



August 1, 2012

**EX PARTE**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

Re: WC Docket No. 06-122, U.S. TelePacific Corp. d/b/a/ TelePacific Communications

Dear Ms. Dortch:

COMPTEL writes in support of the positions taken by U.S. TelePacific Corp. d/b/a TelePacific Communications in the Notices of Ex Parte filed in the above-captioned proceeding on July 30, 2012, July 26, 2012 and April 20, 2012.<sup>1</sup>

The issue is whether the Commission should use an adjudicatory proceeding to change current FCC Form 499 instructions to require reseller certifications on a service-by-service basis. COMPTEL urges the Commission not to do so. The Commission is currently accepting comments in a rulemaking proceeding that proposes to reexamine the current rules and policies for assessing universal service contributions on revenues from broadband Internet access services as well as the respective contribution obligations of wholesalers and resellers. *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 12-46, Further Notice of Proposed Rulemaking (rel. Apr. 30, 2012). The Commission has recognized the need to modify the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into retail services that are not telecommunications services and therefore not subject to direct USF assessment under the current rules.<sup>2</sup> The Commission also noted, however, that “[i]ssues relating to contribution obligations of wholesalers and their customers are pending in a number of appeals of USAC

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<sup>1</sup> COMPTEL member Sprint does not join in these comments.

<sup>2</sup> *Universal Service Contribution Methodology* FNPRM at ¶143.

decisions” and that the Commission intends to address those issues “in the context of several adjudicatory proceedings in the near future.”<sup>3</sup>

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The Commission’s current rules do not require wholesale carriers to contribute to the universal service fund on the basis of their wholesale (carrier’s carrier) revenues so long as the carrier purchasing the wholesale service is itself a contributor to the fund.<sup>4</sup> Nor do the Commission’s current rules require carriers to contribute to the universal service fund based on retail revenues from broadband Internet access service.<sup>5</sup> In the *Wireline Broadband Order*, the Commission classified wireline broadband Internet access service as an information service and made explicitly clear that the “transmission component of wireline broadband Internet access is *not* a telecommunications service”<sup>6</sup> liable for contribution. COMPTTEL submits that the only reasonable and equitable interpretation of the Commission’s current rules and policies is that neither the wholesaler that sells the broadband transmission component to a reseller nor the reseller that incorporates that transmission component into a retail broadband Internet access service is subject to assessment on the revenues from the transmission component. If the Commission were to conclude otherwise in any of the pending adjudicatory proceedings - - i.e., conclude that broadband transmission wholesale revenues are subject to assessment and that wholesalers may pass those assessments through to their carrier customers – it would create a most unlevel playing field for carriers competing to provide broadband Internet access service, with the field unfairly tilting toward those carriers that own last mile facilities. Although the Commission does not directly assess end user revenues for broadband Internet access service regardless of whether the provider owns the last mile facilities or leases them from another carrier, assessing the wholesale revenues for the broadband transmission component would place the leasing carrier at a significant financial disadvantage in the retail market for broadband Internet access because that USF assessment would be added to the price of the transmission component.

COMPTTEL understands that requiring service-by-service reseller certifications would impose a significant administrative burden on both wholesale and resale carriers. Should the Commission expand the contribution base to include broadband Internet access revenues in the universal service contribution rulemaking proceeding, service-by-service reseller certifications

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<sup>3</sup> *Id.* at ¶145.

<sup>4</sup> *Universal Service Contribution Methodology* FNPRM at ¶144.

<sup>5</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 at ¶¶ 112-113 (rel. Sep. 23, 2005) (“*Wireline Broadband Order*”).

<sup>6</sup> *Wireline Broadband Order* at ¶4.

likely would become obsolete and carriers would be forced to incur additional costs to update their systems again to comply with the new contribution obligations.

In light of the fact that the Commission is reviewing the universal service contribution methodology on a more global basis in the Further Notice of Proposed Rulemaking, including

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reexamining what services should be subject to assessment and how those assessments should be made, the Commission should not make any determinations in the adjudicatory proceedings that would prejudice the outcome of that proceeding. Nor should the Commission impose additional costs on carriers to create administrative tracking systems that would only be used for a limited, interim period.

If you have any questions or need additional information, kindly contact the undersigned.

Respectfully submitted,

/s/

Mary C. Albert

cc: Michael Steffen  
Angela Kronenberg  
Christine Kurth  
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