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October 15, 2012

VIA ECFS

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

Re: *In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122; National Broadband Plan, GN Docket No. 09-51; Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops, RM-11358; Business Broadband Marketplace, WC Docket No. 10-188*
Notice of Ex Parte Communications

Dear Ms. Dortch:

On October 11, 2012, Nancy Lubamersky, Vice President Public Policy of U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific” or “Company”), the undersigned, and J.K. Hage III and Amy Porter Ossont of Hage & Hage Law and Consulting (by phone), met with Angela Kronenberg, Legal Advisor to Commissioner Mignon Clyburn and on October 12, 2012 met with Nicholas Degani, Legal Advisor to Commissioner Ajit Pai to discuss issues relating to universal service fund contributions and broadband over copper. Mr. Hage and Ms. Ossont did not participate in the meeting with Mr. Degani.

The participants discussed the USAC Guidance Order on circulation. TelePacific argued that service-by-service certification not only is administratively burdensome, but creates an unlevel playing field and unfair disadvantage for one carrier over another. Given that the Commission’s overarching goals include promotion of access to broadband and competitive neutrality, it makes no sense as a policy matter for the Commission to require a service-by-service reseller certification that undermines those goals. If the Commission is not prepared to level the playing field for broadband Internet access at this time, TelePacific urged the Commission to issue a narrow clarification order rather than amend the instructions to require, on a going forward basis, carriers that are direct USF contributors to certify reseller exemption on a service-by-service basis.

If the Commission nonetheless adopts a service-by-service certification prospectively, it should give carriers the flexibility to achieve the same result through different means. Specifically, to avoid costly and unduly burdensome processes in implementing the service-by-service exemption through a circuit ordering process, resellers should be permitted to continue to certify exemption on an entity basis if they implement other reliable methods to report actual cost or good faith estimates of revenue relating to the transmission component of wireline broadband Internet access service to ensure contribution to federal universal service support mechanisms.

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Because the practical difficulties of implementing a service-by-service certification for wholesale circuit orders are numerous, TelePacific estimates that it would need 12 months to plan, prepare, train and document requirements for implementation of such a new system. Because TelePacific uses a manual circuit ordering process, it would need to train 200+ customer service representatives which retail products require a wholesale circuit order from the underlying carrier's "end user" Billing Account Number ("BAN") that is not subject to a USF exemption. Moreover, a TelePacific customer might originally order only broadband Internet access and later change to an integrated service that includes voice and broadband. Under a service-by-service certification system, TelePacific would have to disconnect the T-1 circuit from the "end user" BAN and reconnect it under the reseller BAN each time a TelePacific customer changes services, which could result in unnecessary delays and potentially costly termination/reconnection charges by TelePacific's underlying carriers. Even if it is possible to develop systems to implement service-by-service certification, it makes no sense to require carriers to incur time and expense to develop such systems when action on the NPRM could obviate the need for such systems by expanding the contribution base to include retail broadband Internet access revenues.

Requiring service-by-service certification for T-1 special access inputs would unfairly disadvantage TelePacific vis-à-vis its competitors that own loop facilities and is an institutionalization of commercial inequality. If contributions on broadband Internet access, or the telecommunications transmission portion of the service, are necessary to ensure the sufficiency of the Fund, then the Commission should change the rules, prospectively and after public comment, so that all providers (wireline, cable, wireless, stand-alone ISP, etc.), whether or not they own loop facilities, contribute on an equitable and nondiscriminatory basis.

TelePacific explained that it has made substantial investments in deploying Ethernet over Copper ("EoC") capabilities and it needs regulatory certainty in order to continue making such investments. With EoC, TelePacific has used bare copper loops to bring broadband speeds of 10 to 50 Mbps to its small and medium sized business customers. For example, TelePacific was able to switch a school in Los Angeles from two T-1s providing 3 Mbps to EoC using 8 copper pairs that now offer 35 Mbps. Importantly, the price increase for this change was minimal. On average, the underlying cost of provisioning EoC using UNE loops is approximately one-tenth of that similar bandwidth provided over fiber. EoC also has the advantage of using existing plant so that carriers can avoid the time and expense of going through the permitting process and digging up streets to install new fiber. TelePacific believes that EoC has the potential to bring affordable broadband to small businesses, especially community and anchor institutions such as schools, libraries, and rural health care providers, who cannot afford fiber-based broadband. In short, EoC has the potential to speed up broadband deployment by using existing plant and increase broadband adoption rates where price is the primary reason for lack of adoption.

Under current FCC rules, if an ILEC retires the copper feeder TelePacific uses to serve the Los Angeles school, for example, it is not clear that TelePacific is permitted to

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object to such retirement.¹ Even if the ILEC retires the entire copper loop, if the FCC does not act on TelePacific's objection with 90 days, it is deemed denied and the ILEC may retire the copper, forcing TelePacific to look for other broadband solutions, some of which its customers may not be able to afford. This uncertainty hinders investment in affordable broadband over copper.

The California Commission requires an ILEC retiring copper to enter into good faith negotiations with its competitor-customer if the competitor seeks to purchase the copper loop or obtain access at negotiated rates.² While these rules provide competitive carriers and their EoC customers more procedural options, both FCC and California rules need to be updated to take into account the broadband capabilities that new technology makes possible over copper. TelePacific looks forward to working with the FCC and industry to update the rules so that they promote deployment of affordable broadband for small business customers.

Sincerely,

/s/ electronically signed

Tamar E. Finn

*Counsel for U.S. TelePacific, Corp. d/b/a
TelePacific Communications*

cc: (via E-Mail)

Angela Kronenberg
Nicholas Degani

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 at para. 283, n.829 (2003).

² California Public Utilities Commission, *Rulemaking Regarding Whether to Adopt, Amend or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, Decision No. 08-11-033 (Nov. 6, 2008).