

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 06-122
Universal Service Contribution Methodology	)	
	)	
Application for Review of Decision of the	)	
Wireline Competition Bureau filed by Global	)	
Crossing Bandwidth, Inc.	)	
	)	
Request for Review of the Decision of the	)	
Universal Service Administrator and	)	
Emergency Petition for Stay by	)	
U.S. TelePacific Corp. d/b/a	)	
TelePacific Communications	)	
	)	
XO Communications Services, Inc.	)	
Request for Review of Decision	)	
of the Universal Service Administrator	)	
	)	
Universal Service Administrative Company	)	
Request for Guidance	)	

**REPLY COMMENTS OF U.S. TELEPACIFIC CORP.  
D/B/A TELEPACIFIC COMMUNICATIONS**

U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific”) submits these replies to comments on TelePacific’s Petition for Partial Reconsideration (“PFR”) and Request for Stay Pending Reconsideration (“Stay Request”) of the *2012 Wholesaler-Reseller Clarification Order*.<sup>1</sup>

**DISCUSSION**

The initial comments reinforce TelePacific’s assertion that the Commission must reconsider and stay implementation of the requirement adopted in the *2012 Wholesaler-Reseller*

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<sup>1</sup> *AT&T, Inc. CenturyLink, SureWest Communications and Verizon Petition for Clarification or in the Alternative for Partial Reconsideration*, Order, WC Docket No. 06-122, FCC 12-134 (rel. Nov. 5, 2012) (“*2012 Wholesaler-Reseller Clarification Order*”).

*Clarification Order* that resellers certify their status on a service-by-service basis. As the record demonstrates, such a requirement violates Section 254 of the Communications Act and the well-established Commission policies of nondiscrimination and competitive neutrality. All commenters support TelePacific's goal to ensure that universal service contributions are assessed on all broadband Internet access service providers in a competitively neutral and nondiscriminatory manner. BT Americas properly describes how the harm inflicted by the *2012 Wholesaler-Reseller Clarification Order* extends to other services – including Multi-Protocol Label Switching (“MPLS”)-based services – for which the Commission has not yet clarified contribution obligations.<sup>2</sup> To eliminate the market distortions created by the service-by-service certification and to comply with the statute, TelePacific and all commenters urge the Commission to take immediate remedial action.

TelePacific agrees with the assertions of ITTA and Sprint Nextel<sup>3</sup> that the *2012 Wholesaler-Reseller Clarification Order* violates requirements of both the Administrative Procedure Act (“APA”) and the Paperwork Reduction Act (“PRA”). This new service-by-service certification requirement conflicts with Commission precedent and its statutory obligations under both the APA and PRA. As others have pointed out, the service-by-service requirement is not a clarification of existing law; rather, it is a new requirement that the Commission cannot properly adopt without following notice and comment rulemaking procedures and explaining the basis for the change based on a full consideration of the record.<sup>4</sup> Even the Commission recently stated that

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<sup>2</sup> See Joint Comments of BT Americas Inc., on behalf of itself and its U.S. affiliates, Orange Business Services US, Inc. and BCE Nexxia Corp., WC Docket No. 06-122 (Jan. 9, 2013) (“BT Americas Comments”).

<sup>3</sup> See Comments of Sprint Nextel Corporation, WC Docket 06-122 (Jan. 9, 2013) (“Sprint Nextel Comments”); Comments of the Independent Telephone & Telecommunications Alliance, WC Docket 06-122 (Jan. 9, 2013) (“ITTA Comments”).

<sup>4</sup> ITTA Comments, at 2-4.

its universal service rules and orders create no explicit requirement for service-by-service reseller certifications.<sup>5</sup>

Further, TelePacific agrees with Sprint Nextel that the development of new systems to track usage and prepare certifications on a circuit-by-circuit basis will require tremendous efforts and will involve tracking and maintaining thousands, if not hundreds of thousands, of records over multiple years,<sup>6</sup> all at significant cost to carriers. TelePacific acquires access to transmission facilities from a number of different vendors and TelePacific integrates those circuits into a variety of different services. At any time, TelePacific may shift the way a given circuit is used based on its customers' needs. For example, if TelePacific provides only broadband Internet access service to a customer, TelePacific cannot claim exemption for the special access circuit used to provide that broadband Internet access service under the service-by-service certification adopted in the *2012 Wholesaler-Reseller Clarification Order*. However, if TelePacific's customer later adds a voice service to that circuit (i.e., using a dynamic T1), TelePacific would have to change its reseller certification to claim exemption on this same special access circuit. This could result in multiple exemption certificates being issued throughout the same calendar year, wreaking havoc with all universal service fund ("USF") administrative processes (e.g., USF projections, 499Q filings, customer invoicing, etc.). AT&T and Verizon also objected to the language the Bureau proposed in the Form 499-A instructions to implement service-by-service certification, arguing that the percentage approach is unworkable<sup>7</sup> and recommending that the Commission work with industry to develop an approach that

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<sup>5</sup> ITTA Comments, at 5; Sprint Nextel Comments, at 16 [*citing USF Contribution Reform FNPRM* at ¶168].

<sup>6</sup> Sprint Nextel Comments, at 19.

<sup>7</sup> Comments of AT&T, at 5, WC Docket 06-122 (Jan. 11, 2013) ("AT&T Comments"); Comments of Verizon and Verizon Wireless, at 9, WC Docket 06-122 (Jan. 11, 2013) ("Verizon Comments").

addresses the Commission's concerns and could be implemented by wholesalers and resellers.<sup>8</sup>

The comments on the unduly burdensome and costly process proposed in the Form 499

Instructions further supports TelePacific's PFR and Stay Request.

### CONCLUSION

As demonstrated in this proceeding, the requirement adopted in the *2012 Wholesaler-Reseller Clarification Order* that resellers certify their status on a service-by-service basis is discriminatory, damages competition, contradicts long-standing Commission policies fostering deployment of advanced services, and violates the Act, the APA and the PRA. Therefore, TelePacific respectfully requests partial reconsideration of the *2012 Wholesaler-Reseller Clarification Order* and a stay of the implementation of the service-by-service reseller certification requirement adopted therein until 90 days after the Commission issues its order resolving TelePacific's PFR.

Respectfully submitted,

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<sup>8</sup> AT&T Comments, at 6; Verizon Comments, at 10.