, the burdens must be balanced with the benefits, and it is insufficient for the FCC to simply proclaim that EVERY service provider benefits equally in its justification for requiring EVERY service provider to contribute equally. Congress and TOPUC require the FCC to weigh the burdens against the proclaimed benefits. The Coalition encouraged the Commission to reform not only the USF contribution system consistent with statutory and judicial intent, but to also address the unequal burdens imposed by the TRS Fund and other FCC program funding mechanisms.

Petitions for Declaratory Ruling

[First Petition for Declaratory Ruling or Rulemaking](#)

On February 12, 2009, the Coalition submitted its first Petition for Declaratory Ruling, or in the alternative for a Rulemaking to address the issues raised. The Coalition noted that the current USAC instruction, which treats non-contributing international telecommunications carriers as end-users, imposes inequitable and discriminatory indirect contribution obligations on these providers. The Coalition proposed that the Commission allow qualifying carriers to elect either to accept pass-through charges or to pay USF fees directly. To the extent that downstream resellers accept pass-through charges, they should be entitled to pass along their obligations to end-user customers.

The Coalition also asked the FCC to declare distributor revenues (which USAC treats as end-user revenues) as non-end-user revenues. Moreover, the Coalition urged the Commission to declare USAC's reporting instructions, requiring PPCC providers to report on the basis of face value, discriminatory and in violation of Generally Accepted Accounting Principles ("GAAP"). Alternatively, the Coalition requested that the FCC initiate a Rulemaking to consider these issues.

[Second Petition for Declaratory Ruling or Rulemaking](#)

On September 4, 2009, the Coalition submitted its second Petition for Declaratory Ruling, or, in the alternative, for a Rulemaking. First, the Coalition asked the Commission to declare USAC's reporting instruction, which treats revenues from sales to international only carriers as USF-assessable end-user revenues, invalid. The "rule" was promulgated in violation of the Administrative Procedure Act ("APA") and conflicts with Federal Court precedent (TOPUC) because it has the effect of imposing indirect assessments on certain carriers' international services revenue in excess of the carrier's total interstate revenue. Second, the Coalition urged the Commission to cease exercising jurisdiction over international only carriers in violation of the limits on its authority. In the alternative, the Coalition encouraged the FCC to initiate a rulemaking to consider these issues.

[Third Petition for Rulemaking](#)

In its third Petition for Rulemaking, submitted on February 16, 2010, the Coalition requests that the Commission open a rulemaking proceeding to evaluate the variety of deficiencies associated with the CCR and USAC's implementation and application of the Rule. The Coalition highlighted ambiguities in USAC's instructions which have led wholesale carriers to misconstrue and misapply the Commission's rules, imposing undue pass-through charges on resellers. The Coalition cited a number of petitions and other filings currently pending before the Commission which underscore the need for CCR reform. The Coalition asked the Commission to take steps to avoid these types of appeals in the future, by defining the specific parameters of the CCR through a formal rulemaking process, rather than continuing to give deference to USAC in such matters. Further, the Coalition urged the FCC to adopt and publish uniform rules in the Code of Federal Regulations and a standard Exemption Form to assist carriers with the USF exemption certification process.

Comments and Reply Comments

[Comments to USAC Request for Guidance](#)

On April 1, 2011, the Coalition filed comments in response to a request for guidance from the FCC by USAC. USAC presented the question whether it may base an "audit finding" (evidence of a rule violation) on post-dated reseller certificates submitted by contributing wholesalers to support

their expectation that a reseller would contribute directly to the USF. The Coalition reiterated its position as articulated in its petitions for declaratory ruling- that the CCR as applied by USAC is rife with inequities and violates FCC rules. Instead of addressing USAC's discrete question, the Coalition urged the Commission to consider the broader issues it raised in its petitions and to reform the entire carrier-to-carrier exemption process.

See also [USAC Guidance Request Comments](#)

[Reply Comments in TelePacific Matter](#)

In response to comments on a petition for reconsideration of a Bureau order granting TelePacific Corp.'s Request for Review of a December 2009 USAC decision classifying TelePacific's Internet access service as a USF-assessable interstate telecommunications service, on January 19, 2010, the Coalition filed Reply Comments. Therein, the Coalition renewed its request for the immediate suspension of all USAC and FCC enforcement of the CCR pending the conclusion of a rulemaking proceeding to vet issues and resolve industry-wide confusion regarding the CCR.

[Comments on NetworkIP Petition](#)

On September 8, 2009, the Coalition filed comments addressing Network Enhanced Telecom, LLP's ("NetworkIP") request seeking FCC review of the findings in its 2008 USAC audit, wherein USAC instructed NetworkIP to reclassify certain revenues reported as wholesale revenue as end-user revenue. The Coalition agreed with NetworkIP that USAC interpreted the CCR and exceeded the scope of its administrative authority when it rejected NetworkIP's documentation of compliance with the CCR.

[Reply Comments to First Petition for Declaratory Ruling or Rulemaking](#)

On June 22, 2009, the Coalition filed reply comments responding to comments raised on its first Petition for Declaratory Ruling or Rulemaking. The Coalition noted that all filed comments supported its Petition. The Coalition agreed with comments suggesting that forced re-classification of "wholesale" revenue as "end-user" retail revenue is unreasonable and unlawful. The Coalition also endorsed comments urging the FCC to invalidate reporting instructions requiring PPCC providers to report the "face value" of cards sold. Finally, the Coalition expressed its support for comments illustrating marketplace inequities facing *de minimis* resellers absent the opportunity to elect direct contribution.