

SUMMARY

XO Communications, LLC (“XO”) appreciates this opportunity to provide comments on the Bureau’s draft revisions to FCC Form 499-A and its accompanying Instructions. Due to the role the Instructions play in the Universal Service Administrative Company’s (“USAC’s”) administration of the Universal Service Fund (“USF”), XO supports greater transparency and greater public input into the development of this guidance from the Bureau. XO offers its comments below in the spirit of improving the administration of the USF, but cautions that the *Public Notice* does not imbue the Instructions with greater legal significance than they enjoy today. As the Commission has noted several times – most recently in the *2012 Wholesaler-Reseller Clarification Order* – the Instructions are merely guidance to USAC and the industry; they are not themselves rules and they are not effective separate from applicable FCC orders and rules.

With this understanding in mind, XO offers its comments on the proposed changes to the 2013 Form 499-A and accompanying Instructions. XO recommends several additional changes to the reseller revenue section of the Instructions in order to better reflect the rulings adopted in the *2012 Wholesaler-Reseller Clarification Order*. In addition, XO supports the revisions to clarify that non-incumbent LECs are not required to assess a subscriber line charge (“SLC”), and recommends that the language be expanded to encompass any access recovery charges (“ARCs”) assessed by non-incumbent LECs. Finally, XO opposes revisions to make a purchasing carrier the guarantor of a seller’s compliance, and offers comment to clarify various other proposed changes to the Instructions.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Universal Service Contribution Methodology)

) WC Docket No. 06-122
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COMMENTS OF
XO COMMUNICATIONS, LLC

XO Communications, LLC and its affiliates (collectively, “XO”) by its attorneys, hereby submits these Comments on the Bureau’s proposed revisions to the 2013 Form 499-A.¹

I. **THE PUBLIC COMMENT PROCESS DOES NOT ALTER THE SIGNIFICANCE OF THE FORM 499-A INSTRUCTIONS.**

XO is pleased that the Bureau has sought public comment on its proposed revisions to FCC Form 499-A, 499-Q and the accompanying Instructions. Due to the role the Instructions play in the Universal Service Administrative Company’s (“USAC’s”) administration of the Universal Service Fund (“USF”), XO supports greater transparency and greater public input into the development of this guidance from the Bureau. XO offers its comments below in the spirit of improving the administration of the USF, but cautions that the *Public Notice* does not imbue the Instructions with greater legal significance than they enjoy today. As the Commission has noted several times – most recently in the *2012 Wholesaler-Reseller*

¹ *Public Notice*, Wireline Competition Bureau Seeks Comment on Proposed Changes to FCC Form 499-A, FCC Form 499-Q and Accompanying Instructions, WC Docket No. 06-122, DA 12-1872 (rel. Nov. 23, 2012) (“Form 499 Public Notice”).

*Clarification Order*² – the Instructions are merely guidance to USAC and the industry; they are not themselves rules and they are not effective separate from applicable FCC orders and rules. Applicable provisions of the Communications Act of 1934, as amended, (the “Act”) and the FCC orders and rules, duly adopted pursuant to the Act as well as requirements of the Administrative Procedure Act, remain as the only sources of binding obligations for contributors.

The authority delegated to the Wireline Competition Bureau to modify the USF forms is carefully limited to non-substantive changes to the rules. In 1997, the Commission delegated to the then-Common Carrier Bureau authority to revise the USF forms in order to promote the sound and efficient administration of the USF.³ In its 1999 *Carrier Contribution Reporting Requirements Order*, the Commission clarified that this delegation was limited in scope.⁴ Specifically, the Commission explained the limitations on the authority delegated to the Bureau as follows:

These delegations extend to administrative aspects of the requirements, e.g., where and when worksheets are filed, incorporating edits to reflect Commission changes to the substance of the mechanisms, and other similar details. . . . We reaffirm that this delegation extends only to making changes to the

² *Universal Service Contribution Methodology, et al.*, Order, WC Docket No. 06-122, FCC 12-134 (rel. Nov. 5, 2012) (“*2012 Wholesaler-Reseller Clarification Order*”); *see Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, Order, 24 FCC Rcd 10824 (2009) (“the instructions are indeed guidance from the Commission”); *In re Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, 25 FCC Rcd 14533 (WCB 2010) (“while the Commission does not dictate what procedures a carrier must implement to meet the ‘reasonable expectation’ standard, the agency has provided guidance in the FCC Form 499-A instructions to assist wholesale carriers”).

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18442, ¶ 81 (1997).

⁴ *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, 14 FCC Rcd 16602, 16621, ¶¶ 39-40 (1999) (“*Carrier Contribution Reporting Requirements Order*”).

administrative aspects of the reporting requirements, not to the substance of the underlying programs.⁵

Within this limited delegation of authority, XO supports the greater transparency and greater public input resulting from the *Public Notice*. These public comments will assist the Bureau in refining its guidance to USAC and in ensuring its Instructions promote the sound and efficient administration of the USF. But XO cautions that this process does not convey greater legal significance upon the Instructions than they enjoy today. That is, the Bureau may continue to modify the “administrative aspects” of the USF reporting requirements, but may not make substantive changes to the program.

This distinction is key. In many places, the Instructions address areas that have been the subject of complex FCC decisions, sometimes enacted over a period of years. It is unrealistic to expect the Bureau to distill all FCC orders into concise and binding re-statements in the Instructions. No public notice process could bear the weight of such a task. Either the result would be Instructions that fail to capture the entirety of the FCC orders or the entire process would rapidly become a quagmire as interested parties re-fight battles decided in separate proceedings. Moreover, the Bureau does not have rulemaking authority, and thus cannot, by whatever process, adopt binding rules.⁶

Therefore, the object of this exercise of seeking public comment on proposed revisions to the Instructions should be to refine and clarify guidance to be given to USAC and the industry. Both the Bureau and USAC should recognize the limitations of this guidance, particularly in the limited ability of the Instructions to reflect via shorthand statements the

⁵ *Carrier Contribution Reporting Requirements Order*, ¶¶39-40.

⁶ 47 C.F.R. § 0.291(e) (“The Chief, Wireline Competition Bureau, shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing”).

complexity and nuances of FCC orders. XO recommends that the Bureau modify page 2 of the Form 499-A Instructions to read as follows (deleted language appearing as ~~strikethrough text~~; new language appearing as double underlined text):

Although some Telecommunications Reporting Worksheet filers may not need to contribute to each of the support and cost recovery mechanisms, all telecommunications carriers and certain additional telecommunications providers must file. ~~These instructions explain which filers must contribute to the particular mechanisms, but filers should consult the specific rules that govern contributions for each of the mechanisms.~~⁴ In general, contributions are calculated based on each filer's end-user telecommunications revenue information, as filed in this Worksheet.

These instructions provide guidance to the Administrator and filers on how to comply with the Commission's rules and orders. These instructions explain which filers must contribute to the particular mechanisms, but filers should consult the specific rules and orders that govern contributions for each of the mechanisms.⁴ Strict compliance with the instructions is not the only means for a contributor to satisfy the rules and orders. The Administrator shall consider all relevant evidence demonstrating the contributor's compliance with the rules and orders and shall refer matters directly to the Commission to the extent it cannot determine from the facts presented whether the contributor has complied with the Commission's rules and orders.^[m] [New footnote: 47 C.F.R. § 54.702(c); Universal Service Contribution Methodology, et al., Order, WC Docket No. 06-122, FCC 12-134 ¶52 (rel. Nov. 5, 2012).]

This proposed addition moves a sentence from the preceding paragraph in the current instructions into a new paragraph, adds language derived from the *2012 Wholesaler-Reseller Clarification Order* at paragraph 51, n.125 (“we are not, in fact, treating strict compliance with the instructions as the only means for a contributor to meet the ‘reasonable expectation’ standard”) and at paragraph 52 (“we direct USAC to refer matters directly to the Commission to the extent it cannot determine from the facts presented whether the provider has demonstrated a reasonable expectation either by relying on the guidance in the FCC Form 499-A or other reliable proof”), and adds a reference to the limitation on USAC's authority contained in

section 54.702(c) of the Rules (“where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission”).

Collectively, these revisions confirm that the Instructions are guidance, not binding rules.

II. THE INSTRUCTIONS IMPLEMENTING THE 2012 WHOLESALER-RESELLER CLARIFICATION ORDER SHOULD BE FURTHER REVISED TO BETTER REFLECT THE RESELLER PROCEDURES

In the *2012 Wholesaler-Reseller Clarification Order*, the Commission instructed the Bureau to issue a public notice seeking comment “on any revisions that should be made to the FCC Forms 499 and instructions for reporting 2012 revenues in 2013, taking into account our directive [to modify the existing sample certificate language].”⁷ The Bureau’s proposed changes in response to this directive appear on pages 22-25 of the Form 499-A Instructions.⁸ XO believes that the Bureau’s changes inadequately reflect the *2012 Wholesaler-Reseller Clarification Order* and should be revised as follows:

Continued use of the 2012 reseller certification language. At pages 23-24, the Bureau’s proposed instructions state that a provider may demonstrate compliance with the reasonable expectation standard by relying on certificates consistent with the existing sample certification language. This instruction only partially implements the ruling in the *2012 Wholesaler-Reseller Order* relating to the transition period. First, the Bureau should clarify that a wholesale provider may rely upon this language for wholesale revenue received through December 31, 2013 (not just “through December 31”). Wholesale providers choosing this alternative will be relying upon these certifications for purposes of the 2014 Form 499-A, which will be submitted in April 2014 (reporting 2013 revenues). To avoid any confusion, the instruction should reflect that a wholesaler may rely upon the sample certification language to

⁷ *2012 Wholesaler-Reseller Clarification Order*, ¶ 51.

⁸ *See Form 499 Public Notice*, at 4.

demonstrate a reasonable expectation with respect to any revenue received during the permitted transition period.

Second, the instruction should be modified to include the clarification that it is sufficient for resellers to provide these certificates through this time period as well. It is possible that some wholesale providers will migrate to new certification procedures that purport to require more specific information than the current certification language allows. A reseller may not yet have the capability in 2013 to provide this certification, so it must retain the option to certify according to the current certification language.⁹ The instruction should state that, regardless of which certificate a wholesale carrier requests, for the period through December 31, 2013, a reseller may choose to provide certification using the language contained in the current instructions and that a wholesale carrier must accept such a certification during this period.

Third, the instructions should not delete (at p. 23) references to a wholesale carrier's use of the FCC's USF filer database for verification purposes. The *Form 499 Public Notice* explains that the Instructions were "revised to delete the suggested procedure to check the Commission's website to ascertain whether a carrier customer is a contributor to the USF, because such action, by itself, is insufficient to satisfy the reasonable expectation standard."¹⁰ While checking the list may not be sufficient, by itself, to establish that an entity meets all the requirements to be classified as a reseller, this database provides the only contemporaneous and objective evidence of whether a reseller contributes to the USF. Evidence that a wholesale carrier has checked this database is evidence of the carrier's exercise of due diligence to classify its reseller customers. The Bureau should retain this portion of the Instructions as evidence of

⁹ See *2012 Wholesaler-Reseller Clarification Order*, at ¶ 41 ("Likewise, we will consider it sufficient for customers to provide certificates to wholesalers that are consistent with the sample language in the 2012 instructions for the same time period").

¹⁰ *Form 499 Public Notice*, at 4.

due diligence that would support the reasonable expectation standard. Moreover, for 2013 revenues, this evidence is part of the 2012 sample certification procedure, and thus would be sufficient to demonstrate due diligence in qualifying a reseller customer. Therefore, this language should be retained in the Instructions.

Use of new certification language in 2013. In replacement of the current sample certification language, the Bureau proposes (at pp. 24-25) to allow wholesale carriers to use any of several alternative certifications proposed in the *Contribution Methodology FNPRM* issued in April of 2012.¹¹ However, inclusion of these certifications in the Instructions is premature and should be deleted. As the Bureau’s proposed changes note, these alternatives are merely under consideration in the *Contribution Methodology FNPRM*. The Commission has not adopted these alternatives, and several parties have raised questions concerning at least some of the alternatives.¹² It is inappropriate to include within the Instructions mere proposals that have not been adopted by the Commission, as the Bureau lacks delegated authority to make substantive changes to the USF program. The Instructions should not be revised to include any of these alternatives unless and until such alternatives have been formally adopted by the Commission.

Therefore, XO recommends that the Bureau not provide for any specific alternative certification language at this time. The Instructions’ reference to the definition of a “reseller” (at p. 23) provides sufficient guidance to wholesalers and resellers in the absence of action by the Commission in the *Contribution Methodology FNPRM*. Thus, a wholesale carrier should be permitted alternatively to use any certification that confirms that the reseller (or, as

¹¹ *Universal Service Contribution Methodology; A National Broadband Plan for our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC12-46 (rel. April 30, 2012) (“*Contribution Methodology FNPRM*”).

¹² *See, e.g.*, Comments of Verizon, WC Docket 06-122, filed July 9, 2012, at 18-19 (discussing problems with percentage-based certifications proposed in the *Contribution Methodology FNPRM*).

recognized by the rules currently, each of the reseller's own resellers) "is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications services into its own telecommunications offerings; and (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from such offerings when provided to end users."

Sufficiency of compliance with the reasonable expectation standard. XO further recommends that the Bureau revise the statement (at p. 25) that, "Filers that do not comply with the above procedures will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users." This statement conflicts with the holdings of the *2012 Wholesaler-Reseller Clarification Order*. First, it is not correct that failure to comply with the Instructions, by itself, constitutes a failure to comply with the FCC's rules. For the reasons explained in Section I above, the Instructions are not binding rules; they are merely guidance. The Commission confirmed this several times in the *2012 Wholesaler-Reseller Clarification Order* when, for example, it clarified that a wholesale carrier may demonstrate a reasonable expectation either by complying with the safe harbor procedures described in the Instructions *or* by presenting other reliable proof of a reasonable expectation.¹³ Thus, compliance with the procedures specified in the Instructions is not the only method of establishing compliance with the FCC's rules.

Second, even if the wholesaler cannot establish compliance with the FCC's rules to demonstrate a reasonable expectation for classifying reseller revenues, it does not follow that the wholesale carrier necessarily will be responsible for additional USF assessments. The *2012*

¹³ See, e.g., *2012 Wholesaler-Reseller Clarification Order*, at ¶ 52 ("If a wholesale provider follows procedures that deviate in any way from the guidance in the Form 499-A instructions, USAC should determine whether that provider has demonstrated a reasonable expectation using the 'other reliable proof' standard").

Wholesaler-Reseller Clarification Order held that USAC may not attempt to recover USF contributions from a wholesale provider if its customer, in fact, contributed to the USF on the revenues in question.¹⁴ Wholesale carriers are permitted to present any evidence, including confirmatory certificates, to demonstrate that its customer (or the customer's customer) actually contributed to the USF.

XO therefore recommends that this sentence be replaced with the following language instead:

If a filer is unable to demonstrate a reasonable expectation either through compliance with the above procedures or through other reliable proof, the revenue may be reclassified as end user revenue and the filer may be responsible for additional universal service assessments on the revenue if the filer's customer (or the customer's customer) did not, in fact, contribute to the USF mechanisms based on the relevant services. The filer may submit evidence demonstrating that the customer (or the customer's customer), in fact, contributed on the relevant services (including confirmatory certificates executed by the relevant customer) and bears the burden of proof to establish that such contributions were made.

III. THE INSTRUCTIONS' ERRONEOUS LANGUAGE REGARDING SUBSCRIBER LINE CHARGES SHOULD BE ELIMINATED.

XO supports the Bureau's proposal to revise its instructions for revenues to be reported on line 405 of the Form 499-A (p. 17). Line 405 relates to certain charges authorized or required by the Commission's regulation of incumbent local exchange carriers, including the subscriber line charge ("SLC"), Access Recovery Charge ("ARC") and Presubscribed Interexchange Carrier Charge ("PICC"). In the draft changes, the Bureau proposes to delete

¹⁴ *Id.* at ¶ 44 ("we clarify that if a wholesale provider's customer actually contributed, USAC should not attempt to recover contributions from the wholesale provider on the subject revenues, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that its customer would contribute when it filed the Form 499 revenue data").

language that failed to reflect FCC rules accurately and replace it with language that acknowledges that competitive LECs are not required to assess these charges and therefore have flexibility in determining where to report similar revenues.

Specifically, the Bureau proposes to delete the following two sentences from the current Instructions for local exchange revenue (line 404):

Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Filers without subscriber line charge revenue must identify the interstate portion of the fixed local exchange service revenues in column (d) of the appropriate line 404.1

XO supports deletion of these two lines. As the *Form 499 Public Notice* notes, deletion of these instructions will better reflect Commission precedent and rules.¹⁵ Nothing in the Commission's rules requires non-incumbent LECs to assess a SLC, nor do the rules require non-incumbent LECs to allocate a portion of their local exchange revenues (generally, intrastate revenues) to the interstate jurisdiction. Deletion of these two sentences will avoid any confusion on these points and will preclude USAC from requiring competitive LECs to report SLC-like revenues in an interstate revenue column.

XO further agrees that the Bureau's replacement instruction – added to line 405 – correctly acknowledges that competitive LECs are not required to assess a SLC. If a competitive LEC chooses to recover interstate costs by assessing a non-traffic sensitive charge for interstate services or interstate access services, then the filer should report such revenue on line 405. Similarly, if the competitive LEC does not assess an interstate charge, no revenue should be

¹⁵ See Form 499 Public Notice at 3.

reported on line 405 (and, due to the deletion of the erroneous instruction to line 404, no allocation need be made from local revenues).

XO recommends that the Bureau expand the instruction to line 405 (p. 17) to also address charges assessed by competitive LECs to mirror the ARC. Like the SLC, the ARC is a charge that is regulated only with respect to incumbent LECs.¹⁶ Competitive LECs are not required to assess the ARC, although some may do so to mirror access rates and rate structures in specific markets. If a competitive LEC assesses the ARC, it, too, should report such revenues on line 405. XO recommends that the Instructions be revised to address these optional ARC-like charges. It may do so by revising the proposed instruction as follows (additions denoted by double underlined text):

Although the Commission does not regulate federal subscriber line charges or the ARC for non-incumbent LECs, to the extent that non-incumbent contributors choose to recover a non-traffic sensitive charge for ...

Similar changes should be made in footnote 41 (p. 17) to clarify that non-incumbent LECs may choose to assess a charge similar to the incumbent LEC's ARC.

IV. OTHER CHANGES

A. The Bureau's clarification of types of carrier's carrier revenue is appropriate.

The *Form 499 Public Notice* states that the discussion of carrier's carrier revenues was revised to add additional examples of revenue that always should be reported in Block 3 (carrier's carrier revenues) instead of Block 4 (end user revenues).¹⁷ With this change, the

¹⁶ In the *USF/ICC Transformation Order*, the Commission allowed incumbent LECs to assess an ARC on certain wireline telephone customers in order to compensate for access reductions prescribed by the access charge reform rules. *Connect America Fund, et al.*, 26 FCC Rcd 17663, 17956-61 (2011).

¹⁷ *Form 499 Public Notice*, at 4.

instructions now list per-minute switched access and reciprocal compensation charges, per-call payphone compensation payments, universal service support revenues, roaming revenues, and physical collocation charges as charges that always should be listed in Block 3 (p. 23). XO agrees that these charges are carrier's carrier revenues, and further that the reseller certification/reasonable expectation standard does not apply to the classification of these revenues.

B. The Bureau should not revise the Instruction relating to Mergers and Acquisitions.

The *Form 499 Public Notice* states that changes are made to pages 9 and 14 of the Form 499-A Instructions relating to the obligations to report revenues of acquired entities.¹⁸ The upshot of the changes, however, appears to be to place the purchaser in the position of a guarantor of the seller's reporting practices. For example, at p. 9 of the Instructions, the Bureau proposes to add a statement that, "it is the successor company's responsibility to ensure that the revenues for both companies for the previous calendar year are accounted for in their entirety" (p. 9, emphasis added). It then continues at p. 9 to make the successor's obligation to file a certain way contingent upon whether the acquired company files its own Form 499-A. XO opposes these changes.

At the outset, XO notes that the USAC policy dealing with mergers and acquisitions has been in place since 2000¹⁹ and the Form 499-A Instructions have contained the same language from 2007 through 2012.²⁰ Some form of the instruction, with slightly varying

¹⁸ *Form 499 Public Notice*, at 3.

¹⁹ See USAC Board of Directors Minutes, January 25, 2010, "Procedures for the Required Filing and Follow-Up of Contribution Reports for Companies involved in the Transfer and/or Sale of Assets."

²⁰ See 2007 FCC Form 499-A, Telecommunications Reporting Worksheet (Nov. 2007, OMB Approval 3060-0855), Instructions at 12.

language has been in place since the 2000 Form 499-A.²¹ At no time, however, have the Instructions stated that the successor company is responsible to ensure that the acquired company's revenues are reported or that its obligations depend upon the post-close actions of the acquired company.

Since the 2012 Form 499-A, there have been no FCC orders addressing the reporting of revenues in mergers and acquisitions. Without FCC rulings on the reporting of revenues from mergers and acquisitions, it is unclear (at best) on what basis the Bureau proposes the changes. Because the Bureau is not permitted to make substantive changes to the USF programs or rules, the changes it proposes regarding mergers and acquisition are beyond the Bureau's delegated authority to revise the Form 499 filings.

More fundamentally, the proposed changes would impose significant new burdens on acquiring carriers. Purchasers of telecommunications businesses are unable to control the actions of the seller in a transaction. Depending upon the timing of the transaction, moreover, due dates for an FCC Form 499-A can be up to 15 months after the transaction closes. A purchaser cannot control whether a seller does or does not fulfill its post-close responsibilities under the Act and the USF rules. It is not appropriate, therefore, to make the purchaser, in effect, a guarantor for the seller's future compliance with the rules. The addition of language in the USF Instructions that appears to impose such a responsibility should be stricken.

²¹ 2000 FCC Form 499-A, Telecommunications Reporting Worksheet (Feb 2000, OMB Approval 3060-0855), Instructions at 8 ("Contributors should not file a revised April 1 Form 499-A Telecommunications Reporting Worksheet to reflect mergers, acquisitions, or sales of operating units. In the event that a contributor that filed a Form 499-A no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make payments, if any, for the funding period. However, filers should notify the universal service administrator so that the second half revenue of the surviving entity can be calculated as the total combined revenue for the year minus the first half revenue of each predecessor entity.")

C. The Bureau should not revise the Instruction relating to revenues from affiliates.

The *Form 499 Public Notice* proposes to delete certain language relating to the reporting of revenues from affiliates. Specifically, on p. 14 of the Instructions, the Bureau proposes to delete the following statement:

Gross billed revenues also do not include revenues (imputed or otherwise) for serviced provided by the filer itself or from one wholly owned affiliate to another unless: (1) the filer is required to record such revenues for some other federal or state regulatory purpose; or (2) the filer is providing service to an affiliate for resale and the affiliate is not a direct universal service contributor.

The only explanation offered for this change is that the deletion will “better reflect Commission precedent and rules.”²² No explanation is provided of how the deletion of this language will reflect FCC precedent or rules, or what rule or order is allegedly in conflict with the quoted language. XO is not aware of any FCC order in 2012 that modifies the definition of gross billed revenues for USF purposes. Nor is it clear whether such revenues are or are not to be reported after the deletion takes effect. XO recommends that the Bureau abandon this change in the Instructions and retain the quoted language instead.

D. The Bureau should revise the Instruction to clarify that all revenue from VoIP-PSTN Traffic may be reported on line 304.1.

The *Form 499 Public Notice* notes that changes were made to p. 16 of the Instructions (line 304) to allow reporting of per-minute charges for originating or terminating VoIP-PSTN traffic.²³ In the Instructions, the Bureau adds language clarifying that line 304 includes all per-minute charges for originating or terminating calls, including charges relating to VoIP-PSTN traffic (p. 16). XO is concerned, however, that the instructions for lines 304.1 and

²² *Form 499 Public Notice*, at 5.

²³ *Form 499 Public Notice*, at 2. These changes are the result of rule changes stemming from the *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011).

304.2 may appear to require providers to split their reporting of charges related to VoIP-PSTN traffic. Specifically, line 304.1 currently states that per-minute charges “provided under state or federal access tariffs” are to be reported on this line. Per-minute charges provided under UNE arrangements “or other contract arrangements” are to be reported under line 304.2.

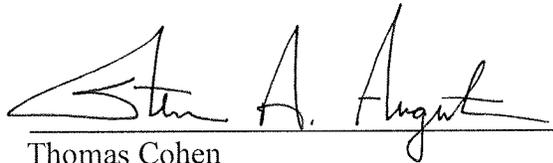
XO collects per-minute charges for VoIP-PSTN traffic both pursuant to its tariffs and pursuant to contractual arrangements with other carriers. XO does not distinguish in its revenue reporting between revenues related to VoIP-PSTN traffic received via tariff and via contracts, however. In order to avoid requiring carriers such as XO to distinguish unnecessarily between tariff-based and contract-based charges for VoIP-PSTN traffic, the Instruction for line 304.1 should be revised to encompass all charges related to VoIP-PSTN traffic, regardless of the basis for the revenue. This can be accomplished by modifying this instruction to read (additions shown in double underlined text): “304.1 – Revenues for originating and terminating minutes provided under state or federal access tariffs and all arrangements related to VoIP-PSTN traffic.”

V. **CONCLUSION**

XO appreciates the opportunity afforded by the Bureau to provide input on the proposed revisions to its Form 499 Instructions. For the reasons explained above, the proposed Instructions should be further revised to better reflect Commission precedent and rules.

Respectfully submitted,

XO COMMUNICATIONS, LLC

A handwritten signature in black ink, appearing to read "Steven A. Augustino", written over a horizontal line.

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