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THE COMMLAW GROUP

June 21, 2013

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JUN 21 2013

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: AMV Gateway, LLC – Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21

Dear Secretary Dortch:

On behalf of AMV Gateway, LLC ("AMV"), please find enclosed AMV's Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21 ("Appeal").

AMV, by its counsel and pursuant to Sections 0.457 and 0.459 of the Commission's, Rules 47 C.F.R. §§ 0.457, 0.459, respectfully requests confidential treatment of certain information provided in its Appeal because this information is competitively sensitive and its disclosure would have a negative competitive impact on AMV were it made publicly available. Accordingly, AMV is submitting a confidential version of the Appeal marked "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION." AMV provides justification for the confidential treatment of this information in Attachment 1 to this letter. AMV is also submitting a redacted version of this Appeal filed concurrently via ECFS. The redacted version is marked "REDACTED – FOR PUBLIC INSPECTION," with the confidential information redacted.

Should you have any questions please do not hesitate to contact me.

Respectfully submitted,

Linda McReynolds

Linda McReynolds
Counsel for AMV Gateway, LLC

Att.

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Attachment 1

Request for Confidentiality

AMV Gateway, LLC ("AMV"), respectfully requests confidential treatment of certain information provided in its Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21 ("Appeal") because this information is competitively sensitive, and its disclosure would have a negative competitive impact on AMV were it made publicly available. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under 47 C.F.R. §§ 0.457 and 0.459.

47 C.F.R. §0.457

Specific information in the Appeal is confidential and proprietary to AMV as "trade secrets and commercial or financial information" under Section 47 C.F.R. §0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information in connection with AMV's ongoing business and operations.

47 C.F.R. §0.459

Specific information in the Appeal is also subject to protection under 47 C.F.R. §0.459, as demonstrated below.

Information for which confidential treatment is sought

AMV requests that specific information in the Appeal be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. The information designated as confidential includes the sensitive USAC audit report (included as Exhibit 1), AMV's response to the draft USAC Internal Audit Division's Draft Detailed Audit Findings (included as Exhibit 2) and AMV's supplemental response to USAC Internal Audit Division's Draft Detailed Audit Findings (included as Exhibit 3) and information regarding AMV's customers, USAC contribution amount and the degree to which such amount would change based on USAC's recommendations is redacted. This information is competitively sensitive information that AMV maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative impact on AMV since it would provide competitors with commercially sensitive information. The non-redacted version of AMV's filing is marked as "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.**" The redacted version of AMV's filing is marked as "**REDACTED – FOR PUBLIC INSPECTION.**"

Commission proceeding in which the information was submitted

The information is being submitted in AMV's Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information designated as confidential includes the sensitive USAC audit report, AMV's billing records and customer service orders and agreements and information regarding AMV's USF contribution amounts and the degree to which such amount would change based on USAC's findings. As noted above, the data is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on AMV.

Degree to which the information concerns a service that is subject to competition and manner in which disclosure of the information could result in substantial harm
The market for the television production and editing services that AMV provides is competitive and thus the release of this confidential and proprietary information would cause AMV competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of AMV's business at a level of detail not currently available to the public.

Measures taken by AMV to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosures of the information to third parties
AMV has treated and continues to treat the non-public information disclosed in this Appeal as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which AMV asserts that the material should not be available for public disclosure
AMV cannot determine at this time any date on which this information should not be considered confidential.

Other information AMV believes may be useful in assessing whether its request for confidentiality should be granted
Under applicable Commission decisions, the information in question should be withheld from public disclosure.

REDACTED - FOR PUBLIC INSPECTION

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

FILED/ACCEPTED

JUN 21 2013

Federal Communications Commission
Office of the Secretary

In the Matter of	)		
	)	Docket Nos.	WC 06-122
AMV Gateway, LLC Request for	)		WC 96-45
Review of a Decision of the	)		WC 97-21
Universal Service Administrator	)		

REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR

REDACTED - FOR PUBLIC INSPECTION

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REDACTED - FOR PUBLIC INSPECTION

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

In the Matter of	)		
	)	Docket Nos.	WC 06-122
AMV Gateway, LLC Request for	)		WC 96-45
Review of a Decision of the	)		WC 97-21
Universal Service Administrator	)		

REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR

I. INTRODUCTION AND SUMMARY

Pursuant to sections 54.719(c) and 54.720 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), AMV Gateway, LLC ("AMV" or the "Company") (Filer ID 823362) hereby respectfully requests review of the Final Audit Report ("USAC Audit Report") issued by the Universal Service Administrative Company ("USAC") on April 23, 2013.[1] The report stemmed from a compliance audit conducted by USAC's Internal Audit Division ("IAD") of AMV's completion of the 2010 Telecommunications Reporting Worksheet, FCC Form 499-A, reporting revenues earned during the calendar year 2009.

Specifically, AMV appeals Finding #1 ("Finding #1") concerning line reporting of revenues earned during calendar year 2009, a finding that turns on IAD's conclusions about the legal classification of services provided by AMV. IAD erroneously identifies portions of AMV's TV production and post-production service revenue as telecommunications revenue subject to Universal Service Fund contribution obligations. AMV, like its peers in the broadcast and video production industry, is an end user of telecommunications. The Company mistakenly

[1] *See* USAC Internal Audit Division Report on the Audit of AMV Gateway, LLC -2010 FCC Form 499-A Rules Compliance (USAC Audit No. CR2011CO011) adopted by the Board on April 23, 2013, attached hereto as Exhibit 1.

began reporting and remitting to USAC as it expanded its video production services into a new physical plant, based on the practices of the predecessor owner of the facility, itself a telecommunications provider. Through this audit, IAD has built upon the Company's initial mistake in filing with more mistakes. IAD supports its conclusions about the legal classification of AMV's services by disregarding any evidence inconsistent with IAD's first blush conclusions while accepting *as fact* the way AMV identified itself on portions of the same Form 499 that the auditors concluded AMV misunderstood. The USAC Audit Report could have sweeping industry-wide impact if allowed to stand, and AMV urges the FCC to reverse the decision.

USAC's conclusions are unreasonable. First, IAD based its findings on AMV's reporting errors and arbitrary labels from its books of account. IAD chose to ignore all evidence inconsistent with its initial impressions formed in the early stages of the audit. Second, IAD's conclusions concerning legal classifications are faulty because IAD fails to distinguish between resale of telecommunications and passing along costs of doing business, which include telecommunications costs. The legal classification of services should turn on what AMV provides to its customers, not overhead and expenses AMV incurs in providing those services. Because of the nature of AMV's business and the nature of the programs it works on - televised live news coverage, sports events, live television shows - AMV needs to utilize satellite and fiber to send and receive its product. As a result, the telecommunications costs it incurs are significant. The nature of AMV's business does not offer it the luxury to deliver its finished product by mail, courier, email, or some other less expensive method. AMV's use of these expensive forms of telecommunications, however, and the fact that it makes these costs transparent to its customers, does not render AMV a telecommunications provider. AMV is an end user of telecommunications that never should have filed a Form 499. Instead, it has

unwittingly made double payments into the Fund for years, both direct and indirect, when peers in the same industry properly have no direct contribution obligation. For the reasons discussed herein, AMV's services have always been exempt from USF contribution requirements. AMV requests that the FCC order USAC to accept AMV's withdrawal of its FCC Form 499-A filing and refund all overpayments made into the Universal Service Fund.

II. FACTUAL BACKGROUND

A. AMV's Service

The owners of AMV, the Duke family, have been engaged in editing and production work and support for live and recorded television shows, movies, live sports events and newsgathering for decades.[2] Today, AMV's customers are TV syndicators involved in producing programs; television networks including [redacted]; and film production companies.[3] These customers hire AMV to provide editing and production work on their live and recorded television shows.[4] AMV's employees are skilled video and audio engineers, graphics specialists, and video/audio editors.[5] These employees provide quality control services for television video broadcasts and recorded programming before the TV show is delivered to the customer's desired location.[6]

In 1976, the Duke family entered the market as a production and editorial equipment rental business.[7] By 1980, they expanded the video equipment rental business unto a video production and post production facility, and in 1989 they bought studios for larger productions[8] In 2003, AMV expanded its operations by acquiring Williams Communications' "teleport"

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[2] *See* Affidavit of Richard Duke attached hereto as Exhibit 4 ("Duke Aff.") at ¶ 2.
[3] *Id.* at ¶ 49.
[4] *Id.* at ¶ 50.
[5] *Id.* at ¶ 47.
[6] *Id.*
[7] *Id.* at ¶ 3.
[8] *Id.*

facility in Carteret, New Jersey.[9] AMV converted the newly acquired physical space into an adjunct video production and post-production facility to provide services to syndicators, television networks, film production companies, and similar customers that expanded AMV's in-house capabilities because AMV was able to quickly receive and deliver programs and materials for production.[10] After purchasing the physical plant from Williams Communications, AMV installed equipment such as hundreds of television monitors, Dolby encoders and production systems that enabled it to edit programming, insert commercials, redact (*ie.*, "bleep out") indecent audio, record and replay a delayed version of programming information and other services[11] detailed herein and in AMV's submissions to IAD during the course of the audit, attached hereto and incorporated by reference.[12]

During the acquisition, management at Williams Communications incorrectly advised AMV that it would need to obtain a FCC Filer ID and contribute to the universal service fund in the same fashion as Williams Communications had.[13] Williams Communications, a provider of telecommunications services, based this advice on its own practice and operations, not on the legal classification of AMV's services.[14] AMV did not independently evaluate the proper legal classification of its video production and post-production services, or the accuracy of Williams

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[9] *Id.* at ¶ 4.
[10] *Id.*
[11] *Id.* at ¶ 5.
[12] *See* Response of AMV Gateway, LLC to USAC Internal Audit Division Draft Detailed Audit Findings on the Audit of AMV Gateway's 2010 FCC Form 499-A dated June 20, 2012 attached hereto as Exhibit 2; Supplemental Response of AMV Gateway, LLC to USAC Internal Audit Division Draft Detailed Audit Findings on the Audit of AMV Gateway's 2010 FCC Form 499-A submitted October 16, 2012 attached hereto as Exhibit 3.
[13] Duke Aff. at ¶ 6.
[14] *Id.* at ¶ 7; The services provided by AMV are vastly different that what was offered by Williams Communications. Williams Communications provided pure transport and did not offer the production and editing services that AMV does. AMV and Williams Communications do not compete for the same customers as they are in different industries entirely. *Id.* at 8.

Communications' statements.[15] Instead, not understanding the true nature of its services, AMV took a conservative approach and began filing FCC Form 499s and incorrectly checked a block on the form to identify itself as a provider of satellite services, following the practice of the predecessor owner of the facility.[16]

All the while, AMV has been an end user of telecommunications services.[17] AMV purchases telecommunications services from several suppliers in order to provide its TV production and post-production services.[18] For example, it purchases separate single direction circuits (fiber loops) from Verizon so that AMV can establish a direct connection between a customer's location and AMV's facility.[19] AMV's customers cannot use that fiber loop for any purpose other than to send video to AMV for production services and quality control or by using a second alternative path back again.[20] These fiber paths are single direction only and can not be used for two-way communications. Video can be sent either to AMV's facility for production work or from AMV's facility to the customer's site but, not both directions.[21]

In other words, AMV purchases the fiber for its own business purposes – establishing a connection between itself and its own customer – but AMV's customer cannot, in turn, specify the points of the fiber loop or what type of information is sent over that loop.[22] The loop is in place solely to make possible AMV's editing, production and quality control services.[23] Even if the loop may only be used an hour or less a day in some cases, AMV incurs a monthly cost to establish and to maintain this connection between AMV and its customer so that it is on

[15] Duke Aff. at ¶ 9.
[16] *Id.* at ¶ 10.
[17] *Id.* at ¶ 28.
[18] *Id.* at ¶ 61.
[19] *Id.* at ¶ 62.
[20] *Id.* at ¶¶ 63-64.
[21] *Id.* at ¶ 65.
[22] *Id.* at ¶ 66.
[23] *Id.* at ¶ 67.

"standby" with a ready direct connection in the event the customer needs AMV to work on a program to be televised.[24]

The cost associated with this fiber is considered an overhead expense that AMV recovers from its customer through its monthly fee.[25] Whereas AMV's telecommunications supplier provides the fiber loop for AMV's purposes, without regard to the type of information AMV chooses to send over the loop, AMV is not selling that same functionality to its own customer. AMV's customer can only use that loop to send video to AMV so that AMV can provide post-production services and deliver the edited video back to the customer.[26]

Although the various costs and components that AMV uses to provide its video production services may be itemized on customer bills, and revenues from these services are linked to AMV's underlying costs in accounting books and records, AMV does not provide any of its customers the option of purchasing telecommunications services as a *standalone* product.[27] Thus, while AMV purchases separate telecommunications components from its suppliers, AMV's customers do not use telecommunications components as standalone products separate and apart from AMV's TV production and post-production services.[28] For example, customers do not purchase satellite service or fiber from AMV as a standalone product.[29] Instead, AMV's customers hire AMV for the specific purpose of checking the quality of each and every video being transferred as well as changing the form and content of videos before broadcast.[30] When AMV's customers need telecommunications services, such as satellite services for their own use,

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[24] *Id.* at ¶¶ 68-69.
[25] *Id.* at ¶ 70.
[26] *Id.* at ¶¶ 71-72.
[27] *Id.* at ¶ 73.
[28] *Id.* at ¶ 74; *see* Affidavit of Lenny Laxer attached hereto as Exhibit 5 ("Laxer Aff.") at ¶¶ 15-16.
[29] Duke Aff. at ¶¶ 75-78; Laxer Aff. at ¶¶ 15-16; *see* Letter June 19, 2013 from [redacted] attached here to as Exhibit 6 ("[redacted]").
[30] Duke Aff. at ¶ 75; Laxer Aff. at ¶¶ 8-9; [redacted].

they go directly to a satellite service provider to obtain the telecommunications services, not to AMV.[31]

B. USAC's Findings

In June 2011, the USAC's IAD commenced an audit of AMV's compliance in completing its 2010 Telecommunications Reporting Worksheet, FCC Form 499-A. IAD obtained supporting documentation and testimonial evidence for AMV's classification methods in an effort to ascertain whether AMV was compliant with 47 C.F.R. Part 54 as well as other FCC rules, FCC orders and the 2010 FCC Form 499-A Instructions (collectively the "Rules"). IAD concluded *inter alia*, that AMV improperly classified certain services as non-telecommunications revenue.[32] As a result of the audit findings, the estimated effect on the contribution base is an increase in [redacted] for the audited period. Consequently, USAC concluded that AMV's additional USF contribution obligation is [redacted] for the period audited. IAD found that the documentary evidence was inconsistent with testimonial and physical evidence that *did* support AMV's description of services provided to its customers. The auditors disregarded most of the information provided throughout the audit period after the preliminary site visit.

Generally speaking, IAD made the following determinations when it concluded that AMV was providing telecommunications: that initial audit documentation provided in the form requested by IAD, including billing and accounting records, customer invoices, and spreadsheets completed in a format specified by IAD, contradicted testimonial and physical evidence obtained during and after the preliminary stages of the audit; that statements explaining that fiber circuits were used in conjunction with post-production and editing services were not supported by

[31] Duke Aff. at ¶ 76; Laxer Aff. at ¶ 17.
[32] *See* Audit Report, Finding #1.

documentation and therefore would be accorded no weight; that supplemental documentation describing and detailing the alterations and changes to the form and content of video for AMV's top 11 customer during the relevant calendar year nonetheless supported IAD's initial impressions that AMV's line item charges for fiber, uplink and downlink services constitute resale of pure transmission, telecommunications, to AMV's customers.[33]

III. ARGUMENT

On review, actions of the USAC Board are entitled to no deference from the Commission. Rather, the Commission reviews USAC Board decisions *de novo.* 47 C.F.R. § 54.723. The Commission must resolve requests for review of USAC decisions within 90 days. 47 C.F.R. §54.724.

The record confirms that the FCC should grant AMV's request and reject USAC's audit findings. The evidence demonstrates USAC wrongly and unlawfully classified AMV's TV production and editing services as telecommunications.[34] If left standing, USAC's Audit Report sets a dangerous precedent by classifying a provider to be a reseller simply because it uses telecommunications to provide its services and separates this operating cost in its books and records. USAC's decision turns on the labels used as shorthand on invoices and in accounting books and records. USAC's conclusions ignore the totality of evidence gathered to interpret and explain those records and arrive at an incorrect legal classification of the services AMV provided. The documentary, testimonial and physical evidence unequivocally show AMV's customers are provided non-telecommunications services. AMV's customers never received or perceived they were being provided telecommunications services.[35]

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[33] *See generally* USAC Audit Report at 10-17.
[34] *See generally,* Exhibits 2-7.
[35] *Id.*

A. USAC's Findings Ignored Testimonial, Documentary and Physical Evidence that Ran Counter to the Auditors' First Impressions

The Commission's rules require USAC to audit carriers consistent with the Generally Accepted Government Auditing Standards ("GAGAS").[36] Under GAGAS, USAC must obtain evidence that is sufficient to provide a reasonable basis for the findings and conclusions reached in the audit.[37] Moreover, "in assessing the overall appropriateness of evidence, auditors should assess whether the evidence is relevant, valid and reliable. Sufficiency is a measure of the quantity of evidence used to support the findings and conclusions."[38] And, when assessing the evidence, "auditors should evaluate whether the evidence taken as a whole is sufficient and appropriate" for supporting the findings and conclusions.[39] "Evidence obtained through the auditors' direct physical examination, observation ... and inspection is generally more reliable than evidence obtained indirectly."[40]

Documentary evidence is not necessarily to be accorded greater weight than other types of evidence in accordance with GAGAS. In describing the types of evidence that auditors can collect to form the basis for conclusions during field work, GAGAS provides:

> [E]vidence may be categorized as physical, documentary, or testimonial. Physical evidence is obtained by auditors' direct inspection or observation of people, property, or events. Such evidence may be documented in summary memos, photographs, videos, drawing, charts, maps, or physical samples. Documentary evidence is obtained in the form of already existing information such as letters, contracts, accounting records, invoices, spreadsheets, database extracts, electronically stored information, and management information on performance. Testimonial evidence is obtained through inquiries, interviews, focus groups, public forums, or questionnaires. . . . The strength and weakness of each form of evidence depends on the facts and circumstances associated with the evidence and professional judgment in the context of audit objectives."[41]

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[36] *See* 47 C.F. R. § 54.702.
[37] *See* GAGAS § 6.56, 2011 Internet Version.
[38] *Id.* at § 6.57.
[39] *Id.* at §6.58.
[40] *Id.* at §6.61(b).
[41] GAGAS §A6.04.

The auditors have chosen to accord greater weight to documentary evidence than all other forms of evidence collected during the audit based on the form alone. Testimonial or physical evidence that show the complete picture of the services provided by AMV is instead rejected as inconsistent with documentary evidence. Instead of reconciling and pulling together all information gathered, the auditors are "cherry picking" from among the documents, ignoring all testimonial and physical evidence that interprets and explains those documents, to arrive at a conclusion that supports a legal classification of "telecommunications."

AMV provided sufficient documentary and testimonial evidence that proved it is not providing "telecommunications," as defined in the Communications Act of 1934, as amended (the "Act")[42] to its own customers.[43] Instead, AMV is an *end user* of telecommunications services that uses telecommunications components to provide its service.[44]

USAC had more than sufficient evidence to conclude that the production services offered by AMV were not telecommunications services.[45] In addition to the ample documentary evidence presented to USAC, AMV verbally explained its operations and its offerings. This testimonial evidence supports the interpretation of AMV's documentary evidence. Testimonial evidence is considered useful in interpreting and corroborating documentary evidence.[46] Then, in a September 20, 2012 conference call, IAD asked for additional information about specific customers in order to get a more complete picture of the services provided to customers. To provide a more complete picture of the services AMV offers, AMV provided the auditors with a detailed explanation of the services provided to the 11 largest customers along with supporting documentation. These customers included [redacted].

[42] *See* 47 U.S.C. § 153(50)
[43] *See* Exhibit 2-3 and generally Duke Aff ¶¶ 122-127.
[44] Duke Aff. at ¶28.
[45] *See* Exhibits 2-3.
[46] *See* GAGAS §6.62.

[redacted], and others in the television industry.[47] This additional information was provided further supporting the conclusion that AMV is not a reseller of telecommunications.[48] With this additional information AMV invited IAD to visit its facility again to gain a better understanding of exactly what its TV production and editing services entail. IAD did not visit the facility. Had they visited AMV they would have seen more than 300 television monitors and AMV's video technicians performing their various production services.[49] They would have seen that AMV is constantly changing the form and content of its customer's video with encoding and other modifications in addition to monitoring and reviewing the video.[50] The services provided by AMV are the same services provided by any broadcast network: recording, playback, editing, duplication, encoding and transferring of the material between parties to further complete show material ultimately destined for public consumption.[51] They would have seen the true functionality being provided to AMV's customers.

B. USAC Erroneously Relied on Arbitrary Labels When It Should Have Focused on the Services the Customer Received

The legal classification of service for USF reporting turns on what services an end user is actually provided and that end users' perceptions of the capabilities a provider offers, and *not* on labels that the provider places on its services.[52] USAC abandoned this tenet when it seized on AMV's billing codes and invoice descriptions and ignored the service that AMV provided. As a result, by classifying AMV's services as telecommunications USAC exceeded its authority and has acted contrary to the will of Congress and the Commission.

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[47] *See* Exhibit 2.
[48] *See* Exhibit 3.
[49] *See* Affidavit of Michael Carberry attached hereto as Exhibit 7 ("Carberry Aff.) at ¶¶ 9-12.
[50] *See generally,* Carberry Aff. at ¶¶ 9-20..
[51] Duke Aff. at ¶ 20.
[52] *See, e.g. Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, para. 25 (2002).

USAC's reclassification of AMV's revenue is based on labels describing underlying costs and inputs that AMV itself uses to provide television production and post-production services. To reclassify AMV's services as telecommunications ignores the critical fact that while AMV incurs costs in acquiring the telecommunications services it needs to provide services to its customers, AMV *does not provide* its own customers with telecommunications capabilities.[53]

Again, USAC improperly seized on line-item identifications found on AMV's invoices. However, attributing weight to this "evidence" is completely misplaced. It does not matter how a provider labels, prices, or bills various components of its integrated service—these are marketing and accounting decisions that can be made in any number of ways and, critically, do not alter the nature of the service offered to consumers.[54] As the Commission has explained, "[f]or universal service contribution reporting purposes, the revenues should be reported based on the legal classification of the associated service."[55] Here, as in the CTE Telecom, LLC audit, the auditors requested specific types of billing records and accounting records and developed an initial understanding of the nature of the services from which revenues were derived from labels applied in those records. Here, as there, auditors disregarded inconsistent information obtained during the course of the audit that would provide a complete picture of the services from which the revenues in the account were derived.

In other words, it is insignificant how AMV bills for its services, what matters is what AMV provides to its customers. The determinative fact is that AMV does *not* provide telecommunications services. Therefore the fact certain underlying costs of providing video

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[53] Duke Aff. at ¶¶ 79-86; Laxer Aff. at ¶¶ 15-17; [redacted].

[54] *See Request for Review of a Decision of the Universal Service Administrator by CTE Telecom, LLC*, Order, WC Docket No. 06-122, 27 FCC Rcd 15242 (2012) (finding that filer was not required to contribute to the universal service fund based on revenues where provider's label in its general ledger accounts did not accurately reflect the service from which the revenues in the account were derived.).

[55] *Id.* para. 14.

production services are identified in AMV's billing is irrelevant to the legal classification of video production services as non-telecommunications.

Until the audit, AMV was unaware of the import of using industry terms of art such as "uplink," "downlink," "satellite services," "transmission" and others.[56] Because of this, AMV used terms of art to improperly describe its services.[57] What is termed "uplink" and "downlink" in the video production industry includes a range of services, not pure transmission.[58] AMV offers what it terms "uplink" services, but uplink, in the sense USAC referred to the term in the USAC Audit Report, may not even be used for the actual service AMV provides.[59] The term "uplink," as used by AMV, encompasses services involving post-production coding, editing, monitoring and quality control of television programming.[60] Using this term assists the technician in understanding the workflow direction (i.e., outbound) for the video information. With these services, a customer will send the video to AMV via the private fiber loop or by some other means, such as videotape or file delivery.[61] When the video arrives at AMV's facility, AMV converts the video signal in order to process the video, view it, and add encoding and encryption to the video.[62] AMV uses a Harris NetVX decoder and HD/SDI router for signal processing, which includes NAVE encoding (for Neilson ratings), closed captioning, some commercial insertion additions, video tape records (VTR) and disk records (DDR), Evergreen playback (discussed in more detail in footnote 72, and other encoding, depending on the particular customer's needs.[63] ATIS may be added to analog signals as part of what AMV terms

[56] Duke Aff. at ¶
[57] *Id.* at ¶¶ 21-22, 37.
[58] Duke Aff. at ¶¶ 99-109
[59] Duke Aff. at ¶ 87.
[60] *Id.* at ¶ 88.
[61] *Id.* at ¶ 89.
[62] *Id.* at ¶ 90.
[63] *Id.* at ¶ 91.

"uplink" services.[64] Once processed, the video signal is converted from video to data with the HD/SDI encoder. The video travels an IP path to a satellite dish.[65] AMV might send a converted signal via satellite using the satellite services AMV has purchased for its own use, or the signal might travel via satellite services AMV's customers have purchased directly from a satellite service provider for their own purposes.[66] The monthly subscription price of the "uplink" service is higher where AMV uses its own satellite services versus where the customer transmits the signal on its own satellite services. [67] In either case, AMV employees provide quality control as the video signal is sent via satellite, observing the program on monitors at the AMV facility so that AMV employees can contact the satellite service provider if they notice "sparkles" or other fade issues with the video quality.[68] All of these services appear as one line item called "uplink" on a customer invoice.[69]

Similarly, AMV offers what it calls "downlink" services, which typically involve AMV capturing program information for quality control analysis and production services.[70] For example, a network might request pre-production services on a sports event to prepare video feeds for further editing at the customer's studio.[71] Network customers send the video to AMV via satellite services that the customer has purchased directly from a satellite service provider. When the signal comes to AMV's facility, the signal is converted from satellite dish RF frequency to L-Band frequency via a decoder.[72] The signal is converted to HD/SDI Video, not

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[64] ATIS is a unique broadcast identification that allows broadcast networks to identify the location of the transmission point of a signal. *Id.* at ¶¶ 92-93.
[65] *Id.* at ¶ 94.
[66] *Id.* at ¶ 95.
[67] *Id.* at ¶ 96.
[68] *Id.* at ¶ 97.
[69] *Id.* at ¶ 98.
[70] *Id.* at ¶¶ 99-100.
[71] *Id.* at ¶ 101.
[72] *Id.* at ¶ 102.

simply in order to complete the transmission from the customer to AMV, but in order to enable AMV to view the video on its monitors so that it can acknowledge receipt of the correct video and provide quality control assurance, confirm closed caption information is attached or added as required and other production and post-production services.[73] For example, the signal is processed internally within the facility through an HD/SDI video router to monitoring devices that can check for closed captioning decryption or loudness monitoring.[74] After AMV has provided quality control and production services, the video is converted to data and sent along an IP data path and then via a Verizon video circuit (loop) to the customer site.[75]

In short, prior to the audit, AMV did not understand the legal classification of its services for universal service reporting purposes, the significance of using terms of art when describing its services in books of account.[76] Had it done so it would have concluded that it does not provide satellite transport or other telecommunications services, and its TV production and post-production services are not subject to USF obligations.

USAC itself acknowledged that AMV misunderstood the terminology and USF specifics when it filed its Form 499-A.[77] Despite this, USAC concluded that the terms AMV used in its invoices and when filing its Form 499-A proved that AMV was providing telecommunications. In doing so, USAC improperly ignored the fact that what AMV was providing to its customers was wholly inconsistent with the terms it misunderstood and used when describing its services and filing its Form 499-A. USAC's improper disregard of the evidence further exaggerates the error of USAC's findings.

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[73] *Id.* at ¶ 103.
[74] *Id.* at ¶ 104.
[75] *Id.* at ¶ 105.
[76] *Id.* at ¶¶21-23, 37.
[77] *See* Exhibit 1 at 9, 10.

C. AMV Does Not Provide Telecommunications to its Customers

The capabilities AMV offers to its customers do not fit the elements of the definition of "telecommunications" in the Communications Act of 1934, as amended (the "Act").[78] "Telecommunications" is defined as:

> **the transmission, between or among points specified by the user**, of information of the user's choosing, **without change in the form or content of the information as sent and received.**[79]

First, AMV does not provide "transmission" for its customers. Basic telecommunications service was defined as "the offering of a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information."[80] AMV does not provide pure transmission. As detailed below, AMV's customers engage AMV for the specific purpose of changing the form and content of videos before broadcast, such as changing the aspect ratio, adding graphics, adding coding for ratings services, etc.[81] AMV uses telecommunications to obtain the video content for which AMV's customer has requested AMV provide production services and to send the finished video content to its customer.[82] The underlying telecommunications supplier provides the transmission to AMV for this purpose.[83]

Second, AMV does not provide its customers with the capacity to transmit information "between or among points specified by" them.[84] When a customer contracts with AMV for production services, the customer and AMV each use telecommunications to deliver the video to and from AMV's facility, *a point specified by AMV*, so that AMV can provide quality control, monitoring, encoding, adding commercials, loudness control and other services described above,

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[78] Duke Aff. at ¶¶ 122-127.
[79] 47 U.S.C. § 153(50) (emphasis added).
[80] *Computer and Communications Industry Association v. FCC*, 693 F.2d 198, 204 (D.C. Cir. 1982).
[81] *Id.* at ¶¶ 52-53.
[82] *Id.* at ¶ 61.
[83] *Id.* at ¶¶ 65-67,
[84] *Id.* at ¶¶ 71-78; *see generally,* Laxer Aff. at ¶¶ 14-17.

such as running an "Evergreen" program alongside a live show in the event something happens during production of the live show.[85] The customer is not purchasing telecommunications services from AMV that it can use in turn for its own purposes.[86] AMV's services do not allow customers to transmit the delivered video to points of their own choosing.[87] Rather, all of AMV's customers have their own third-party telecommunications suppliers to satisfy their telecommunications needs.[88]

Finally, AMV always changes the form and content of the information as sent and received and therefore cannot offer telecommunications to its customers.[89] The FCC has determined that under the statutory definition of "telecommunications" "an entity provides telecommunications *only* when it *both* provides a transparent transmission path *and* it does not change the form or content of the information."[90] There is always a change in form and content of the video, and AMV itself uses the transmission path to deliver the finished product to a desired location.[91]

AMV uses telecommunications to receive its customers' video programming. AMV does not compete with or provide the same services as its underlying telecommunications suppliers, nor do its underlying suppliers provide the production, graphics and editing services that AMV

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[85] These services are part of AMV's redundancy services important in case of some catastrophic failure. For example, if a studio goes dark during a live show, AMV will substitute an "Evergreen" show in its place – a television show that does not have content tied to any particular time of year or day. This generic programming does have the current daily commercials inserted, or space for local commercials that a broadcaster could insert, with use of AMV's facility and employees, so that commercials can still air during any time when a studio is dark. AMV provides this "playback to nowhere" service during live programming, so that the Evergreen show is running concurrently and would be available for broadcast immediately in case something happens with the live program or the studio. *See* Duke Aff. at ¶¶ 106-109.
[86] Duke Aff. at ¶¶ 63, 65-66; *generally* [redacted].
[87] Duke Aff. at ¶¶ 63-66, 72.
[88] Duke Aff. at ¶ 76; Laxer Aff. at ¶ 17.
[89] Duke Aff. at ¶ 52
[90] *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, FCC 02-42A1, 17 FCC Rcd 3019, 3031 (2002))(emphasis added)
[91] *See generally*, Duke Aff. at ¶¶ 52-60.

offers its customers.[92] Rather, AMV's competitors are such entities as television networks and post production facilities that choose to do the production and editing work in-house rather than out-source it to AMV.[93]

The evidence shows that AMV's customers do not purchase or use stand alone telecommunications components from AMV and they have never believed that AMV was providing such services.[94] Indeed, there is no need to purchase such services from AMV because all of AMV's customers have their own arrangements with telecommunications providers.[95] AMV's customers have always understood that AMV utilizes telecommunications that it purchases from telecommunications providers in order to offer production and post-production services but, these costs of AMV's video production business are not components separately offered to AMV's customers.[96] The capabilities AMV offers to its customers do not fit the elements of the definition of "telecommunications" in the Communications Act of 1934, as amended (the "Act").[97]

In short, AMV uses telecommunications to obtain the video content for which AMV's customers have requested production services and to send the finished video content to its customers.[98] The underlying telecommunications supplier, *e.g.,* Verizon, provides the transmission to AMV for this purpose.[99] AMV never provides its customers with the capacity to transmit information "between or among points specified by" them.[100] Consequently, the

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[92] *Id.* at ¶¶ 116-118.
[93] *Id.* at ¶ 119.
[94] *See* [redacted] Laxer Aff. at¶ 16.
[95] Duke Aff. at ¶ 127; Laxer Aff. at ¶ 17.
[96] *See generally,* Laxer Aff. at ¶¶ 9-12, 15-16; *see National Cable & Telecommunications Association v. Brand X Internet Services,* 545 U.S. 967, 990 (2005).
[97] *See generally* Exhibit 2-3; Duke Aff. at ¶¶ 122-127; *see e.g.* [redacted]
[98] *See generally,* Duke Aff. at ¶¶ 61-72.
[99] *Id.* at ¶¶ 62, 66.
[100] *Id.* at ¶¶ 63, 65-67, 71-72.

customer is not purchasing telecommunications services from AMV that it can use in turn for its own purposes.[101] If AMV was able to send and receive video via email, for example, the question whether AMV was an Internet service provider would seem ridiculous. In that instance, AMV would be a user of Internet services even though the costs to AMV of having Internet access would be passed on in some form to AMV's customers.

AMV does far more than pass on a video signal from one place to another. AMV monitors the quality of video, adds encoding[102] and otherwise alters the transmitted information depending on a particular customer's specifications.[103] AMV employees also always monitor the quality of video signals and edit the content to suit the customer's needs.[104] Thus, before the video is sent to the customer's destination,[105] AMV processes the information received, monitors video signals, and converts formats and other information contained in the video.[106]

Depending on the type of signal involved, AMV might also make other conversions, such as aspect ratio, format, or standards conversions.[107] Television signals can have different sizing and format requirements in order for the video to appear correctly on a television screen.[108] Because the television signals must first be converted from video to data and/or IP to be carried over satellite or digital media, none of these parameters are in place when AMV receives the

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[101] *Id.* at ¶¶ 66, 71-,72.

[102] Encoding is the process of compressing a signal with as little loss in signal quality as possible. Chroma subsampling is the practice of encoding images by implementing less resolution for chroma information than for luma information, taking advantage of the human visual system's lower acuity for color differences than for luminance. In the documents attached to Exhibit 3, for example, "4:2:2" and "4:2:0" describe the chroma subsampling requested by the customer.

[103] Such changes in form and content include by way of example, adding graphics, adding coding for rating services, adding close captioning, adding commercials, etc.

[104] Carberry Aff. at ¶¶ 9, 20.

[105] AMV does not broadcast programming to the general public. AMV provides production and post-production services with the program information supplied to it by its own Customers. AMV returns the finished product to its Customers who ultimately broadcast the material to the public.

[106] Carberry Aff. at ¶¶ 9-20; Duke Aff. at 19, 53.

[107] Duke Aff. at ¶ 54.

[108] *Id.* at ¶ 55.

television signal.[109] Consequently, converting signals is a necessity if the format arriving at AMV is not the required specification of the receiving customer.[110] For example, SD is most commonly sent in a 4:3 ratio of width to height, and HD is 16:9.[111] Some broadcasters will prefer signals to be sent in SD as a 16:9 format to create a black space above and below the picture.[112] Many older programs that were originally shot in SD 4:3 ratio are being broadcast on HD networks and will have black on the sides of the picture.[113] AMV can convert the aspect ratio or replace the black space with a graphic element instead.[114] Because conversions cause degradation in the show quality, all efforts are made to reduce the number of times a signal is converted.[115] The signal originator will usually not sacrifice any quality degradation to the product, so AMV normally performs the conversion one time to the standard required by the recipient.[116]

Clearly, AMV's TV production and post-production service incorporates an array of services where AMV is changing the form and content of the video sent to its customers. As a result, it is not providing "telecommunications."

D. AMV Is an End-User of Telecommunications, Not a Reseller

USAC erroneously found that AMV is a reseller of telecommunications. FCC From 499-A Instructions provide that:

> For the purpose of completing Block 3, a "reseller" 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

[109] *Id.*
[110] *Id.* at ¶ 56.
[111] *Id.* at ¶ 57.
[112] *Id.*
[113] *Id.* at ¶ 58.
[114] *Id.*
[115] *Id.* at ¶ 59.
[116] *Id.*

contribute to federal universal support mechanisms based on revenues from such offerings when provided to end users".[117]

AMV does not incorporate purchased telecommunications into its own *telecommunications* offerings.[118] Rather, AMV is itself an *end user* of telecommunications.[119] AMV uses telecommunications obtained from suppliers for the purpose of establishing a connection directly to particular customers that require often real-time customized video processing for their signals. Consequently, AMV does not *resell* to its customers the same functionality or capacity that it purchases from its suppliers. AMV pays USF surcharges as an end user to its telecommunications suppliers, such as Verizon, which as a telecommunications provider has the direct USF contribution obligation. Despite its efforts AMV misunderstood the USF regime and a provider's contribution obligations.[120] These misunderstandings are evidenced by the fact that AMV reflected another cost of AMV's business in the form of pass-through universal service charges on customers' invoices.[121] Because AMV's suppliers pass through universal service charges to AMV, AMV included this cost on invoices to AMV's own customers.[122] As a result, USAC has collected *double* contributions from AMV. That is, AMV, due to its own misunderstanding of the mechanics of the Fund, has unwittingly been paying twice – once in the form of pass-throughs to its telecommunications suppliers in the form of USF surcharges those carriers impose *and* secondly in the form of USF fees it collects from its customers and remits to USAC based on a mistaken belief that USF assessments are based on

[117] *See* 2010 FCC Form 499-A Instructions at 19.
[118] *See generally* Duke Aff. at ¶¶ 73-78
[119] *See generally id.*, at ¶¶ 61-72.
[120] *Id.* at ¶ 22.
[121] *Id.* at ¶ 23.
[122] *Id.* at ¶¶ 26-27.

what AMV purchases and utilizes to provide those services.[123] AMV did not realize that as an end user of telecommunications it did not have a direct contribution obligation of its own.[124]

AMV's revenues are derived from the sale of non-telecommunications video production and editing services.[125] Despite the mound of evidence supporting AMV's position that it is an end-user of telecommunications, USAC unbelievably found AMV to be a reseller. This finding was erroneously based, in large part, on itemizations presented on AMV invoices. USAC's conclusions ignore reality and disregard evidence that explains why AMV provides the line-item details on its customers' invoice.[126]

Purely for the customer's convenience and information, AMV's invoices reflect, in some instances, AMV's own underlying costs and inputs.[127] Consider for example an attorney that bills $250.00 per hour for her services. In providing her legal services she uses the telephone to obtain information from the client and deliver her advice. She may separately invoice the client for the telephone usage or roll it into the overhead/cost of doing business that is incorporated into her hourly rate. Either way, she is not considered a reseller of telecommunications. Likewise, AMV is not a reseller of telecommunications nor does it offer specific separate services that comprise a bundle. The various telecommunications services that AMV must acquire to provide its production and post-production editing services are transparent to its customer – meaning they are itemized on the customers' bills.[128] However, these components are not resold to

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[123] Duke Aff. at ¶¶ 27-28.
[124] Duke Aff. at ¶¶ 21-28.
[125] AMV now understands that because it should not be a direct contributor to the Fund, the FCC "will look to the underlying carrier," in other words, AMV's own suppliers, "for the universal service contribution." *In the Matter of Federal-State Joint Board on Universal Service Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 10824, 10828 (2009).
[126] Duke Aff. at ¶¶ 79-80, 110-114.
[127] Duke Aff.at ¶ 80.
[128] Duke Aff. at ¶¶ 79-81.

AMV's customers, either individually or as a bundle.[129] Moreover, these line items ***do not*** reflect the functionality that is being supplied to AMV's customers, nor could a customer purchase any of these line items directly from AMV on a standalone basis for any purpose.[130] The reality is that these line-item charges are akin to the overhead that AMV rolls into its charges.[131]

The details provided by AMV were solely to assist in explaining to AMV's customers the basis for the pricing of AMV's production and editing services.[132] There can be no denying that a significant part of AMV's operating expenses derive from the telecommunication services that it purchases. These telecommunications components are necessary for AMV to deliver the production and post-production editing services it provides on a timely basis.[133] In fact, without these telecommunications components AMV could not adequately provide its services. Because these costs (*ie.* satellite transport) are so expensive, AMV decided to identify these costs AMV paid in its customer invoices. It did this in large part to provide transparency to its customers and respond to questions about why its television production and post-production prices were what they were.[134]

USAC confuses these operating expenses with *resale* and somehow leaps to the conclusion that because AMV uses telecommunications in its operations it is somehow reselling telecommunications. The Bureau should reject USAC's conclusions and grant AMV's Request for Review. The fact that the cost of AMV's production and post-production services includes

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[129] Duke Aff. at ¶ 82; Laxer Aff. at ¶ 15.
[130] Duke Aff. at ¶ 83; Laxer Aff. at ¶¶ 9, 16.
[131] Duke Aff. at ¶ 80.
[132] Duke Aff. at ¶¶ 110-111.
[133] Duke Aff. at ¶¶ 79-80, 110-114.
[134] Duke Aff. at ¶ 113.

the telecommunications charges that AMV incurs through its operations does not equate to AMV reselling telecommunications.

IV. CONCLUSION

In light of the foregoing, AMV respectfully requests that the Commission reverse Finding #1 of the USAC Audit Report regarding the classification of AMV's video production services. Further, AMV requests that the Commission find that AMV is an end user of telecommunications services with no direct USF contribution obligation and order USAC to refund excess contributions into the Fund.

Respectfully submitted,

Linda McReynolds
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Dated: June 21, 2013

VERIFICATION

State of New York)
) ss.
County of NY)

I, Richard Duke, President of AMV Gateway, LLC ("AMV"), am authorized to and do make this Verification on AMV's behalf. The statements and facts in the foregoing Request for Review of a Decision of the Universal Service Administrator are true and correct to the best of my knowledge, information and belief.

Richard Duke, President
AMV Gateway, LLC

Subscribed and sworn before me this 20 day of June, 2013.

Notary Public

My Commission expires: 2/14/2017

TASHA RIVERA
Notary Public, State of New York
Registration #01RI6122616
Qualified In Bronx County
Commission Expires February 14, 2017

EXHIBIT
1

REDACTED – FOR PUBLIC INSPECTION

PAGES INTENTIONALLY OMITTED

EXHIBIT
2

REDACTED – FOR PUBLIC INSPECTION

PAGES INTENTIONALLY OMITTED

EXHIBIT
3

REDACTED – FOR PUBLIC INSPECTION

PAGES INTENTIONALLY OMITTED

EXHIBIT
4

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

In the Matter of:	)		
	)	Docket No.	WC 06-122
AMV Gateway, LLC Request for	)		WC 96-45
Review of a Decision of the	)		WC 97-21
Universal Service Administrator	)		

AFFIDAVIT
Of
RICHARD DUKE

FILED/ACCEPTED

JUN 21 2013

Federal Communications Commission
Office of the Secretary

Richard Duke, being duly sworn, deposes and says that:

1. I am the President of AMV Gateway, LLC ("AMV").

2. My family has been engaged in editing and production work and support for live and recorded television shows, movies, live sports events and newsgathering for decades.

3. My family first entered the marketplace in 1976 as a production and editorial equipment rental business. By 1980 it began production and editing video rentals and in 1989 it bought studios for larger productions.

4. In 2003, AMV expanded its operations by acquiring Williams Communications' "teleport" facility located in Carteret, New Jersey. AMV converted the newly acquired physical space into an adjunct video production and post-production facility to provide services to syndicators, television networks, film production companies, and similar customers that expanded our in house capabilities because AMV was able to quickly receive and deliver programs and materials for production.

5. After purchasing the physical plant from Williams Communications, AMV installed equipment such as hundreds of television monitors, Dolby encoders and production systems that

enabled it to edit programming, insert commercials and redact (*i.e.,* "bleep out") indecent audio, record and replay a delayed version of programming information and other services.

6. During the acquisition, the management at Williams Communications incorrectly advised AMV that it would need to obtain a FCC Filer ID and contribute to the universal service fund.

7. Williams Communications, a provider of telecommunications services, based this advice on its own practice and operations, not on the legal classification of AMV's services.

8. AMV's management failed to recognize at this time that the video production and post-production services offered by AMV were vastly different than what was offered by Williams Communications.

9. AMV did not independently evaluate the proper legal classification of its video production and editing services or the accuracy of Williams Communications' statements.

10. Not understanding the true nature of its services, AMV began filing FCC Form 499s and incorrectly checked a block on the form to identify itself as a provider of satellite services, following the practice of the predecessor owner of the facility. In June 2011, USAC's Internal Audit Division notified AMV that it was auditing AMV's 2010 FCC Form 499-A, reporting revenues for calendar year 2009.

11. On June 20, 2012, AMV submitted its response to USAC's Internal Audit Division's draft findings, wherein, among other things, the Internal Audit Division reclassified some of AMV's revenues as telecommunications.

12. In its response and as I set out in greater detail below, AMV explained that it provides video editing and TV production work on live and recorded television shows and it does not provide telecommunications service.

13. AMV explained that while it uses the telecommunications it purchases from third-party suppliers (like Verizon) to provide its TV production and editing services, AMV does not offer "telecommunications," as defined in the Communications Act to its customers.

14. Following conversations with the auditors, USAC indicated its willingness to accept the information provided in the response and AMV's position but requested additional documentation to support the statements made in the June 20, 2012 response.

15. USAC requested additional documents that would provide a more complete picture of the end product AMV customers expect to receive.

16. In particular, USAC sought information from eleven AMV customers.

17. AMV then submitted various documentation evidencing the end product those eleven customers expected to receive, including, as suggested by USAC, emails, statements of work, and contracts/service orders as available.

18. The supplemental response explained that the array of television production and editing services for live and recorded entertainment, sports and news programs AMV provided to customers spans from simple to complex.

19. Notwithstanding the vast array of services offered, one key fact remained true for all of AMV's customers. Namely, in every instance, AMV changes the form and content of the live or recorded video with encoding and other modifications in addition to monitoring and reviewing the video.

20. The services provided by AMV are exactly the same services provided by any broadcast network. Recording, playback, editing, duplication, encoding and transferring of the material between parties to further complete show material ultimately destined for public consumption.

21. Until the audit, AMV was unaware that broadcast shorthand and terms of art could be used in an audit context to determine the legal classification of services provide for universal service contribution purposes.

22. Terms such as "uplink," "downlink," "transmission" and others that are understood in the broadcast and video production industry to incorporate an array of services do not hold the same meaning as the auditors ascribed to them in the audit. Because of this, AMV, and its employees, used terms of art that were plain to its customers to describe its services.

23. In addition, AMV completely misunderstood the federal universal service support mechanism and the associated contribution obligations of providers.

24. AMV does not have a full time legal team to manage the USF billing and collection process.

25. Moreover, our accounting firms were also confused by the USF billing and collection process.

26. AMV's misunderstandings are exemplified by the fact that AMV included USF costs that it paid to its telecommunications suppliers on invoices to its customers.

27. In other words, AMV has been collecting and remitting the USF fees it collects to USAC based on a mistaken belief that USF assessments are based on what AMV purchases and utilizes to provide those services.

28. AMV always considered itself an end user of telecommunications, and not a reseller of telecommunications services.

29. We found the definition of telecommunications, and knew that we were changing the form of every signal we dealt with, so we genuinely did not believe we were providing

telecommunications. Also, our customers do not have a choice of where the connectivity is but ultimately need a connection to our facility to satisfy a production need.

30. We asked the FCC if our services really constitute telecommunications. We never received any clarity.

31. AMV concluded that it should pass on the USF fees imposed by its telecommunications vendors to its own customers, but did not seek exemption from pass-through charges from its telecommunications vendors.

32. AMV believed it was following an appropriate model of the predecessor owner of the facility and of other companies, but we did not understand that as end users of telecommunications we do not have a direct contribution obligation of our own.

33. As a result of imposing USF surcharges, AMV has lost business to its competitors because the USF charge makes us uncompetitive. By paying our carriers and taking the most conservative approach to USF imaginable, we felt we had all bases covered and fully complying with the USF rules and regulations.

34. Despite all of our efforts, we were blindsided by a USAC audit.

35. If USAC is correct and we need to be charging USF on all the services they suggest, we will not be able to be competitive in the broadcast arena. We will likely lose most of our customers as they will either take their work in-house or to another company that does not collect USF.

36. Since the audit it has become abundantly clear to me that we never should have been charging our customers in the first place -- had we not, we never would have been audited and completely misunderstood and mislabeled by USAC.

37. In short, prior to the audit, AMV failed to properly understand the classification of its services, the significance of using terms of art when describing its services.

38. Instead, AMV accepted as true comments made by Williams Communications, not realizing the legal implications of the different services it provides.

39. During the course of the audit, AMV has better understood the USF framework and that it is not a reseller of satellite transport or other telecommunications services and its TV production and editing services are not subject to USF obligations.

40. However, it failed to conduct the proper inquiry when it acquired its transport facility and unfortunately, accepted Williams Communications' classification despite the fact that the services offered by Williams Communications were significantly different than the TV production and editing services offered by AMV.

41. Even USAC's Internal Audit Division's employees told me that AMV's biggest mistake was to register with the FCC and file a FCC Form 499-A in the first instance.

42. I was led to believe that none of our competitors (i.e. television networks, post production facilities, and switching hubs) were USF contributors but because AMV obtained a FCC Filer ID and contributed to the USF, it now was part of the system and would have to disprove its classification as a telecommunications provider.

43. As set forth in greater detail below, AMV has provided documentary and testimonial evidence to show that it was not and does not offer on a stand alone basis telecommunications services; that its customer do not order nor do they believe they are being provided telecommunications services; that AMV always changes the content and form of the videos that it is working on for its customers.

44. It should be clear that USAC and its auditors failed to understand the true nature of AMV's services.

AMV's Facility and Employees

45. AMV's adjunct production and post production facility is located in Carteret, New Jersey.

46. This New Jersey facility houses over 300 television monitors and AMV's video technicians performing their various production and post production services.

47. AMV's employees are skilled video and audio engineers, graphics specialists, and video/audio editors that provide the quality control services for the customers' television video broadcasts and recorded programming before the TV show is put on the air.

48. AMV does not broadcast any programming to the general public. The programming is all copyright protected, and AMV is providing production or post production services with all program information that is destined to its customers who will ultimately disperse to the general public.

AMV's Customers

49. AMV's customers are TV syndicators involved in producing programs, television networks including [redacted], and film production companies.

50. These customers hire AMV to provide production and post production work on their live and recorded television shows.

AMV changes the form and content of the information as sent and received

51. AMV does far more than pass on a video signal from one place to another.

52. Video never leaves AMV's facility in the same form and format as it arrives.

53. AMV monitors the quality of video, adds encoding and other content, changes the format and aspect ratio, adds graphics, adds coding for rating services, adds close captioning, adds commercials and otherwise alters the transmitted information depending on a particular customer's specifications as is required.

54. Depending on the type of signal involved, AMV might also make other conversions, such as aspect ratio, format, or standards conversions.

55. Television signals can have different sizing and format requirements in order for the video to appear correctly on a television screen. Because the television signals must first be converted from video to data and/or IP to be carried over satellite or digital media, none of these parameters are in place when AMV receives the television signal.

56. As a result, converting signals is a necessity if the format of the program arriving at AMV is not the required specification of the receiving customer.

57. For example, SD is most commonly sent in a 4:3 ratio of width to height, and HD is 16:9. Some broadcasters will prefer signals to be sent in SD as a 16:9 format to create a black space above and below the picture.

58. Many older programs that were originally shot in SD 4:3 ratio are being broadcast on HD networks and will have black on the sides of the picture. AMV can convert the aspect ratio or replace the black space with a graphic element instead.

59. Because conversions cause degradation in the show quality, all efforts are made to reduce the number of times a signal is converted. The signal originator will usually not sacrifice any quality degradation to the product, so AMV normally performs the conversion once to the standard required by the recipient.

60. AMV's TV production and editing service incorporates an array of instances where AMV is changing the form and content of the video sent to its Customers.

AMV uses telecommunications services to provide its TV production and editing services

61. AMV purchases telecommunications services from several suppliers in order to provide its TV production and editing service.

62. For example, it purchases fiber loops from Verizon so that AMV can establish a direct connection between a customer's location and AMV's facility.

63. AMV's customers cannot and do not use that fiber loop for any purpose other than to send video to AMV for production services and quality control.

64. Inversely, while it is possible for a telecommunications company like Verizon to provide two-way communications via fiber circuits, AMV must procure separate single direction circuits from the carriers.

65. AMV cannot provide two-way communications for any of its services. Video can be made to travel either to our facility OR from our facility but not both directions.

66. In other words, AMV purchases the fiber for its own business purposes – establishing a connection between itself and its own customer – but AMV's customer cannot, in turn, specify the points of the fiber loop or what type of information is sent over that loop.

67. The loop is in place solely to make possible AMV's production and quality control services.

68. Even if the loop may only be used an hour or less a day in some cases, AMV incurs a monthly cost to establish and to maintain this connection between AMV and its customer.

69. The constant connection is necessary so AMV is on "standby" with a ready direct connection in the event the customer needs AMV to work on a program to be televised.

70. The cost associated with this fiber is considered an overhead expense that AMV recovers from its customer through its monthly fee.

71. Whereas AMV's telecommunications supplier generally permits AMV to transmit whatever information AMV chooses over that loop, AMV's customers do not have that ability.

72. AMV's customers can only use that loop to send video to AMV so that AMV can provide video production services and deliver the edited video back to the customer.

AMV does not provide standalone telecommunications

73. Although the various costs and components that AMV uses to provide its video production services may be itemized on customer bills, and revenues from these services are linked to AMV's underlying costs in accounting books and records, AMV does not provide any of its customers the option of purchasing telecommunications services as a *standalone* product.

74. Thus, while AMV purchases separate telecommunications components from its suppliers, AMV's customers do not use telecommunications components as standalone products separate and apart from AMV's TV production and editing services.

75. AMV's customers hire AMV for the specific purpose of changing the form and content of its videos before broadcast.

76. When AMV's customers need telecommunications services, such as satellite services for their own use, they go directly to a satellite service provider to obtain the telecommunications services, not to AMV.

77. In other words, AMV uses telecommunications to obtain the video content for which AMV's customers have requested production services and to send the finished video content to its customers.

78. The underlying telecommunications supplier, *e.g.,* Verizon, provides the transmission to AMV for this purpose.

While AMV itemizes its underlying costs of providing service, its customers cannot separately purchase or use any one of these cost inputs for any other purpose.

79. Over the years, AMV has strived to provide its customers with transparent bills. That is, invoices that itemize to the greatest extent as possible the underlying costs that make up the service fee charged by AMV.

80. As a result and purely for the customer's understanding and convenience, AMV's invoices reflect, in some instances, AMV's own underlying costs and inputs.

81. These costs and inputs include the various telecommunications services that AMV must acquire and use to provide its production and editing services.

82. While these components are itemized on the customers' bills, they are not "resold" to AMV's customers, either individually or as a bundle.

83. Moreover, these line items do not reflect the functionality that is being supplied to AMV's customers, nor could a customer purchase any of these line items directly from AMV on a standalone basis for any purpose.

84. The line-item identification of these costs are akin to the overhead that AMV rolls into its service charges.

85. AMV has never considered itself to be reselling these services that it purchases to operate its business.

86. AMV has never offered these telecommunications components that it purchases to the public.

AMV's Post Productions Services are Included in What it Called Uplink Services

87. AMV offers what it terms "uplink" services, but uplink may not even be used for the actual service AMV provides.

88. The term "uplink," as used by AMV, refers to the signal that is outbound from its facility, it encompasses services involving post-production coding, editing, monitoring and quality control of television programming.

89. With these services, a customer will send the video to AMV via the private fiber loop or by some other means, such as videotape or file delivery.

90. When the video arrives at AMV's facility, AMV converts the video signal in order to process the video, view it, and add encoding and encryption to the video.

91. AMV uses a Harris NetVX decoder and HD/SDI router for signal processing, which includes NAVE encoding (for Neilson ratings), closed captioning, some commercial insertion additions, video tape records (VTR) and disk records (DDR), Evergreen playback and other encoding, depending on the particular customer's needs.

92. ATIS may be added to analog signals as part of what AMV terms "uplink" services.

93. ATIS is a unique broadcast identification that allows broadcast networks to identify the location of the transmission point of a signal.

94. Once processed, the video signal is converted from video to data with the HD/SDI encoder. The video travels an IP path to a satellite dish.

95. AMV might send a converted signal via satellite using the satellite services AMV has purchased for its own use, or the signal might travel via satellite services AMV's customers have purchased directly from a satellite service provider for their own purposes.

96. The monthly subscription price of the "uplink" service is higher where AMV uses its own satellite services versus where the customer transmits the signal on its own satellite services.

97. In either case, AMV employees provide quality control as the video signal is sent via satellite, observing the program on monitors at the AMV facility so that AMV employees can contact the satellite service provider if they notice "sparkles" or other fade issues with the video quality.

98. All of these services appear as one line item called "uplink" on a customer invoice.

Downlink

99. AMV also offers what it calls "downlink" services.

100. Typically, "downlink" services involve AMV capturing program information for quality control analysis and production services.

101. For example, a network might request pre-production services on a sports event to prepare video feeds for further editing at the customer's studio.

102. Network customers send video to AMV via satellite services that the customer has purchased directly from a satellite service provider. When the signal comes to AMV's facility, the signal is converted from satellite dish RF frequency to L-Band frequency via a decoder.

103. The signal is converted to HD/SDI Video, not simply in order to complete the transmission from the customer to AMV, but in order to enable AMV to view the video on its monitors so that it can acknowledge receipt of the correct video and provide quality control monitoring, check captioning, and other production and editing services.

104. For example, the signal is processed internally within the facility through an HD/SDI video router to devices that can check for closed captioning decryption or loudness monitoring.

105. After AMV has provided quality control and production services, the video is converted to data and sent along an IP data path and then via a Verizon video circuit (loop) to the customer site.

Redundancy Services

106. AMV's facility also provides redundancy services in case of some catastrophic failure.

107. For example, if a studio goes dark during a live show, AMV will substitute an "Evergreen" show in its place – a television show that does not have content tied to any particular time of year or day.

108. This generic programming does have the current daily commercials inserted, or space for local commercials that a broadcaster could insert, with use of AMV's facility and employees, so that commercials can still air during any time when a studio is dark.

109. AMV provides this "playback to nowhere" service during live programming, so that the Evergreen show is running concurrently and would be available for broadcast immediately in case something happens with the live program or the studio.

AMV's Detailed Billing

110. AMV's customers often ask us for an explanation for our pricing.

111. In an effort to satisfy our customers' desire for full disclosure and also to assist in the explanation for our pricing, AMV decided to create detailed invoices.

112. These invoices include our underlying costs.

113. Often the telecommunications components represent the highest expenses that we incur.

114. This explains why we identify the telecommunications components that AMV uses on our invoices.

115. INTENTIONALLY LEFT BLANK.

AMV's Competitors

116. AMV does not compete with or provide the same services as its underlying telecommunications suppliers.

117. AMV uses telecommunications suppliers to connect directly to customers that require customized video processing for their signals.

118. AMV's underlying suppliers do not provide the production, graphics and editing services that AMV offers its customers.

119. AMV's competitors are television production and post production facilities that choose to do the production and editing work in-house rather than out-source the work to AMV.

120. I am not aware of any other company/network that offers the same type of production, graphics and editing services being classified as a telecommunications service provider.

121. Classifying AMV's services as telecommunications will undoubtedly make it more difficult for AMV to compete with the non-contributing networks.

AMV Does Not Provide Telecommunications

122. As a result of this USAC audit I have spent numerous hours with legal counsel evaluating AMV's services and understanding the legal classification of AMV's services.

123. I am familiar with and understand the definition of "telecommunications" as set forth in the Communications Act of 1934, as amended (the "Act").

124. I understand that "telecommunications" as defined by the Act is "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

125. Based on my intimate understanding of AMV's services and the services' functionality provided to AMV's customers, I can state without hesitation that AMV does not provide telecommunications services to its customers.

126. AMV does not market or represent to its customers that it is selling or providing telecommunications services.

127. Our customers have their own underlying telecommunications providers that they use for their telecommunications needs. They do not seek nor expect AMV to provide them with telecommunications services that they can use for their own purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Under penalty of perjury, I hereby affirm that the foregoing statements are true to the best of my knowledge, information and belief.

Richard Duke

State of New York)
ss.:
County of NY)

The foregoing instrument was acknowledged before me this 20th day of June 2013 by

TASHA R. SHA
Notary Public, State of New York
Registration #01RI6122616
Qualified In Bronx County
Commission Expires February 14, 2017

Notary / Registration Number

2/14/2017
My Commission Expires

EXHIBIT
5

REDACTED - FOR PUBLIC INSPECTION

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

In the Matter of	)
AMV Gateway, LLC Request for	)
Review of a Decision of the	)
Universal Service Administrator	)

FILED/ACCEPTED

JUN 21 2013

Federal Communications Commission
Office of the Secretary

AFFIDAVIT
Of
LENNY LAXER

Lenny Laxer, being duly sworn, deposes and says that:

1. I am the Vice President at AMV Gateway, LLC ("AMV").

2. I work out of AMV's Carteret, New Jersey facility.

3. As part of my duties as Vice President for AMV I am responsible for selling AMV's television broadcast, recording, editing and production services and developing relationships with AMV's customers

4. AMV's customers are: TV syndicators involved in producing programs; television networks including [redacted]; and film production companies.

5. These customers hire AMV to provide editing and production work on their live and recorded shows.

6. Given my role at AMV I have first-hand knowledge of the services that AMV's customers purchase and the services AMV provides.

7. I regularly communicate with AMV's customers about the services and oversee their accounts.

8. Our customers hire AMV to do far more than pass on a video signal from one place to another.

9. Our customers hire AMV to monitor the quality of video, add encoding, add closed captioning, change the format and aspect ratio, and otherwise alter the customers' video depending on the particular customer's specifications.

10. As part of its services, AMV provides its customers with what we identify as "uplink" services. I explain to our customers that the term "uplink," as used by AMV is consistent with its usage in the video production industry. That is, the term "uplink" encompasses services involving post-production coding, editing, monitoring and quality control of television programming.

11. I also explain what we identify as "downlink" involves the process of when a customer sends a video to AMV for production services.

12. I also explain that AMV's Carteret facility can provide redundancy services in case of some catastrophic failure at our the customer's studio.

13. I have recently become familiar with and understand the legal definition of "telecommunications" as set forth in the Communications Act of 1934, as amended (the "Act").

14. I understand that "telecommunications" as defined by the Act is "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

15. I have never sold, on AMV's behalf, telecommunications services.

16. None of AMV's customers have ever requested that we provide them with telecommunications services.

17. All of AMV's customers have their own third-party telecommunications and/or satellite service provider(s) that they use for their telecommunications needs.

Under penalty of perjury, I hereby affirm that the foregoing statements are true to the best of my knowledge, information and belief.

Lenny Laxer

State of New York)
ss.:
County of New York)

The foregoing instrument was acknowledged before me this 19 day of June, 2013 by

TASHA RIVERA
Notary Public, State of New York
Registration #01RI6122616
Qualified in Bronx County
Commission Expires February 14, 2017

Notary / Registration Number

2/14/2017
My Commission Expires

EXHIBIT
6

REDACTED – FOR PUBLIC INSPECTION

PAGES INTENTIONALLY OMITTED

EXHIBIT
7

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

In the Matter of	)
AMV Gateway, LLC Request for	)
Review of a Decision of the	)
Universal Service Administrator	)

FILED/ACCEPTED

JUN 21 2013

Federal Communications Commission
Office of the Secretary

AFFIDAVIT
OF
MICHAEL CARBERRY

Michael Carberry, being duly sworn, deposes and says that:

1. I am the VP, Transmission Services at AMV Gateway, LLC ("AMV").
2. I have worked at AMV since May 2003.
3. As AMV's VP, Transmission Services, I work at the company's Carteret, New Jersey facility and I am familiar with AMV's facility and operations.
4. On June 14, 2013, AMV's President Richard Duke asked that I take photographs of the inside of AMV's Carteret facility.
5. I took six photographs attached hereto and identified as Attachments A – F.
6. These photographs are true and accurate representations the AMV's Carteret facility.
7. Generally speaking, the photographs show quality control television monitors, equipment remote control computers, industry video and audio test equipment and telephone systems used for phone bridges during events.
8. This equipment is used by AMV's video and audio engineers, graphics specialists, and video/audio editors to perform a vast array of television production and editing services for its customers' recorded and live entertainment, sports and news programs.

9. The pictures I took depict how an AMV technician monitors incoming feeds side by side.
10. Even though the images in the monitors seem to be the same, in reality there is something slightly different to each.
11. One image will represent the inbound signal. The next represents the signal after close captioning has been encoded and visible. While the other is close captioned but hidden.
12. After all the various decode and encodes are done, AMV technicians view the signal before delivering the program to the customer.
13. If the programming is delivered to satellite, there will be a corresponding "return" feed to the AMV facility allowing it to verify signal quality and confirm that the signal is in fact good.
14. In other words, the monitor wall shows signals as it passes through all of the devices so AMV can isolate any issues that may appear with Neilsen encoding, closed captioning or loudness processing.
15. Because all of this work happens in real time AMV needs the ability to isolate potential signal problems immediately.
16. The photographs also show the waveform monitors, vector scopes directly above some of the monitors built into the console desk to ensure all signals meet network standards.
17. Also depicted is the spectrum analyzer used to monitor the satellite signal. These analyzers identify variations or interferences which then requires manual restoration by an AMV technician.

18. There are also green button panels in the console that represent the HD/SDI Router panels. This router provides AMV technicians with the ability to move the signal to different pieces of equipment to access Disk Recorders or Playback devices, encoders, decoders, loudness monitoring, Dolby processors etc.
19. Also shown on the console are several phones that allow for direct communications with customers that are sending AMV signals or receiving AMV signals. Transferring the signals after processing is a major coordination effort undertaken by AMV and the customer. This is a task that can not be automated.
20. Constant monitoring of the console and equipment depicted in the photographs is needed as visual confirmation of signal quality is required for all program signals.

[REMAINDER OF PAGE INTENTINALLY LEFT BLANK]

Under penalty of perjury, I hereby affirm that the foregoing statements are true to the best of my knowledge, information and belief.

Michael Carberry

State of NY)
ss.:
County of NY)

The foregoing instrument was acknowledged before me this 20 day of June, 2013 by

TASHA RIVERA
Notary Public, State of New York
Registration #01RI6122616
Qualified in Bronx County
Commission Expires February 14, 2017

Notary / Registration Number

2/14/2017
My Commission Expires

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

ATTACHMENT D

PBX 14
PBX 15
PBX 2
PBX 3
PBX 4
PBX 6

ATTACHMENT E

NBC
NEWSCHANNEL
WASHINGTON, DC
ANC1-19F

ATTACHMENT F

Shanghai
For Sale
Shanghai
For Sale

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

In the Matter of	)		
	)	Docket Nos.	WC 06-122
AMV Gateway, LLC Request for	)		WC 96-45
Review of a Decision of the	)		WC 97-21
Universal Service Administrator	)		

CERTIFICATE OF SERVICE

I, Sherry Reese, hereby state and affirm that copies of AMV Gateway, LLC's Request for Review of a Decision of the Universal Service Administrator, were served via Email and First Class Mail on this 21st day of June 2013, upon the following:

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Sherry A. Reese

Sherry Reese