

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
Proposed Changes to FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions)	

COMMENTS OF VERIZON AND VERIZON WIRELESS¹

For the first time, the Wireline Competition Bureau seeks comment on proposed changes to the FCC Form 499-A, Form 499-Q and accompanying instructions before those changes are implemented. This is a long overdue step in the right direction, which the Bureau should repeat annually, or more frequently as changes to the forms/instructions are proposed. In this case, certain of the proposed changes reflected in the Public Notice² and attachments³ require further clarification and/or modification, including: (1) the new definition of “affiliate” for Line 106 reporting purposes, which is not suitable for all circumstances; (2) the deletion of language from the Filer Revenue Information for Blocks 3 and 4 that addressed gross revenues, as no explanation has been given for that proposed change; and (3) the new reseller certification

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. and Cellco Partnership d/b/a Verizon Wireless (collectively, “Verizon”).

² See *Wireline Competition Bureau Seeks Comment on Proposed Changes to FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, Public Notice, 27 FCC Rcd 14382 (2012) (“PN” or “Notice”).

³ See, e.g., PN Attachment 2 (showing proposed changes to the Telecommunications Worksheet Instructions for FCC Form 499-A in redlined form).

language, which is both unclear and conflicts with the Commission's 2012 *Wholesaler-Reseller Clarification Order*.⁴

DISCUSSION

1. ***The Bureau should clarify and/or modify the definition of “affiliate” for purposes of entering information on Line 106 of the Forms.*** Just as with the current Forms, the proposed changes to the instructions for Line 106 require filers to “[e]nter a common identifier for all affiliated filers, typically the name of the filer’s holding company or controlling entity, if any.”⁵ Similarly, “[a]ll reporting affiliates or commonly owned entities” are required to provide the same holding company name and holding company IRS EIN on Lines 106.1 and 106.2.⁶ However, the proposed changes to this section include a new definition of “affiliate” that is not workable in all situations.

The proposed new definition of “affiliate” is borrowed from the Telecommunications Act, and defines an affiliate as a “person that (directly or indirectly) owns or controls, is owned, or controlled by, or is under common ownership or control with, another person.”⁷ In turn, “owns” is defined to mean “to own an equity interest (or the equivalent thereof) of more than 10 percent.”⁸

⁴ See *Universal Service Contribution Methodology*, Order, 27 FCC Rcd 13780 (2012) (“2012 *Wholesaler-Reseller Clarification Order*”).

⁵ PN Attachment 2 at 10.

⁶ *Id.*

⁷ See PN Attachment 2 (showing proposed redlined changes to FCC Form 499-A) at 10-11 (citing 47 U.S.C. § 153(2)).

⁸ *Id.* at 11.

This statutory definition of affiliate was put in place for a particular set of reasons. But it was not defined in this manner for purposes of USF reporting, and it does not make sense to simply graft that statutory definition of affiliate on here – in the revenue reporting context – where it does not necessarily fit.

For example, there may be partnerships or consortiums (or other filing companies) with multiple owners, some or all of which hold an ownership stake of 10 percent or more. In that case, it is unclear under the proposed definition of affiliate whether the partnership or consortium should list *each* of those entities with 10 percent or more ownership – particularly since the current form only has space for identifying one such entity. Indeed, given that limitation, the appropriate course in situations where there are multiple owners that meet the 10 percent threshold may be simply to list the majority owner (or entity with highest percentage share of ownership). But, without further clarity on what information the Bureau is seeking – or why it is seeking it – it is unclear how filing entities are to handle situations in which there are multiple owners that meet the 10 percent threshold.

Moreover, it is unclear whether the Bureau intends the proposed definition of affiliate to be used for purposes other than line 106 reporting. It is uncertain, for example, whether the new definition would require each member of a consortium or partnership to make the same election with respect to the use of safe harbors, simply because each member happens to own more than 10 percent of the consortium or partnership. That result obviously would be problematic. But further clarity is needed as to just what the proposed new definition of affiliate is intended to accomplish and what would be required by it, as that definition simply is not workable in all cases.

2. ***The Bureau should clarify why language regarding gross billed revenue was deleted from the Instructions for Blocks 3 and 4: Filer Revenue Information.*** Language addressing gross revenues is to be deleted from the instructions for the inclusion of Filer Revenue Information for Blocks 3 and 4 of the Forms, which now are proposed to no longer contain the explanation that “[g]ross billed revenues ... do not include revenues (imputed or otherwise) for services provided to the filer itself or from one wholly owned affiliate to another unless ...” certain, specified conditions are met.⁹ While unclear, it appears this proposed deletion reflects a substantive change regarding the reporting of gross revenue. However, no explanation is provided in either the Notice or the Attachments as to why this change is being proposed or what issue is being addressed by the proposed deletion.

To the contrary, the Notice merely states that this deletion was proposed “[i]n order to better reflect Commission precedent and rules,” without identifying *which* Commission precedent or rules or *how* the deletion better reflects them.¹⁰ For some filers, this language is likely material, addressing whether certain internal/affiliate transactions are subject to universal service assessments. For that reason, the Bureau cannot casually delete this sentence without some explanation about what the Bureau is trying to accomplish, particularly if there has been a change in law.

If the proposed deletion is intended to create a new standard or new expectation for how intra-company transactions are to be handled, then the Bureau should specify what that new standard or expectation is. Moreover, as a substantive matter, the Bureau must clarify that – by deleting this language – it does not mean to suggest that filing companies now have any

⁹ See PN Attachment 2 at 14.

¹⁰ Notice at 5.

obligation to impute revenues. But, in any event, further clarity is needed as to what this proposed change is intended to accomplish.

3. ***The Bureau should clarify the meaning of the proposed reseller certification language and ensure that such language does not conflict with the Commission’s 2012 Wholesaler-Reseller Clarification Order.*** The Attachments to the Notice reflect certain proposed changes ostensibly made “[p]ursuant to the recent *2012 Wholesaler-Reseller Clarification Order*,”¹¹ in which the Commission addressed a number of issues relating to USF contribution obligations of wholesale providers and their customers.¹² Among other things, the *2012 Wholesaler-Reseller Clarification Order* clarified the circumstances in which revenues constitute reseller or “carrier’s carrier” revenues and, therefore, are exempt from contribution to the fund.¹³

Purportedly in accordance with that order, the Attachments propose that filers may rely on a certification by their customers that their services were purchased for resale, thereby rendering the resulting revenues exempt from contribution.¹⁴ The proposed changes contemplate that, through December 31, 2013, such reseller certificates can continue to be “consistent with”¹⁵ the sample reseller certificate language from the 2012 Forms. After December 31, 2013, the

¹¹ See, e.g., PN Attachment 2 at 23-24. See also Notice at 4.

¹² See *2012 Wholesaler-Reseller Clarification Order*, ¶ 1.

¹³ See generally *id.* ¶ 3.

¹⁴ See, e.g., PN Attachment 2 at 23-24.

¹⁵ Rather than merely use language “consistent with” the text ultimately included in the instructions, all filers should be required to use the same standard language. Allowing each individual reseller to modify its certification language with unique additions, deletions or other modifications makes for a difficult, burdensome and time-consuming review process for filers – particularly those, like Verizon, that provide wholesale services to a large number of resellers.

proposal indicates that reseller certificates are to be “consistent with” one of two additional sets of alternative language that was proposed in the Commission’s *Contribution Methodology Reform and Modernization Further Notice*, but not adopted by the Commission.¹⁶ However, the difference between the latter two sets of alternative language is unclear, at least in part.

The first of the two proposed post-2013 sets of reseller certification language provides that:

I certify under penalty of perjury that the company is purchasing service which is incorporated into the company’s offerings. I also certify under penalty of perjury that either my company contributes directly to the federal universal service support mechanisms for those offerings that incorporate this wholesale service, or that each entity to which the company, in turn, sells those offerings has provided the company with a certificate in the form specified by Commission rules.¹⁷

The second set of proposed post-2013 language is presented as an alternative to the first set, setting forth certain common language and then directing the filer to check one of two additional paragraphs:

I certify under penalty of perjury that the company is purchasing service for [*sic*] which is incorporated into the company’s offerings. I also certify under penalty of perjury that:

(check one)

_____ The company contributes directly to the federal universal service support mechanisms for those service offerings that incorporate the wholesale service, or if the company resells the service to another contributor, that the company has received a certification from each customer in a form specified by

¹⁶ See PN Attachment 2 at 24 (citing *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012) (“*Contribution Methodology Reform and Modernization Further Notice*”). Under the proposal, language consistent with these two additional options also can be used prior to December 31, 2013.

¹⁷ PN Attachment 2 at 24.

Commission rules that the customer will contribute directly based on revenues from each such service.

_____ The company contributes on [number] percent of the revenues for services that incorporate the wholesale service, or has received a certification from its customer stating that the customer will contribute directly based on revenues from the service. On the remaining [number] percent of the revenues of the service that incorporates the wholesale service, the company does not directly contribute, and it does not sell that service to another contributor.¹⁸

...

While these are presented as two different post-2013 sets of language, it is unclear what the difference is between the first post-2013 set of language and the second post-2013 set of language where the customer checks the first box under that second option. Both appear to be directed at the same scenario. And, in both cases, the language is virtually identical. Therefore, it is not clear why both options are provided or necessary, and the Bureau should clarify what is intended or required by the two sets of language.

In addition, the proposed reseller certification language is inconsistent with the *2012 Wholesaler-Reseller Clarification Order*. Both the first set of post-2013 language and the first choice to be checked under the second set of post-2013 language contemplate that the customer is contributing to the fund for “those offerings” that incorporate the wholesale service. If the Bureau intends the reference to “those offerings” to mean that the customer is contributing to the fund on *all* of its offerings that incorporate the wholesale service, then the proposed certification language conflicts with the *2012 Wholesaler-Reseller Clarification Order*. The *2012 Wholesaler-Reseller Clarification Order* makes clear that – for purposes of determining the filer’s contributions – the customer is *considered a reseller* for the entire portion of the filer’s

¹⁸ *Id.*

revenue even if the wholesale service is incorporated into an offering that is only in part assessable telecommunications on which the customer contributes.

To be clear, a customer is still a reseller if it incorporates a wholesale service into an offering that ... is, at least in part, assessable telecommunications and contributes to the Fund for that service. Thus, if a customer purchases a DS1 line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service.¹⁹

* * *

... [I]f a customer purchases a DS1 line and incorporates that service into an offering of broadband Internet access service, it is not a reseller for purposes of that line because it has no obligation to contribute on those broadband Internet access services revenues. ... In contrast, a customer is a reseller if it purchases a DS1 line and incorporates it into an offering of telephone service (and contributes on that resale), even if it also provides broadband Internet access service on that line.²⁰

In addition, the second, percentage-based option under the second set of post-2013 language is similarly inconsistent with *2012 Wholesaler-Reseller Clarification Order*. That language appears to contemplate that the filer would contribute on a percentage of the revenues received from its wholesale customer, with that percentage determined by the assessable percentage of the *customer's* revenues from offerings that incorporate the wholesale service. That approach is at odds with the Commission's decision that a customer is considered a reseller for the entire portion of the filer's revenues even if the resold service is only in part assessable telecommunications on which the customer contributes. If, for example, a filer sells a DS1 circuit to a customer, and that customer incorporates that circuit into both telephone and

¹⁹ *2012 Wholesaler-Reseller Clarification Order* ¶ 34n.98.

²⁰ *Id.* ¶ 40 n.111.

broadband Internet offerings, *all* of the filer's revenue from that circuit is considered reseller revenue – not just the percentage of the customer's revenue from the resold offerings that is derived from telephone service.

Because the proposed post-2013 reseller certification language conflicts with the *2012 Wholesaler-Reseller Clarification Order*, the Form 499A reseller certification language cannot go forward. The proposed language is contrary to the express direction of the full Commission in the *2012 Wholesaler-Reseller Clarification Order*, which the Bureau does not have the authority to override. *See* 47 U.S.C. 155(c); 47 C.F.R. 0.5(c) and 0.291(a)(2).

The percentage-based approach is problematic in other respects, as well. For example, it is unclear whether the proposed language requires a customer to calculate the percentage that it reports to a wholesale carrier in real time, or whether the customer is permitted to calculate the percentage using historical data. And any percentage, if required, would have to be based on a traffic study or other sample data, as carriers cannot track all traffic, all the time. Similarly, it is unclear whether the proposed language requires the customer to update the percentage within 30 or 60 days whenever that percentage changes. But, in either case, it would be extremely burdensome if the new reseller language required customers to continually update the percentages that they report to underlying carriers, and for those carriers to continually change the percentages used in their Form 499 reporting and billing systems.

Given that the proposed reseller language is inconsistent with the *2012 Wholesaler-Reseller Clarification Order*, and given that several aspects of the proposed language are unclear and likely unworkable, the Bureau should not add the post-2013 reseller certification language to the Form 499 instructions at this time. Instead, the Bureau should make only those changes to that are necessary for the April 1, 2013 Form 499-A filing covering 2012 revenues. Because

new reseller language is not necessary for 2012 reporting, the Bureau should defer adding that language to the instructions in order to provide the Bureau and interested parties with additional time to develop revised reseller language that is both workable and consistent with the *2012 Wholesaler-Reseller Clarification Order*.

CONCLUSION

Verizon appreciates the opportunity for industry input on the proposed changes to the 499 Forms and accompanying instructions before those proposals are adopted. For the reasons set forth above, further clarification and/or modification is needed for the definition of “affiliate,” the deletion of language regarding gross revenues, and the proposed reseller certification language.

Respectfully submitted,

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