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

In the Matter of)
)
Request for Review by IVANS, Inc. of) WC Docket No. 06-122
Decision of the Universal Service)
Administrator)
)
Petition for Declaratory Ruling on the)
Assessability of Certain Information Services)
)

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATOR AND PETITION FOR DECLARATORY RULING**

August 6, 2013

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I. INTRODUCTION AND SUMMARY

IVANS, Inc. (“IVANS”),¹ through its attorneys, and pursuant to Sections 1.2, 54.719(c), 54.720 and 54.721 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules,² submits this request for review of actions taken by the Universal Service Administrative Company (“USAC”) and a declaratory ruling on whether enterprise services using Multi-Protocol Labeling Switching (“MPLS”) and Frame Relay are Universal Service Fund (“USF”) assessable. Because the issues raised in this request are novel questions of fact, law, and policy, they are subject to *de novo* review by the full Commission.³

¹ Subsequent to the April 16, 2013 filings IVANS made with USAC that are at issue here, IVANS was acquired by ABILITY Network, Inc. (“ABILITY”) and then merged into ABILITY in a transaction that closed on May 1, 2013. ABILITY now stands in the shoes of IVANS. The IVANS name is used throughout this pleading for consistency.

² 47 C.F.R. §§ 1.2, 54.719(c), 54.720, 54.721.

³ *Id.* §§ 54.702(c), 54.722(a).

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IVANS appeals to the Commission for review of USAC's letter decision of June 7, 2013, which found that certain of IVANS' 499-A worksheets were "not compliant with the FCC's rules and orders" because IVANS had not reported as assessable the revenue on which AT&T had already contributed to the USF.⁴ USAC justified this decision on three grounds:

- that USAC was not bound by the Commission's guidance in the *Wholesaler-Reseller Clarification Order* to review any evidence offered in order to avoid double collection, instead relying on the *ATS Order* to direct IVANS to settle the issue privately with AT&T;⁵
- that, pursuant to the *ATS Order*, IVANS had not provided sufficient evidence for USAC to determine whether IVANS' methodology resulted in an underreporting of assessable revenue;⁶ and
- that IVANS had violated the Form 499 Instructions by moving the revenue already contributed on by AT&T from Line 406 (assessable) to Line 418 (non-assessable).⁷

In that same letter, USAC also demanded that IVANS file worksheets dating back to 1998, when IVANS first began providing the enterprise services, citing a lack of any "statutory or regulatory limitation on an entity's obligation," and the Commission's enforcement practices.⁸

USAC has erred in both regards.

USAC Cannot Collect from Both IVANS and AT&T. As discussed in Section III.A, the *Wholesaler-Reseller Clarification Order* makes clear that after one service provider has made a contribution, USAC cannot assess a second contributor on the basis of the same revenue. While the burden is on the service provider to demonstrate double collections, USAC cannot summarily

⁴ See Letter from Kristin Berkland, Universal Service Administrative Company, to Alfred Mamlet, Steptoe & Johnson LLP, Counsel for IVANS, at 2 (June 7, 2013) ("USAC Letter") (Attachment 1).

⁵ *Id.* at 4-6.

⁶ *Id.* at 3, 6.

⁷ *Id.* at 2-3.

⁸ *Id.* at 4, 7-8.

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dismiss the evidence of a double collection, and simply require the contributors to work out the double counting issue between them.

Moreover, USAC's decision not to apply the Commission's *Wholesaler-Reseller Clarification Order* was improper because that *Order* is not, as USAC contends, limited to claims of double counting from wholesalers. Indeed, it would violate the Administrative Procedure Act ("APA")⁹ for USAC to ignore evidence of double counting, simply because it is IVANS, and not AT&T, presenting the evidence. This is particularly true given that IVANS produced clear and convincing evidence to USAC, in the form of a signed assurance by AT&T, that AT&T has already contributed based on the revenue that it received from IVANS. While the AT&T assurances meet the Commission's *Wholesaler-Reseller Clarification Order* standard for clear and convincing evidence, IVANS presents additional evidence here in the attached Declaration of Jeff Dobish, which provides a detailed explanation of the basis for IVANS' filings, including its calculations of the amount of IVANS' revenue previously included in AT&T's contribution base (Sections II.B and III.B). Finally, the Instructions for Form 499-A require IVANS to break down its revenue as assessable and non-assessable as appropriate—precisely what IVANS did (Section III.C).

Indefinite Filing Requirement. Contrary to USAC's assertion, holding IVANS to an indefinite filing requirement is not supported by the Commission's enforcement practices. As discussed in Section IV.A, while the Commission has routinely cited companies for failing to register and file with USAC, it has never required any company to file for periods longer than five years from when it first issued a *Letter of Inquiry*. Even then, the Commission has only required a company to file back for five years in the most severe of cases, *i.e.*, where a company

⁹ 5 U.S.C. §§ 551-559, 701-706.

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has failed to respond or comply with the Commission's requests. IVANS comes to the Commission with clean hands and in an attempt to correct an error not of its making. Yet the result of USAC's decision would be to treat IVANS more harshly than even the most egregious and least cooperative of violators ever to face an enforcement proceeding over a failure to contribute. It is unclear whether in the future any similarly situated provider would voluntarily come forward in good faith to face such severe punishment (Section IV.B). Applying an indefinite requirement to back file worksheets to IVANS would also ignore the practical limitations created by a lack of available information and the certification requirement of Form 499-A, which no officer of IVANS may have the requisite knowledge to provide (Section IV.C).

Declaratory Ruling as to Enterprise Services. The Commission has never determined whether those enterprise services like MPLS are assessable, causing carriers to take wildly different views. IVANS therefore also seeks a declaratory ruling making this necessary clarification. To the extent the Commission determines that contribution is owed on these products, IVANS requests that it be applied on a going-forward basis here to avoid the very "administrative nightmare" and patent unfairness that other providers have already warned the Commission about (Section V).¹⁰

IVANS thus requests that the Commission find that: (1) USAC may not double collect on the revenues AT&T has already made USF contributions on; (2) USAC may not require IVANS to file worksheets beyond those it has already submitted; and (3) IVANS' MPLS and Frame Relay-based enterprise services were not assessable for purposes of USF contribution.

¹⁰ Sprint Nextel Corporation, BT Global Services, NTT America Inc., XO Communications, Orange Business Services, and Verizon, Proposal for USF Contributions on MPLS-Enabled Services, WC Docket No. 06-122, at 14-15 (Mar. 29, 2012) ("MPLS Providers White Paper").

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II. BACKGROUND

A. IVANS' Decision to File with USAC

Since 1982, IVANS' primary business has been to provide software and data management services to the healthcare and insurance industries. IVANS' services enabled customers to exchange information with other healthcare and financial services enterprises and with government payers like the Centers for Medicare and Medicaid Services ("CMS"). In 1998, IVANS began offering resold services from AT&T as well so that it could provide the healthcare industry with fully managed data solutions. Among the resold AT&T services was an enterprise service referred to as Enhanced Virtual Private Network ("EVPN"). The EVPN service includes MPLS services resold from AT&T. The predecessor service, Managed Data Network Services ("MDNS"), included resold AT&T Frame Relay service.¹¹ These services have always been an adjunct to IVANS' core software and data management services.

Prior to November 2012, AT&T had never charged IVANS USF on MPLS, Frame Relay, or any other service, nor had it requested a reseller certification from IVANS. As a consequence, IVANS had not contributed to USF or filed Form 499s. In early 2012, ABILITY entered into negotiations to acquire a substantial portion of IVANS' business, including IVANS' EVPN resale business. In the course of a due diligence review of IVANS' operations, however, questions were raised regarding the USF assessability of IVANS' enterprise services.¹²

In October of 2012, IVANS asked AT&T how it treats MPLS for USF purposes. AT&T responded on October 19, 2012, indicating that it had mistakenly classified IVANS as a retail customer and at the same time waived its customary pass-through USF charge—two errors that

¹¹ Declaration of Jeff Dobish ¶ 7 (Aug. 6, 2013) ("Dobish Declaration") (Attachment 2).

¹² *Id.* ¶ 9.

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AT&T indicated it would fix in the next billing cycle.¹³ On October 22, 2012, IVANS requested additional information from AT&T, including verification that AT&T had, in fact, been paying USF on the revenue it received from IVANS.¹⁴ In a November 19, 2012 letter, AT&T confirmed that its Form 499 filings had assessed the revenues it received from IVANS.¹⁵

In March 2013, AT&T reiterated that AT&T had “always treated IVANS as an end-user customer of interstate telecommunications because it had no reasonable expectation that IVANS was a direct [USF] contributor,” and that AT&T had “appropriately reported the interstate telecommunications revenues it received from IVANS as end user revenue, which it included in its [USF] contribution base.”¹⁶

IVANS reviewed the Commission’s rules and precedent regarding the USF treatment of MPLS and Frame Relay and found the record to be unsettled.¹⁷ Due to the unsettled nature of, and conflicting views on, MPLS and Frame Relay assessability for enterprise services, IVANS decided that it should treat the MPLS-based EVPN service in the same manner that AT&T treats it.¹⁸

B. IVANS’ Preparation and Filing of Forms 499

Once IVANS received its first AT&T invoice applying USF charges, IVANS began a customer-by-customer, service-by-service review of its records for the prior five years (2008-

¹³ *Id.* ¶ 9, Exhibit 1 (Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS (Oct. 19, 2012)).

¹⁴ *Id.* ¶ 10, Exhibit 2 (Letter from Jeff Dobish, IVANS, to John J. Malone, AT&T (Oct. 22, 2012)).

¹⁵ *Id.* ¶ 11, Exhibit 3 (Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS (Nov. 19, 2012)).

¹⁶ *Id.* ¶ 11, Exhibit 4 (Letter from John Malone, AT&T, to Jeff Dobish, IVANS, Inc., at 1 (Mar. 19, 2013) (“AT&T Letter”)).

¹⁷ *See* Section V, *supra*.

¹⁸ Dobish Declaration ¶¶ 9-13.

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2012).¹⁹ First, IVANS reviewed the AT&T invoice and determined {which “service categories” on the AT&T invoice were being assessed USF}.²⁰ Next, IVANS matched {

}.²¹ IVANS then connected the product descriptions with the billing identification numbers IVANS has used for the past five years for those services and their predecessors.²²

Next, { } IVANS reviewed its records for each customer on a product-by-product basis for five years (2008-2012), labeling every charge as either subject to USF contribution or not, in a manner corresponding to the AT&T invoice.²³

IVANS’ classification strictly conformed to AT&T’s classification: {

}.²⁴ Next, IVANS classified as non-assessable the revenues AT&T derived from IVANS for those services AT&T deemed subject to the contribution requirement.²⁵ Then, IVANS classified as assessable the remaining revenues (effectively, IVANS’ mark up of (gross

¹⁹ *Id.* ¶ 13.

²⁰ *Id.*

²¹ *Id.* ¶ 14.

²² *Id.* {

²³ *Id.* ¶ 13.

²⁴ *Id.* ¶ 14.

²⁵ *Id.* ¶ 16.

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margin on) the resold services) from those services deemed subject to the contribution requirement.²⁶ Finally, IVANS calculated the amount paid to AT&T for each line item.²⁷

Once IVANS completed this line-item-by-line-item review, it was able to divide its revenues into five categories, as shown below in Table 1: (1) revenues from non-assessable services; (2) IVANS' gross revenues from assessable services; (3) IVANS' payments to AT&T on the assessable services, which AT&T has confirmed it reported to USAC as assessable revenues; (4) IVANS' total non-assessable revenue—the sum of IVANS' revenue from non-assessable services (Column 1) and the revenue on which AT&T has already contributed (Column 3); and (5) the total for assessable services—the difference between IVANS' revenues from customer payments (Column 2) and IVANS' payments to AT&T (Column 3).²⁸ The amounts in each of these five categories for each reporting year (2009-2013) are shown in Table 1:

	(Column 1)	(Column 2)	(Column 3)	(Column 4)	(Column 5)
Year	Revenues from Non-Assessable Services	IVANS Gross Revenues	AT&T Reported Revenues	Total Non-Assessable Revenues Line 418	IVANS' Assessable Revenues Line 406
2009					
2010					
2011					
2012					
2013					

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* ¶ 17.

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IVANS reported its gross assessable revenues (Column 5) on Line 406 and its total non-assessable revenue (Column 4) on Line 418 of the Forms 499-A.²⁹

Prior to filing the forms, IVANS' counsel met with USAC to voluntarily disclose the filing errors and to explain the filing methodology it planned to use to make USF whole. On April 16, 2013, IVANS filed FCC Form 499-As for 2009 to 2013, along with a letter explaining the basis for the revenue reports.³⁰

C. USAC's Decision

On June 7, 2013, USAC issued a letter decision rejecting IVANS' filings. USAC summarily disregarded all evidence that its proposed USF assessments would result in double collections.³¹ USAC also determined that no statute of limitations applies to IVANS' failure to file Forms 499.³² As a result, USAC ordered IVANS (1) to re-file its FCC Forms 499-A to report, as "assessable," revenue on which AT&T has already contributed; and (2) to "file FCC Forms 499-A back to the date it first began providing telecommunications services."³³

Although USAC refused to accept the IVANS filings, USAC has already issued two invoices based on the filings, and intends to send two others. IVANS has already timely paid the first invoice as it will the subsequent invoices.

²⁹ *Id.* ¶ 18.

³⁰ Letter from Alfred Mamlet, Steptoe & Johnson LLP, Counsel for IVANS, to David Capozzi, USAC (April 16, 2013) ("IVANS Letter") (included in Attachment 3, IVANS' Filing with USAC).

³¹ *See* USAC Letter at 4-7.

³² *Id.* at 7-8.

³³ *Id.* at 4.

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III. IVANS' FCC FORM 499 FILINGS PROPERLY REPORT USF GROSS REVENUES

USAC erred in demanding that IVANS refile its forms to include as assessable revenues amounts on which AT&T had already paid USF. USAC rejected IVANS' filings on three principal grounds: (1) that, pursuant to the *ATS Order*, USAC is not required to resolve double collection issues reported by resellers;³⁴ (2) that IVANS has not presented sufficient evidence to support its claim of a double collection;³⁵ and (3) that IVANS failed to properly report all of its "gross revenue" on the Form 499 filings by reporting the revenue on which AT&T had already contributed as "non-assessable" on Line 418.³⁶

Each of these rationales was incorrect. First, the Commission's *Wholesaler-Reseller Clarification Order* determined that USAC cannot "double collect if clear and convincing evidence shows that *another provider* actually contributed on the subject revenues."³⁷ The Commission's decision did not turn, as USAC claims, on whether it was the reseller or the wholesaler who claimed double collection. Second, the Commission further instructed USAC to accept certifications from other providers as evidence of double counting, and that such certifications could be considered "reliable proof" even if they did not conform to a standard

³⁴ IVANS Letter at 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Universal Service Contribution Methodology, *Order*, 27 FCC Rcd. 13780, 13799 (2012) ("*Wholesaler-Reseller Clarification Order*") (emphasis added). Even the *ATS Order*, favorably cited by USAC, notes that only one contribution is due for any particular revenue. See Federal-State Joint Board on Universal Service, 22 FCC Rcd. 5009, 5013 ¶ 12 (2007) ("*ATS Order*") ("A third-party may agree to pay on behalf of a reseller, and the Administrator may accept payments from the third-party . . .").

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reseller certificate.³⁸ Finally, IVANS in fact properly accounted for and reported all of its revenue in each Form 499 filing, consistent with the Form Instructions.

A. The *Wholesaler-Reseller Clarification Order*, Not the *ATS Order*, Controls This Case

USAC's argument for its ability to knowingly double collect relies exclusively on the Bureau's *ATS Order*,³⁹ which has effectively been superseded by the Commission's subsequent *Wholesaler-Reseller Clarification Order*. USAC's assertion that the *Wholesaler-Reseller Clarification Order* is limited by the facts to wholesalers claiming double counting is unsupported either by the *Order* itself or subsequent guidance by the Commission.

USAC ignored IVANS' evidence of double payments, relying on the *ATS Order* for the proposition that USAC "generally does not have the ability to determine with any certainty whether and on what revenues a 'double-payment' was received" because it would have to

³⁸ See *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13801 ¶ 46 ("Within the context of this analysis, USAC should take the Confirmatory Certificates into account, because they may be relevant to the issue of whether the customers in fact contributed to the Fund."); *id.* at 13802 ¶ 54 ("Even if reseller certificates do not follow the guidelines in the Form 499-A instructions, the certificates can still constitute "other reliable proof" supporting a reasonable expectation, depending on the totality of the facts and circumstances under which the certificates were obtained."); see also *id.* at 13801 ¶ 49 (indicating that such evidence would be relevant in determining whether assessing a "provider would thus lead to a double collection").

³⁹ Three of the resellers whose petitions were denied by the Wireline Bureau in the *ATS Order* have appealed to the full Commission. See Public Notice, Federal Communications Commission, Docket No. 96-45, Comment Sought on Petitions for Reconsideration and Review of the Wireline Competition Bureau's *Order Denying Eureka Broadband and Value Added Communication's Request for Review of a Universal Service Administrator Decision*, DA 07-2108 (rel. May 18, 2007); Public Notice, Federal Communications Commission, Docket No. 96-45, Comment Sought on Two Applications for Review of the Wireline Competition Bureau's *Order Denying American Cyber Corp., et al. and American Telecommunications Systems, Inc. Requests for Review of Universal Service Administrator Decisions*, DA 07-3789 (rel. Aug. 29, 2007). No full Commission decision has ever been issued on these petitions, leaving the issues raised pending.

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conduct an audit of both the reseller and the wholesaler.⁴⁰ However, the Commission clearly rejected USAC's position in the *Wholesaler-Reseller Clarification Order*. There, USAC specifically asked the Commission whether, based on "post-dated certificates," USAC should conclude that "the contributor's carrier customers were incorporating the services purchased from the contributor into their own telecommunications offerings, and such customers' USF contributions were based on revenues from such offerings when provided to end-users."⁴¹ As in the *ATS Order*, USAC was concerned that use of such certifications "may result in under-reporting or underpayment of USF contribution obligations."⁴²

Significantly, the Commission did not adopt the reasoning in the *ATS Order* that USAC could ignore evidence of double counting because USAC could not resolve a double counting issue without an audit of both the wholesaler and the reseller. Instead, the *Wholesaler-Reseller Clarification Order* expressly requires USAC to "consider the evidence offered" by one provider that another has contributed on the same revenue,⁴³ because that evidence "may be relevant to the issue of whether the customers in fact contributed to the Fund."⁴⁴ Importantly, the Commission indicated that, "[i]f USAC does determine that the customer contributed to the

⁴⁰ USAC Letter at 5 (quoting *ATS Order*, 22 FCC Rcd. at 5013 ¶ 13). Even the *ATS Order* recognized that if a reseller could show double collection, it would not have to pay the second billing. See *ATS Order*, 22 FCC Rcd. at 5013 ¶ 12 ("A third-party may agree to pay on behalf of a reseller, and the Administrator may accept payments from the third-party . . .").

⁴¹ Letter from Richard A. Belden, Chief Operating Officer, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Mar. 1, 2011) ("Guidance Request").

⁴² *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13792 ¶ 26.

⁴³ *Id.* at 13799-800 ¶ 46.

⁴⁴ *Id.*

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Fund, [it] should not seek to recover additional contributions on the subject revenues from XOCS or other wholesale providers.”⁴⁵

In its letter decision, USAC stated that it was not required to follow the *Wholesaler-Reseller Clarification Order* because IVANS was a reseller, not a wholesaler. However, USAC invited IVANS to seek FCC guidance as to whether the *Wholesaler-Reseller Clarification Order* applies to resellers as well as wholesalers.⁴⁶

While only wholesalers petitioned to avoid double counting in *Wholesaler-Reseller Clarification Order*, there is nothing in the text of the Commission’s decision or in the underlying policy to support a position that double collection from wholesalers is prohibited, but double collection from a reseller is permitted. Indeed, Section II.C of the *Wholesaler-Reseller Clarification Order* addresses double collection, and it is plainly titled: “USAC Should Not Double Collect if Clear and Convincing Evidence Shows that *Another Provider* Actually Contributed on the Subject Revenues.”⁴⁷ The standard announced in that section of the decision was not limited to wholesalers, but instead addressed the burden “on the *provider* claiming double collection to demonstrate actual contributions were made to the Fund based on the relevant services through clear and convincing evidence.”⁴⁸ Most importantly, the Commission’s determination, that USAC cannot “double collect if clear and convincing evidence shows that another *provider* actually contributed on the subject revenues,”⁴⁹ was not restricted to claims from wholesalers.

⁴⁵ *Id.*

⁴⁶ USAC Letter at 6-7.

⁴⁷ *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13799 (emphasis added).

⁴⁸ *Id.* at 13799 ¶ 45 (emphasis added).

⁴⁹ *Id.*

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The policy rationale supporting the *Wholesaler-Reseller Clarification Order* applies with equal force to claims of double collection from resellers as from wholesalers. As the Commission explained, “our present rules require contribution *only once* along the distribution chain.”⁵⁰ Section 254 prevents USAC from collecting twice on the same revenues.⁵¹ The APA requires USAC and the Commission to consider double collections claims from resellers just as it does from wholesalers.

Finally, USAC’s contention that IVANS should sort out the double collection issue with AT&T, instead of USAC,⁵² is unavailing. AT&T cannot simply pay IVANS the amounts contributed to USAC and refile its Form 499s because AT&T is prohibited by a 2004 Bureau *Order*, from revising its filings after one year in any way that “would result in a decrease in contribution amount.”⁵³

B. IVANS Has Provided Clear and Convincing Evidence of a Double Collection

IVANS has met the Commission’s “clear and convincing” standard for establishing that USAC’s position would result in double collection. The March 2013 AT&T Letter confirms that AT&T reported in its Form 499 filings, filed under penalty of perjury, all assessable revenues it received from IVANS through 2012 “in its [USF] contribution base.”⁵⁴ In its original

⁵⁰ *Id.* at 13786 ¶ 11 (emphasis added).

⁵¹ Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9207, ¶ 847 (1997) (“[B]asing contributions on gross telecommunications revenues creates a double-payment problem for resold services and thus is not competitively neutral”).

⁵² USAC Letter at 5.

⁵³ Federal-State Joint Board on Universal Service, *Order*, 20 FCC Rcd. 1012, 1016-17 ¶ 10 (2004).

⁵⁴ Dobish Declaration ¶ 11; AT&T Letter at 1.

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submission to USAC, IVANS further explained how it determined the amount on which AT&T had already contributed.⁵⁵ Nevertheless, USAC contends that:

[N]either AT&T's letter, nor the documentation enclosed with the April 16, 2013 letter provide *any information* regarding the revenues on which AT&T allegedly paid Universal Service contribution amounts, nor does the April 16, 2013 letter explain how IVANS calculated the telecommunications revenues that AT&T allegedly paid during calendar years 2008 through 2012 and IVANS subtracted from the gross revenues amounts reported in its 2009 through 2013 FCC Forms 499-A.⁵⁶

The basis for USAC's claim that IVANS failed to provide "any" information is unclear.

As noted, IVANS fully explained its methodology both in a meeting with USAC before filing and in a letter from counsel that accompanied the filings.⁵⁷ Specifically, IVANS' presentation to USAC on April 8, 2013 explained that IVANS had "adopted the AT&T USF methodology, including the assumption that USF is assessable on MPLS access," "reviewed its customer and accounting records from the past five years (2008-2012) to determine which revenues were assessable down to a customer-by-customer level," and "report[ed] the difference between net and gross revenues as AT&T has paid USF on the revenues it derived from IVANS."⁵⁸ That information was more than sufficient to allow USAC to accept IVANS' filings. To the extent USAC desired additional information to verify the validity of those filings, USAC had the authority to request it, and IVANS was ready and willing to comply.⁵⁹

⁵⁵ IVANS Letter at 2.

⁵⁶ USAC Letter at 3 (emphasis added).

⁵⁷ IVANS Letter at 2.

⁵⁸ *Id.*, Attachment: IVANS, Inc., Presentation to the Universal Service Administrative Company, April 8, 2013.

⁵⁹ *See* 47 C.F.R. 54.711(a) ("The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet.").

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Moreover, under the controlling *Wholesaler Reseller Clarification Order*, USAC is required to review any evidence of double counting and has a duty to avoid double counting where possible.⁶⁰ The Commission did not require providers to submit to USAC an extensive audit trail showing that their filings will not result in an underreporting as part of their showing, as USAC appears to suggest. To the contrary, the Commission indicated that bare certifications from other providers with respect to actions that they will perform in the future regarding their USF obligations should be considered “reliable proof.”⁶¹ By that measure, the AT&T Letter is far more reliable proof here because it is evidence of *actual* contributions that *have been* made, rather than a *projection* that contributions *will be* made.⁶²

The provision of reliable proof also distinguishes this case from that of the resellers in the *ATS Order*. In that case, most of the resellers had not offered any certification from the underlying wholesaler. Further, while one reseller did offer a certification, there were

⁶⁰ *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13799-800 ¶ 46.

⁶¹ *Id.* at 13802 ¶ 54. In those certificates, the certifying provider indicated (1) that it was “purchasing service for resale in the form of U.S. telecommunications or interconnected Voice over Internet Protocol service” and (2) that it had contributed (or would contribute) “directly to the federal universal support mechanisms, or that each entity to which the company provides resold telecommunications is itself an FCC Form 499 worksheet filer and a direct contributor to the federal universal service support mechanisms.” *Compare Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13794 ¶ 30, with Form 499-A, Instructions, at 22 (2013). Similarly here, AT&T acknowledged (1) that IVANS had been purchasing “interstate telecommunications” from AT&T, and (2) that AT&T “appropriately reported the interstate telecommunications revenues it received from IVANS as end user revenue, which it included in its FUSF contribution base” during the relevant period. AT&T Letter at 1. While some of the certifications proffered in the *Wholesaler-Reseller Clarification Order* included sworn declarations, the FCC did not limit USAC’s obligation to evaluate relevant evidence to only sworn documents. *See Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13799-800 ¶ 46 (requiring USAC to “consider the evidence offered by the wholesale provider, *including* sworn reseller certificates”) (emphasis added). Moreover, USAC does not appear to question AT&T’s veracity, so much as IVANS’ methodology. USAC Letter at 3.

⁶² *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. at 13801 ¶ 49.

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discrepancies between the wholesaler's certification and the reseller's filings,⁶³ and the reseller was attempting to claim a complete exemption from USF contribution requirements based on the wholesaler's payments.⁶⁴ Here, AT&T's certification matches IVANS' filings with USAC and meets the requirements of the *Wholesaler-Reseller Clarification Order*. IVANS is prepared to pay on the revenues that AT&T has not already contributed on.

Nevertheless, while IVANS' initial showing was sufficient, IVANS has provided additional clarification and documentation, including a Declaration from Mr. Jeff Dobish, the current Executive Vice President for ABILITY and the former President, Shared Services, Chief Financial Officer, and Treasurer for IVANS. As detailed in the Dobish Declaration and discussed in Section II.B, *infra*, IVANS used a rigorous and painstaking process to determine, with the precision required of a filing under penalty of perjury, the revenue on which AT&T has already contributed. By matching up { [REDACTED] }, IVANS was able to determine precisely which services AT&T was classifying as assessable. With that information, IVANS was able to carefully backtrack through its records over the last five years to determine what revenue is subject to the contribution requirement, how much of that revenue AT&T has already been assessed for, and the remaining revenue assessable to IVANS.⁶⁵

C. IVANS' Filing Was Proper According to the FCC Form 499 Instructions

Contrary to USAC's claim, IVANS did not use Form 499 to create its own "unilateral administrative remedy," when it moved the amount of USF contribution already paid by AT&T

⁶³ See Equivoice's Request for Review of Decision of Universal Service Administrator, CC Docket No. 96-45, at Exhibit B (May 18, 2005).

⁶⁴ See Letter from Universal Service Administrative Company, to Richard C. Balough, at 2 (Mar. 21, 2005).

⁶⁵ Dobish Declaration ¶¶ 12-15.

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from the assessable column to the non-assessable column of its worksheets.⁶⁶ Instead, IVANS properly complied with the FCC's reporting requirements and Form 499-A Instructions.

The Instructions for filing Form 499-A require USF contributors to first report gross revenue from all sources, whether assessable or not on Line 419,⁶⁷ and then to break down that revenue into their constituent assessable and non-assessable parts.⁶⁸ Line 406 is where assessable revenues derived from MPLS and Frame Relay networks are reported.⁶⁹ All other revenue "that should not be reported in the contribution bases" is reported on Line 418.⁷⁰ Pursuant to the *Wholesaler-Reseller Clarification Order*, once a provider has contributed on particular revenue, that revenue is not assessable a second time.⁷¹

IVANS followed these instructions precisely when it made its filing. As indicated above, IVANS reported on Line 406 all of its revenues from the portions of its EVPN (and previous MDNS) services that AT&T had treated as assessable telecommunications revenue, after subtracting the revenue on which AT&T already paid.⁷² On Line 418, IVANS reported all non-

⁶⁶ *Id.* at 2.

⁶⁷ See Form 499-A at 6, Line 419 ("Gross billed revenues from all sources (incl. reseller & non-telecom.) [Lines 303 through 314 plus Lines 403 through 418]").

⁶⁸ See FCC Form 499-A, Instructions at 13 (2013) ("Lines 303-314 and Lines 403-418. – Report gross billed revenues as directed.").

⁶⁹ *Id.* at 17. To the extent the Commission concludes that all IVANS' revenues from end users, including those that AT&T has already made USF contributions on, should be reported on Line 406, IVANS requests that the Commission waive the requirement in this instance for good cause shown because reporting all of the "end user" revenue on Line 406 here would conflict with the prohibition on double collection. See 47 C.F.R. § 1.3.

⁷⁰ See FCC Form 499-A Instructions at 20.

⁷¹ *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd. 13780, 13799 (2012).

⁷² As it reported to USAC, IVANS reported on Line 406 "the revenue from its EVPN service using the difference between net and gross revenues as AT&T has paid USF on the revenues it derived from IVANS." IVANS Letter at 2.

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assessable gross revenues—including both IVANS' non-telecommunications revenue and the revenue on which AT&T had already contributed.

IV. THE REQUIREMENTS TO BACK-FILE AND MAKE USF CONTRIBUTIONS ARE NOT INDEFINITE

USAC has demanded that IVANS file worksheets back to the day it began providing telecommunications services, citing the Commission's enforcement practices and the lack of limiting language in the applicable regulations.⁷³ However, USAC's assertion cannot be squared with the Commission's prior enforcement practices, which, in practice, have never reached beyond five years, even for the most egregious offender. Such a policy would be particularly out of place here, given that IVANS not only came forward voluntarily, but also agreed to contribute on the basis of its resale of enterprise services whose regulatory classification is in doubt. Nor would such a position be good public policy, as it would communicate to delinquent contributors that they would be better off running the risk of an Enforcement Proceeding, where they are likely to receive more lenient treatment, than coming forward voluntarily. A waiver, if necessary, would be justified on those grounds alone.

A. USAC's Demand Is Inconsistent with the FCC's Enforcement Practices

The Commission routinely brings enforcement actions, often referred to by USAC, against carriers and providers for failing to file and contribute to the Fund. While those actions frequently result in citations against those companies, the Commission has never required a company to file for reporting periods beyond five years from when the Commission issued the *Letter of Inquiry*. In *ADMA Telecom, Inc.*, for example, the FCC issued a *Notice of Apparent*

⁷³ USAC Letter at 6-8. USAC's reliance on these two factors suggests that it is aware that the Commission has not clearly addressed this situation. Consequently, USAC was required to seek Commission guidance *before* issuing the letter to IVANS. *See* 47 C.F.R. § 54.702(c) ("Where the Act or the Commission's rules are unclear, or do not address a particular situation, [USAC] shall seek guidance from the Commission.") (emphasis added).

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Liability in 2009 that cited the company for failing to file worksheets for 2005 and 2006,⁷⁴ even though the company acknowledged that it had failed to file worksheets since it began providing service in 2001.⁷⁵ More recently, in *Unipoint Technologies, Inc.*, the FCC cited a company for failing to file all of the required worksheets for the five years prior to the issuance of its *Letter of Inquiry*.⁷⁶ While the FCC kept the date on which Unipoint began providing telecommunications confidential,⁷⁷ the company's website suggests that it may have been providing telecommunications services as early as 1997.⁷⁸

In its attempt to justify an indefinite filing requirement, the USAC Letter asserts that, “[i]n at least one instance, in 2009, the Commission required a carrier to file FCC Forms 499-A as far back as 2003,” citing the FCC’s forfeiture orders in *OMNIAT* and *Compass Global*.⁷⁹ That characterization is misleading. The Commission did not require OMNIAT to go back more than five years *from the issuance of the Letter of Inquiry*. In *OMNIAT*, the delinquent contributor had registered with USAC and filed the required Form 499-A in 2003, but had failed to file subsequently.⁸⁰ USAC began investigating OMNIAT in 2007 and then referred the matter to the

⁷⁴ See ADMA Telecom, Inc., *Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd. 838 (2009).

⁷⁵ See ADMA Telecom, Inc., *Forfeiture Order*, 26 FCC Rcd. 4152, 4155-56 ¶ 10 (2011).

⁷⁶ See Unipoint Technologies, Inc., *Notice of Apparent Liability for Forfeiture*, 27 FCC Rcd. 12751, 12762 ¶ 22 (2012).

⁷⁷ *Id.* ¶ 9 n.38.

⁷⁸ See Unipoint Technologies, Inc., <http://www.unipointhome.com/company.html> (last visited Aug. 6, 2013).

⁷⁹ See USAC Letter at 8 (citing OMNIAT International Telecom, LLC, *Apparent Liability for Forfeiture*, 24 FCC Rcd. 4254 (2009) (“*OMNIAT*”); Compass Global, *Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd. 6125 (2008) (“*Compass Global*”).

⁸⁰ See *OMNIAT*, 24 FCC Rcd. at 4260-61 ¶¶ 9-10.

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FCC in 2008.⁸¹ So while the FCC's ultimate *Order* was issued in 2009, the Commission's request for missing USF filings in fact only required OMNIAT to go back at most four years from the date at which USAC first began investigating the company and five years from when the FCC's Enforcement Bureau issued the *Letter of Inquiry*.⁸²

Importantly, the Commission only required OMNIAT to go back five years because the company failed to respond to FCC inquiries. *OMNIAT* is an outlier for that very reason. Indeed, in the underlying 2008 decision, the Enforcement Bureau only requested that OMNIAT file worksheets back to 2006, two years earlier.⁸³ It was not until OMNIAT failed to respond to the Bureau's request for this documentation that the full Commission took the further step of demanding that the company file any worksheets required since it had last filed in 2003, five years before the *Letter of Inquiry*.⁸⁴

USAC's citation to *Compass Global* is similarly unavailing. In that case, the delinquent contributor had been providing service since 1998, but only registered in 2006 and only reported and paid on its telecommunications revenue back to 2005.⁸⁵ Rather than requiring the company to file back to 1998, the FCC instead cited *Compass Global* in 2008 for its failure to properly file the required worksheets and pay the resulting USF contribution back to 2005—three years from the *Notice of Apparent Liability* and two years from the Bureau's original *Letter of Inquiry*.⁸⁶

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Compass Global*, 23 FCC Rcd. at 6131 ¶ 8.

⁸⁶ *Id.* at 6141 ¶ 34.

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B. IVANS Should Not Be Punished for Voluntarily Coming Forward and Taking a Conservative and Inclusive Approach to IVANS' USF Obligation

IVANS is not a villain here. IVANS is merely trying to do the right thing following discovery of AT&T's error. Despite the unsettled classification of enterprise services,⁸⁷ IVANS came forward voluntarily to report on this revenue. By contrast, OMNIAT had refused to register, file, and contribute for the mere three years originally requested by the Enforcement Bureau in its *Letter of Inquiry*.⁸⁸ In sum, IVANS is contributing on services that other similarly situated providers do not,⁸⁹ and for longer than the Commission would ordinarily require in an enforcement proceeding.

To the best of IVANS' knowledge, USAC did not refer IVANS to the Enforcement Bureau, given IVANS' voluntary disclosures. Nevertheless, USAC's Letter Ruling takes a harsher stance against IVANS than even the most egregious and least cooperative of violators previously to face an enforcement proceeding over a failure to contribute. Not only is USAC's Letter Ruling inconsistent with prior FCC practice, it also raises serious questions about whether any provider would voluntarily come forward in light of the unsettled classification of certain services and the potential for increasingly severe liability even for those acting in good faith. That would be a plain violation of Section 254's requirement that contribution burden be "equitable and nondiscriminatory."⁹⁰

⁸⁷ See *infra* Part V.B.

⁸⁸ OMNIAT, 24 FCC Rcd. at 4260-61 ¶¶ 9-10.

⁸⁹ See Section V, *supra*.

⁹⁰ 47 U.S.C. § 254(b)(4).

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C. The FCC Should Not Require a Provider to File for More than Five Years

The FCC generally requires contributors to maintain records for five years.⁹¹ While the Commission’s record keeping requirement could be read as open-ended for companies that have not previously contributed,⁹² the Commission’s enforcement policy of not requiring delinquent contributors to go back more than five years is grounded in the practical reality that most companies do not keep sufficiently detailed records to make USF filings back more than five years, and to certify to the accuracy of those filings under penalty of perjury.⁹³

As Mr. Dobish explains in the attached Declaration, {

[REDACTED]
[REDACTED]}.⁹⁴ A requirement to go back fifteen years to 1998, when IVANS began providing Frame Relay-based [EVPN], to prepare Form 499s and certify to their accuracy under penalty of perjury would not be feasible for IVANS or for most (if not all) other providers.

D. Waiver in the Alternative

To the extent that the Commission finds that no general limitation on the duty to file and contribute is appropriate, IVANS alternatively requests a waiver of the requirement to file worksheets and contribute beyond the years for which IVANS has already filed. The Commission has discretion to waive its rules for good cause shown, particularly where strict

⁹¹ 47 C.F.R. § 54.706(e).

⁹² *Id.*

⁹³ FCC Form 499-A, Instructions, at 30 (2013). *Cf.* Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, *Report and Order*, 22 FCC Rcd. 16372, 16386 ¶ 28 (2007) (“We are therefore adopting a five-year [administrative limitations period for audits] for the other USF programs. This time period appropriately balances the beneficiary’s need for finality and our need to safeguard the USF programs from waste, fraud, and abuse.”)

⁹⁴ Dobish Declaration ¶ 20. {

[REDACTED]
[REDACTED]}

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compliance with a rule is inconsistent with the public interest when taking “into account considerations of hardship, equity, or more effective implementation of overall policy,” and when deviation on an individual basis does not require “evisceration of a rule by waivers.”⁹⁵

There is good cause for a waiver here. As noted above, strict application of an indefinite filing requirement here would not merely cause great harm to IVANS, which voluntarily disclosed to USAC that it had not been contributing once it found out that AT&T considered these services assessable; it would also increase the Commission’s enforcement burden and undermine the Commission’s broader policy of expanding the USF contribution base, by creating an asymmetry between the Commission’s prior treatment of delinquent contributors and providers such as IVANS, who come forward voluntarily.

V. IVANS REVENUE FROM ENTERPRISE SERVICES UTILIZING MPLS AND FRAME RELAY SHOULD BE DEEMED NON-ASSESSABLE

IVANS used MPLS and Frame Relay as one part of its bundled enterprise solutions, MDNS and EVPN, respectively. Through these enterprise solutions, IVANS provided secure connections to its proprietary “Cloud,” where customers can communicate securely with other healthcare and financial services enterprises in the IVANS Cloud, connect directly with other clouds (*e.g.*, { [REDACTED] }) that are similar to the IVANS Cloud, or connect directly with entities like the Centers for Medicare and Medicaid Services (“CMS”).⁹⁶ The access component is not sold separately—only as part of a bundled solution that includes IVANS provision of routers, security and network software, protocol processing, and applications.⁹⁷ Because the

⁹⁵ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁹⁶ Dobish Declaration ¶ 5.

⁹⁷ *Id.* ¶ 6.

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EVPN and MDNS services are enterprise solutions, their assessability is an open issue that must be resolved by the Commission.

A. IVANS Requests a Declaratory Ruling that IVANS' Enterprise Services Were Not USF Assessable

Pursuant to Section 1.2 of the FCC's rules,⁹⁸ IVANS requests that, as part of its review of USAC's decision above, the FCC issue a declaratory ruling that IVANS's enterprise services using MPLS and Frame were information services not subject to USF contribution requirements.⁹⁹ Specifically, IVANS believes it should be treated by USAC in a similar manner to other contributors who are apparently not making USF contributions on their MPLS- and Frame Relay-based revenues. IVANS requests that the Commission expeditiously rule on this request either in response to this filing or in the other proceedings where the issue is currently before the Commission.¹⁰⁰

B. The Regulatory Status of Enterprise Services Using MPLS and Frame Relay Is, at Best, Unclear and Many MPLS Service Providers Do Not Contribute on Their MPLS Providers

As the Commission acknowledged in the *USF Contribution Reform NPRM*, the FCC has never "formally addressed enterprise communications services such as Dedicated IP, VPNs,

⁹⁸ 47 C.F.R. § 1.2.

⁹⁹ IVANS previously filed with USAC based on the preliminary determination that it should follow AT&T's lead on the classification of these revenues. But upon further examination and research into how contributors other than AT&T treat MPLS services, IVANS has reconsidered its position that these services are assessable.

¹⁰⁰ The issue has been raised at least four times before the Commission. The Commission itself raised the issue in the context of USF contribution reform. *See USF Contribution Reform NPRM*, 27 FCC Rcd. at 5382 ¶ 44. Masergy raised the issue following the release of the 2009 Form 499-A instructions. *See Masergy Petition for Clarification*, WC Docket No. 06-122, at 3 (filed Mar. 27, 2009) ("Masergy Petition"). XO raised the issue in an appeal of a USAC audit report. *XO Communications Services, Inc., Request for Review of the Universal Service Administrator*, WC Docket No. 06-122, at 48 (Dec. 29, 2010) ("XO Petition"). And a group of MPLS providers has provided the FCC with a White Paper presenting a fair and equitable method for assessing MPLS services. *MPLS Providers White Paper*, at 14-15.

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WANs, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations.”¹⁰¹

The result of this lack of clarity has led to contributors taking a “diversity of methods” on whether those services are accessible.¹⁰² In its pending petition for clarification, Masergy indicated its belief that “at least one carrier does not collect USF on either the MPLS information service or the underlying transport.”¹⁰³ Indeed, in public filings made by a variety of large carriers, it would appear that many MPLS providers do not contribute on their MPLS products and that this non-payment is well known to the Commission, without any significant enforcement action taken. For example, the nation’s largest carrier, Verizon, has stated: “As its name—Multi-Protocol Label Switching—implies, MPLS provides the inherent capability to convert between protocols, and thus many services that use MPLS enable net protocol conversion and are information services.”¹⁰⁴ Sprint has consistently declared to the Commission that its MPLS offerings are information services that are not assessable.¹⁰⁵ Other MPLS

¹⁰¹ *USF Contribution Reform NPRM*, 27 FCC Rcd. at 5382 ¶ 44.

¹⁰² Masergy Petition at 3.

¹⁰³ *Id.*

¹⁰⁴ Comments of Verizon, WC Docket No. 06-122, at 6 (Feb. 7, 2011).

¹⁰⁵ Comments of Sprint Nextel Corporation, WC Docket No. 06-122, at 1-2 (June 8, 2009) (“MPLS services are information services not subject to USF obligations, and the Bureau did not have the authority to determine that MPLS information service providers should be treated otherwise”); *see also* Comments of Sprint Nextel Corporation, IB Docket No. 04-112, at 3 (Aug. 18, 2011) (arguing that “IP/MPLS falls squarely within the definition of non-common carrier ‘information service’ in Section 3 of the Communications Act. As such, traffic and revenue associated with IP/MPLS should not be subject to the reporting requirements in the new proposed Section 43.62, and the Commission should make such clarification”). The Commission declined Sprint’s request to clarify the service, leaving it an open issue. *See Reporting Requirements for U.S. Providers of International Telecommunications Services, Second Report and Order*, 28 FCC Rcd. 575, 594 ¶ 72 (2013).

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providers, including BT Americas,¹⁰⁶ Equant,¹⁰⁷ Level 3, PAETEC, U.S. Telepacific Corp.,¹⁰⁸ Masergy,¹⁰⁹ and XO,¹¹⁰ have all publicly proclaimed that some or all MPLS services are non-assessable information services.

In at least one instance, it appears that USAC has agreed with the assessment of these contributors and accepted a Form 499 filing classifying MPLS services as an information service. Equant offers MPLS-based IP-VPN services.¹¹¹ In the course of a USAC audit, Equant had attempted to reclassify revenue from its MPLS-based service from USF-assessable telecommunications revenue to non-assessable information service revenue, but USAC objected

¹⁰⁶ Comments of BT Americas Inc., WC Docket No. 06-122, at 4 (June 8, 2009) (“The prioritization capability offered to the customer is not for the benefit of BT or any other provider, but it is a benefit offered to and paid for by the customer. Hence MPLS-enabled services cannot be telecommunications and must be classified as information services. To the extent a service provider offers an MPLS-based information service, it need not contribute on the revenue derived from that service”).

¹⁰⁷ Equant Inc., Request for Review of the Universal Service Administrator, WC Docket No. 06-122, at 14 (Jan. 3, 2012) (“Equant Petition”).

¹⁰⁸ Joint Comments of Level 3 Communications, LLC, PAETEC Communications, Inc., and U.S. TelePacific Corp., WC Docket Nos. 05-337, 06-122, CC Docket No. 96-45, at 10 (Oct. 28, 2009) (“For example, a VPN may provide users the ability to run a variety of applications, including World Wide Web browsers, FTP clients, Usenet newsreaders, electronic mail clients, Telnet applications, and others, which the FCC has found makes a service information. So long as the provider of the VPN ‘supports such functions,’ and regardless of whether ‘subscribers use all of the functions,’ of the VPN, the FCC found that wireline broadband services offering these functions are information services”).

¹⁰⁹ Masergy Petition at 4 (“Because the MPLS port functions clearly provide information services that are inseparable from the intermediate transmission between the ingress and egress points of an MPLS network, MPLS ‘inextricably intertwines’ the information functions contained in the port with the intermediate transmission functions of an MPLS network”).

¹¹⁰ XO Petition at 48 (“under controlling FCC precedent, these facets of XOCS’s MPLS qualify the services provided MPLS – including MTNS – as information services, and the Commission must reverse USAC’s finding that MTNS-derived revenue must be reclassified as ‘telecommunication service’”).

¹¹¹ Equant Petition at 14.

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to the reclassification.¹¹² During the pendency of an appeal to the FCC, USAC accepted Equant's revised Form 499-A classifying the MPLS-based revenues as information service revenue.¹¹³ USAC's change of position with regards to Equant shows that USAC has acknowledged the lack of resolution to MPLS's classification and that it has affirmatively allowed contributors to report MPLS revenues as non-assessable information service revenues.

C. Any USF Contribution Liability Should Be Assessed on a Prospective-Only Basis

Even if the Commission determines that enterprise services using MPLS and Frame Relay are assessable, it should do so on a prospective-only basis, given the well-documented confusion that exists. As the Commission has acknowledged, any MPLS USF requirement is, at best, unclear as it has never "formally addressed enterprise communications services . . . that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations."¹¹⁴ It is clear, however, that many contributors are not currently making USF contributions on MPLS-based revenues. Especially given USAC's position that contributors have an indefinite responsibility to correct their prior filings, a finding that these enterprise services are assessable would potentially create unforeseen and unexpected significant liabilities for many providers, which would not be met with providers coming forward as IVANS has done here, but with carriers staying silent and hoping to avoid USAC audits. It would also be virtually impossible to enforce in a manner that is not arbitrary and capricious.

Given that the USF obligations of MPLS providers is a new, novel, and unresolved issue, a group of carriers are certainly correct in their MPLS position that: "Retroactive application of

¹¹² *Id.* at 18-19.

¹¹³ See Equant Inc., Motion for Partial Withdrawal of Request for Review of the Universal Service Administrator, WC Docket No. 06-122, at 2-3 (Mar. 3, 2012).

¹¹⁴ *USF Contribution Reform NPRM*, 27 FCC Rcd. at 5382 ¶ 44.

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USF contribution obligations would create an administrative nightmare and would be unfair to the entities that have been providing and purchasing these offerings under the well-founded view that they are information services.”¹¹⁵ Consequently, the FCC should eliminate liability for contributors, including IVANS, for any failure to file on those revenues prior to the date that the FCC issues a determination that clarifies whether or not MPLS services are assessable.

VI. CONCLUSION

The USAC Letter would result in an impermissible double collection and ignores the Commission’s existing guidance on the subject. Further, USAC’s use of an indefinite filing requirement is inconsistent with the Commission’s enforcement precedent and would be inappropriate public policy in this instance. Moreover, the lack of guidance on enterprise services creates additional doubt as to whether there is any liability under these circumstances in the first place. IVANS, therefore, requests that the Commission overturn USAC’s decision.

¹¹⁵ MPLS Providers White Paper at 14-15.

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Attachment 1

**Letter from Kristin Berkland, Universal Service Administrative Company, to
Alfred Mamlet, Steptoe & Johnson LLP, Counsel to IVANS, Inc.
June 7, 2013**



By Certified and Electronic Mail

June 7, 2013

Mr. Alfred Mamlet
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795

Re: Response to Letter dated April 16, 2013 regarding the Federal Universal Service Filing and Contribution Obligations of IVANS, Inc.

Dear Mr. Mamlet:

I am writing in response to your letter, dated April 16, 2013, regarding the federal Universal Service filing and contribution obligations of IVANS, Inc. (IVANS). Your letter states that an October 2012 due diligence review of IVANS' operations caused the company to inquire with its underlying carrier, AT&T, regarding the federal Universal Service treatment of the EVPN (and predecessor MDNS) service resold by IVANS.¹ Your letter further states that in response to IVANS' inquiry, AT&T informed IVANS that: (1) the access portion of the EVPN (and previous MDNS) offering is assessable; (2) AT&T has been reporting and contributing on the access revenues it receives from IVANS; (3) AT&T erroneously did not assess federal Universal Service recovery fees to IVANS on the access revenues; and (4) although AT&T did not charge a federal Universal Service recovery charge to IVANS prior to the fall of calendar year 2012, AT&T would begin assessing federal Universal Service pass-through charges to IVANS beginning with the November 2012 billing (for October 2012 services).² According to your letter, "[d]espite the unsettled nature of the FCC's treatment of MPLS for Universal Service Fund USF treatment, IVANS has determined that it should treat the EVPN services it sells to end users in the same manner that AT&T treats" the services.³

Enclosed with the April 16, 2013 letter were seven FCC Form 499 filings. Specifically, IVANS provided its 2009 through 2013 FCC Forms 499-A (reporting revenue for calendar years 2008 through 2012) and its November 2012 and February 2013 FCC Forms 499-Q (projecting revenues for the first and second quarters of calendar year 2013). USAC has updated its records to reflect receipt of the above-mentioned FCC Form 499 filings submitted by IVANS. However, with respect to the FCC Forms 499-Q filed by IVANS, USAC must reject the forms because they were filed after the FCC-

¹ Letter from Alfred Mamlet, counsel for IVANS, Inc., to David Capozzi, USAC Acting General Counsel at 1 (Apr. 16, 2013) (*April 2013 Letter*).

² *Id.*

³ *Id.*

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established 45-day revision deadline.⁴ Nonetheless, the certified information provided in IVANS' November 2012 and February 2013 FCC Forms 499-Q is the company's best available financial data for those periods and, pursuant to the FCC's rules, USAC will use the certified financial information to bill IVANS for the first and second quarters of calendar year 2013.⁵ USAC will use the actual calendar year 2013 revenue information submitted by IVANS on its 2014 FCC Form 499 (due on April 1, 2014) to correct for any discrepancies in the quarterly revenue information.⁶ Because IVANS has been acquired by Ability Network, Inc. (Ability), should IVANS not file its own 2014 FCC Form 499-A, Ability must report all the revenues associated with IVANS' telecommunications operations on Ability's own 2014 FCC Form 499-A, including revenues billed in the calendar year prior to the date of acquisition.⁷ Please be advised that Ability is responsible for continuing to make assessed contribution or true-up payments for the funding period if IVANS does not make them⁸ and IVANS may owe, or Ability may owe, additional federal Universal Service contributions or may be due refunds, depending on how the applicable FCC Form 499-A compares to the applicable previously filed FCC Forms 499-Q.⁹

Regarding the revenue reported on the FCC Forms 499-A submitted by IVANS, your letter states that "[o]n Line 406 of the Forms 499A, IVANS is reporting the revenue from its EVPN service using the difference between net and gross revenues as AT&T has paid USF on the revenues it derived from IVANS."¹⁰ Your letter further states that the offset is "necessary to avoid double collection of USF contributions for the time period that AT&T confirmed that it made the USF contributions directly, because FCC and USAC procedures prevent AT&T from revising its reports to reclassify these revenues."¹¹ According to your letter, "IVANS will report gross revenues once its reseller's certificate becomes effective."¹² In other words, it appears that IVANS has unilaterally created its own administrative remedy by reporting its revenues on its 2009 through 2013 FCC Forms 499-A in a manner that is not compliant with the FCC's rules and orders¹³ or the

⁴ See generally, *In the Matter of Universal Service Contribution Methodology Request for Review of Decision of the Universal Service Administrator by deltathree, Inc.*, WC Docket No. 06-122, Order, DA 11-81, 26 FCC Rcd 333 (2011) (directing USAC not to accept either upward or downward revisions of the FCC Form 499-Q after the 45-day revision deadline).

⁵ See 47 C.F.R. § 54.709(d).

⁶ USAC Website, Understanding Invoices – Annual True Up, <http://www.usac.org/cont/invoices/true-up.aspx> (last visited Jan. 16, 2013).

⁷ 2013 FCC Form 499-A Instructions at 14 (2013) (*2013 Instructions*).

⁸ *2013 Instructions* at 8.

⁹ *Id.*

¹⁰ *April 2013 Letter* at 2.

¹¹ *Id.* (internal citation omitted).

¹² *Id.*

¹³ 47 C.F.R. §§ 54.706(b); 54.709; 54.711(a); *In the Matter of Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, FCC 12-46, 27 FCC Rcd 5357, 5452-53, ¶ 271 (2012); *In the Matter of Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review et al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and

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2009 through 2013 FCC Form 499-A instructions¹⁴ to adjust for the federal Universal Service contribution base amounts IVAN alleges AT&T paid during calendar years 2008 through 2012 for the end-user revenues derived from IVANS. In support of the revenue reporting on its 2009 through 2013 FCC Forms 499-A, IVANS provides a letter from AT&T stating that AT&T treated IVANS as an end-user customer during calendar years 2008 through 2012 because AT&T had no reasonable expectation that IVANS was a direct federal Universal Service contributor.¹⁵ However, neither AT&T's letter,¹⁶ nor the documentation enclosed with the April 16, 2013¹⁷ letter provide any information regarding the revenues on which AT&T allegedly paid federal Universal Service contribution amounts, nor does the April 16, 2013 letter explain how IVANS calculated the telecommunications revenues that AT&T allegedly paid during calendar years 2008 through 2012 and IVANS subtracted from the gross revenue amounts reported on its 2009 through 2013 FCC Forms 499-A.¹⁸

Although not referenced in your April 16, 2013 letter, during an April 8, 2013 meeting between counsel for IVANS, counsel for Ability and USAC, you asserted that IVANS is not required to file FCC Forms 499-A back to the date that the company first began providing telecommunications services.¹⁹ Specifically, you stated that IVANS' obligation to back file its FCC Forms 499-A is limited to the five-year document retention period established by the FCC for retention of information to support the revenues reported on the FCC Forms 499. USAC notes that according to the 2009 through 2013 FCC Forms 499-A filed by IVANS, the company first began providing telecommunications prior to January 1, 1999.

Order, FCC 02-43, 17 FCC Rcd 3752, 3786, ¶ 77 (2002); *In the Matters of: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Consideration, FCC 97-253, 12 FCC Rcd 18400, 18500 (1997).

¹⁴ 2013 *Instructions* at 13-14; 2012 FCC Form 499-A *Instructions* at 12-14 (2012 *Instructions*); 2011 FCC Form 499-A *Instructions* at 12-14 (2011 *Instructions*); 2010 FCC Form 499-A *Instructions* at 19-21 (2010 *Instructions*); 2009 FCC Form 499-A *Instructions* at 20-21 (2009 *Instructions*); 2008 FCC Form 499-A *Instructions* at 20-21 (2008 *Instructions*); 2007 FCC Form 499-A *Instructions* at 19-21 (2007 *Instructions*); 2006 FCC Form 499-A *Instructions* at 19-20 (2006 *Instructions*); 2005 FCC Form 499-A *Instructions* at 18-20 (2005 *Instructions*); 2004 FCC Form 499-A *Instructions* at 17-18 (2004 *Instructions*); 2003 FCC Form 499-A *Instructions* at 16-17 (2003 *Instructions*); 2002 FCC Form 499-A *Instructions* at 16-17 (2002 *Instructions*); 2001 FCC Form 499-A *Instructions* at 16 (2001 *Instructions*); 2000 FCC Form 499-A *Instructions* at 14 (2000 *Instructions*); 1999 FCC Form 457 *Instructions* at 8 (1999 *Instructions*); 1998 FCC Form 457 *Instructions* at 7 (1998 *Instructions*).

¹⁵ Letter from John Malone, AT&T Signature Client Director, to John Dobish, IVANS, Inc. President Shared Services and Chief Financial Officer (Mar. 19, 2013) (*AT&T Letter*).

¹⁶ *Id.*

¹⁷ See attachments to *April 2013 Letter*.

¹⁸ See generally *April 2013 Letter*.

¹⁹ Present at the meeting were Alfred Mamlet and Christopher Bjornson, Counsel for IVANS, Inc., Steve Augustino and Jameson Dempsey, Counsel for Ability Network Inc., David Capozzi, USAC Acting General Counsel, Kristin Berkland, USAC Assistant General Counsel, Michelle Garber, USAC Director of Financial Operations, and Fred Theobald, USAC Senior Manager of Contributions (Apr. 8, 2013).

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As discussed in the Federal Universal Service Fees Paid by AT&T section below, IVANS' FCC Form 499 filings made in reliance on the letter from AT&T are not compliant with the FCC's rules and orders²⁰ or the 2009 through 2013 FCC Form 499-A Instructions,²¹ which require filers to report the total gross revenues billed to customers during the applicable filing period(s). As discussed in the IVANS' Obligation to File FCC Forms 499-A from the Date it First Began Providing Telecommunications Services section below, pursuant to FCC rules, IVANS is required to file FCC Forms 499-A back to the date it first began providing telecommunications services.

Federal Universal Service Fees Paid by AT&T

In its role as administrator of the federal Universal Service Support Mechanisms, the FCC's rules authorize USAC to verify the information reported on the FCC Forms 499-A.²² Moreover, the FCC's rules require filers to maintain records and documentation to justify the revenue information reported on the FCC Forms 499-A and to provide such records and documentation to USAC upon request.²³ In addition, telecommunications carriers and other providers of telecommunications have an ongoing, i.e., without a time limitation, obligation to submit a revised FCC Form 499-A if an error is discovered in the revenue data that they report that would result in an increased Universal Service contribution obligation.²⁴ As stated in USAC's April 12, 2013 email,²⁵ the FCC Form 499-A instructions clearly state that filers must report gross (not net) billed revenues on their FCC Form 499-A filings.²⁶ The FCC's rules and orders also require that gross billed revenues be used on the FCC Form 499-A.²⁷ Therefore, IVANS must re-file its forms to report its gross revenues in accordance with the FCC's rules and the FCC Form 499-A instructions.

In the *ATS Order*, the FCC Wireline Competition Bureau (FCC WCB) upheld a USAC decision finding that a reseller must look to its underlying carrier to resolve any possible double-payment of federal Universal Service contribution obligations that result from federal Universal Service fees assessed by the underlying carrier.²⁸ Although AT&T did not pass through federal Universal Service fees to IVANS during calendar years 2008

²⁰ See *supra* note 13.

²¹ See *supra* note 14.

²² 47 C.F.R. § 54.711(a).

²³ *Id.*

²⁴ 2013 Instructions at 8; 2012 Instructions at 7-8; 2011 Instructions at 8; 2010 Instructions at 11-12; 2009 Instructions at 11-12; 2008 Instructions at 12; 2007 Instructions at 11-12; 2006 Instructions at 11-12; 2005 Instructions at 11-12; 2004 Instructions at 10-11; 2003 Instructions at 10; 2002 Instructions at 9-10; 2001 Instructions at 9; 2000 Instructions at 8; 1999 Instructions at 12; 1998 Instructions at 11-12.

²⁵ Email from Michelle Garber, USAC Director of Finance, to Alfred Mamlet, Counsel for IVANS, Inc. (Apr. 12, 2013).

²⁶ See *supra* note 14.

²⁷ See *supra* note 13.

²⁸ See generally *In the Matter of Federal-State Joint Board on Universal Service American Telecommunications Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, Ton Services, Inc., Value-Added Communications, Inc.*, CC Docket No. 96-45, Order, DA 07-1306, 22 FCC Rcd 5009, 5012, ¶¶ 10-11 (2007) (*ATS Order*).

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through 2012, the reasoning of the *ATS Order* is still applicable. Namely, IVANS argues that its federal Universal Service contributions were made indirectly through AT&T because AT&T treated IVANS as an end-user customer.²⁹ However, the FCC WCB reiterated in the *ATS Order* that contributions are to be based on a contributors' interstate and international end-user telecommunications revenues.³⁰ Moreover, the FCC has repeatedly held that both resellers and their underlying carriers have independent federal Universal Service reporting and contribution obligations.³¹ If a reseller cannot certify that it is a direct federal Universal Service contributor and a wholesaler cannot demonstrate that it has a reasonable expectation that its reseller customer is directly contributing to the federal Universal Service Support Mechanisms, then the wholesaler must treat the revenue from its reseller customer as end-user and report and contribute to the federal Universal Service Support Mechanisms based on that revenue.³² Further, the FCC WCB upheld USAC's assertion that USAC "generally does not have the ability to determine with any certainty whether and on what revenues a 'double-payment' was received."³³ The FCC WCB stated that to make such a determination USAC would need to audit both the reported revenues of the reseller carriers and the reported revenues of the underlying carriers.³⁴ Accordingly, and because there was no billing error by USAC,³⁵ the FCC WCB found that, "[b]ecause of the complications associated with making such determinations, USAC has rightly left such matters for the entities involved in the transaction to determine."³⁶

²⁹ See generally *April 2013 Letter*.

³⁰ *ATS Order* at 5010, 5012, ¶¶ 2, 10-11.

³¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, ¶¶ 843-46 (1997) (*First Report and Order*). See also, 47 C.F.R. § 54.709; *In the Matters of Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18427, ¶ 49 and 18499, App. A (1997); *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, DA 09-1821, 24 FCC Rcd 10824, 10827, ¶ 11 (2009) (*Global Crossing Order*).

³² *In the Matter of Universal Service Contribution Methodology Application for Review of the 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 Company Request for Guidance*, WC Docket No. 06-122, Order, FCC 12-134, 27 FCC Rcd 13780, 13781-82, 13786-87, 13795-96, ¶¶ 3, 11, 12, 34, 37 (2012) (*Wholesaler-Reseller Clarification Order*); *Global Crossing Order*, 24 FCC Rcd 10824, 10827-28, ¶¶ 11, 12. See also *ATS Order*, 22 FCC Rcd 5009, 5012, ¶¶ 10-11.

³³ *Id.* at 5013, ¶ 13.

³⁴ *Id.* See also, *Id.* at 5011, ¶ 7 and n.17 (explaining the basis for USAC's denial and quoting language highlighting the fact that absent data carefully correlated by both carriers, it is doubtful that USAC "could ever conclusively establish whether an underlying carrier in fact reported and paid on a particular carrier's revenues").

³⁵ *Id.* at 5012, ¶ 9.

³⁶ *Id.*

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The *Wholesaler-Reseller Clarification Order* does not negate the FCC's findings in the *ATS Order*. As a preliminary matter, USAC notes that the *Wholesaler-Reseller Clarification Order* seeks to prevent double collection by USAC in situations where a wholesale provider is not able to demonstrate a reasonable expectation that its reseller customer did, in fact, contribute to the federal USF but USAC is able to determine or has actual knowledge that the reseller customer actually did contribute during the relevant calendar year.³⁷ Moreover, "the burden of proof is on the provider claiming double collection to demonstrate that actual contributions were made to the [federal USF] based on the relevant services through clear and convincing evidence."³⁸ USAC need only determine whether a reseller customer actually contributed to the federal USF in cases where a wholesale provider is not able to demonstrate a reasonable expectation and USAC is not required to conduct any independent investigation beyond a check of its own records to do so.³⁹

IVANS' situation is distinct from the situation presented in the *Wholesaler-Reseller Clarification Order* because IVANS is a reseller, not a wholesaler required to demonstrate that it has met the FCC's reasonable expectation standard. As previously discussed, the FCC has held that both resellers and their underlying carriers have independent federal Universal Service reporting and contribution obligations⁴⁰ and the FCC's rules and orders,⁴¹ and the 2009 through 2013 FCC Form 499-A instructions⁴² clearly state that filers are required to report gross billed revenues on their FCC Forms 499-A. Therefore, please be advised that IVANS must re-file its forms to report its gross revenues in accordance with the FCC's rules and orders,⁴³ and the 2009 through 2013 FCC Form 499-A instructions.⁴⁴ USAC notes that had IVANS initially complied with its federal Universal Service filing and contribution obligations and/or provided AT&T with a reseller certification⁴⁵ during calendar years 2009 and 2013, there would be no need for IVANS to seek a credit for the federal Universal Service contribution amounts allegedly

³⁷ *In the Matter of 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*, WC Docket No. 06-122, Order, FCC 12-134, 27 FCC Rcd 13780, 13784, 13799-801, ¶¶ 8, 43-46, 49.

³⁸ *Id.* at 13799, ¶ 45.

³⁹ *Id.*

⁴⁰ *See supra* note 31.

⁴¹ *See supra* note 13.

⁴² *See supra* note 14.

⁴³ *See supra* note 13.

⁴⁴ *See supra* note 14.

⁴⁵ *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd 13780, 13787, ¶¶ 13, 14; *ATS Order*, 22 FCC Rcd 5009, 5012, ¶ 11 ("To assist underlying carriers and their resellers, the Commission has a certification procedure in place that underlying carriers may use to determine whether the entities to whom they offer telecommunications or telecommunications services for resale are in fact direct contributors. Through this certification procedure, both parties to the reselling transaction have the information they need to determine whether the USF obligation should be collected by the underlying carrier or whether the reseller has an independent obligation to contribute.").

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paid by AT&T because AT&T would have treated IVANS as a reseller and would not have paid federal USF contributions on the revenues received from IVANS in the first instance. Please be advised that only the FCC may waive its rules and/or the FCC Form 499-A requirements for good cause shown.⁴⁶ Therefore, if IVANS wishes to offset or receive a credit for the federal USF contribution obligations allegedly paid by AT&T based on the end-user telecommunications revenues AT&T received from IVANS, IVANS must direct its request to the FCC.⁴⁷

IVANS' Obligation to File FCC Forms 499-A from the Date it First Began Providing Telecommunications Services

A telecommunications provider is required to file all applicable FCC Forms 499-A, even if the period for retaining the records related to those forms has expired.⁴⁸ As set forth in section 64.1195 of the Commission's rules, upon entry or anticipated entry into interstate telecommunications markets, a telecommunications carrier must register by submitting information on the FCC Form 499-A.⁴⁹ There is no statutory or regulatory limitation on an entity's obligation to report and pay its federal Universal Service contribution obligations under the requirements of FCC rule 54.706.⁵⁰ Telecommunications providers are required to file and certify the FCC Form 499 as set forth in FCC rule 54.711.⁵¹ In addition, telecommunications carriers have an ongoing, i.e., without a time limitation, obligation to submit a revised FCC Form 499-A if an error is discovered in the revenue data that it reports that would result in an increased Universal Service contribution obligation.⁵² The record retention requirements set forth in FCC rule 54.711(a) state that a contributor must maintain records and documentation for three years to justify the information it reports in the FCC Forms 499 and the record retention requirements set forth in FCC rule 54.706(e) state that an entity that is required to contribute to the federal Universal Service Support Mechanisms shall retain documentation for five years to demonstrate that its contributions were made in compliance with FCC rules.⁵³ Neither

⁴⁶ 47 C.F.R. § 1.3.

⁴⁷ *Id.*

⁴⁸ *In the Matter of Compass Global, Inc., Apparent Liability for Forfeiture*, File No. EB-06-IH-3060, Notice of Apparent Liability for Forfeiture, FCC 08-97, 23 FCC Rcd 6125, 6138, ¶¶ 3, 29 (2008) (citing 47 C.F.R. § 64.1195 and stating that the carrier "should have filed Worksheets when it first began providing telecommunications service in the United States") (*Compass Global*).

⁴⁹ See 47 C.F.R. § 64.1195.

⁵⁰ See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support programs.")

⁵¹ See 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a[n]... annual basis.")

⁵² See *supra* note 24. See also *In the Matter of Universal Service Contribution Methodology Request for Review of a Decision of the Universal Service Administrator by IP Telecom Group, Inc.*, WC Docket No. 06-122, Order, DA 11-371, 2011 WL 3470616, at *1 n.6 (2011) (noting that a one-year deadline was not imposed for revisions to the FCC Form 499-A that result in increased contribution obligations).

⁵³ 47 C.F.R. §§ 54.706(e); 54.711(a).

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rule establishes a limitation period with respect to a telecommunications provider's obligation to comply with its mandatory federal Universal Service reporting and contribution obligations and a telecommunications provider cannot attempt to evade those obligations through a misinterpretation of the FCC's record retention requirements.⁵⁴ In at least one instance, in 2009, the Commission required a carrier to file FCC Forms 499-A dating as far back as 2003.⁵⁵ Thus, it is USAC procedure to request prior year forms for all prior periods of revenue that have not yet been reported.

The 2007 through 2013 instructions for Line 228 of the FCC Forms 499-A require a filer to report information regarding when it first began providing telecommunications services.⁵⁶ Specifically, Line 228 of the 2007 through 2011 FCC Forms 499-A requests the "[y]ear and month filer first provided (or expects to provide) telecommunications in the U.S."⁵⁷ FCC rule 54.711 states that "[t]he Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a[n]...annual basis."⁵⁸ Line 228 of IVAN's 2009 through 2013 FCC Forms 499-A, indicate that IVANS first began providing telecommunications prior to January 1, 1999. Accordingly, **within 60 days of the date of this letter**, IVANS is required to submit to USAC FCC Forms 457, if applicable, and FCC Forms 499-A reflecting revenues for each calendar year that IVANS has provided telecommunications.

Sincerely,



Kristin K. Berkland
Assistant General Counsel

cc: Christopher Bjornson, Steptoe & Johnson LLP (*by email only*)
Steve Augustino, Kelley Drye & Warren, LLP (*by email only*)

⁵⁴ *Id.*

⁵⁵ *In the Matter of OMNIAT International Telecom, LLC, Apparent Liability for Forfeiture*, File No. EB-08-IH-1150, Notice of Apparent Liability for Forfeiture and Order, FCC 09-26, 24 FCC Rcd 4254, 4255, ¶ 2 (2009) (requiring OMNIAT to file with USAC all required FCC Form 499s from the date it began providing telecommunications service in the United States). *See also, Compass Global*, 23 FCC Rcd 6125, 6138, ¶ 29 (tolling the statute of limitations for forfeitures for the failure to file Form 499s until the violation is cured).

⁵⁶ *2013 Instructions* at 13; *2012 Instructions* at 12; *2011 Instructions* at 12; *2010 Instructions* at 18; *2009 Instructions* at 18; *2008 Instructions* at 18; *2007 Instructions* at 18.

⁵⁷ Telecommunications Reporting Worksheet, FCC Form 499-A, at Line 228 (2007-2011).

⁵⁸ 47 C.F.R. § 54.711(a).

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Attachment 2

**Declaration of Jeff Dobish, IVANS
August 6, 2013**

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DECLARATION OF JEFF DOBISH

I, Jeff Dobish, being over 18 years of age, swear and affirm as follows:

1. I make this declaration in support of the Request for Review by ABILITY Networks, Inc. (“ABILITY”) of a Decision of the Universal Service Administrator and the Petition for Declaratory Ruling on the Assessability of Certain Information Services.

2. I am currently the Executive Vice President for ABILITY.

3. Prior to May 1, 2013, when ABILITY completed its acquisition of IVANS, I was the President, Shared Services, Chief Financial Officer, and Treasurer for IVANS. While at IVANS, I certified, signed, and oversaw the preparation of IVANS’ Form 499 filings for submission to the Universal Service Administrative Company (“USAC”) and certified to their accuracy. This declaration explains the methodology IVANS employed to avoid double payment of contributions to the Universal Service Fund (“USF”) from both AT&T and IVANS.

4. IVANS began offering electronic data solutions to the healthcare and property-casualty insurance industries in 1982. IVANS initiated its Managed Data Network Services (“MDNS”), which included a resold frame relay access component from AT&T, in 1998. IVANS started offering Enhance Virtual Private Network (“EVPN”) services, based on Multi-Protocol Labeling Switching (“MPLS”), as a replacement for MDNS around January 2008. By 2011, IVANS had completely phased out MDNS. Like MDNS, EVPN included a resold access component from AT&T.

5. Through these enterprise solutions, IVANS provided secure connections to its proprietary “Cloud,” where its customers could communicate securely with other healthcare and financial services enterprises in the IVANS Cloud, connect directly with other clouds (*e.g.*,

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{ [REDACTED] }, or connect directly with government payers like the Centers for Medicare and Medicaid Services (“CMS”).

6. The MPLS/Frame Relay access components were not sold separately—only as part of a bundled solution that included provision of routers, security and network software, protocol processing, and applications.

7. Prior to the fall of 2012, AT&T had never charged IVANS USF for the access (or any other) component of MPLS or Frame Relay (or anything else). For this reason, IVANS did not consider its services USF assessable. In the course of a due diligence review conducted prior to the acquisition by ABILITY, questions were raised concerning the potential assessability of these IVANS’ services resold from AT&T.

8. To respond to these due diligence questions, IVANS asked AT&T about its USF treatment of the underlying services.

9. AT&T’s initial response to IVANS said that: (1) AT&T erroneously did not assess USF recovery surcharges to IVANS on the access portion of the EVPN (and previously MDNS) offerings; and (2) AT&T would begin passing through the USF charges to IVANS beginning on October 19, 2012. *See* Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS (Oct. 19, 2012) (attached as Exhibit 1).

10. On October 22, 2012, IVANS requested additional information from AT&T, including verification that AT&T had, in fact, been paying USF on the revenue it received from IVANS. *See* Letter from Jeff Dobish, IVANS, to John J. Malone, AT&T (Oct. 22, 2012) (attached as Exhibit 2).

11. AT&T subsequently confirmed on November 19, 2012, that it had been reporting the revenues it receives from IVANS on the access portion of EVPN/MDNS as assessable end-user

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revenues and that AT&T is current on its USF contributions. *See* Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS (Nov. 19, 2012) (attached as Exhibit 3). In addition, in March 2013, AT&T reiterated that AT&T had “always treated IVANS as an end-user customer of interstate telecommunications because it had no reasonable expectation that IVANS was a direct [USF] contributor,” and that AT&T had “appropriately reported the interstate telecommunications revenues it received from IVANS as end-user revenue, which it included in its [USF] contribution base.” *See* Letter from John Malone, AT&T, to Jeff Dobish, IVANS, Inc., at 1 (Mar. 19, 2013) (attached as Exhibit 4).

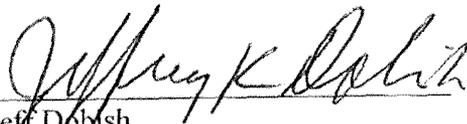
12. Given AT&T’s response, IVANS decided that it should prepare FCC Form 499 filings and begin contributing to USF as a reseller of AT&T’s services. We were very serious, deliberate, and painstaking in our efforts to provide the greatest level of accuracy in the Form 499 submissions.

13. The process for preparing the Form 499 filings began when AT&T first sent invoices applying USF charges to IVANS. Our initial step was to review the AT&T invoice and determine { [REDACTED] }. We then matched { [REDACTED] } [REDACTED] }. Next, we matched { [REDACTED] } [REDACTED] }.

14. { [REDACTED] } IVANS then analyzed its database records for each customer on a product-by-product basis for five years (2008-2012), labeling every charge as either USF assessable or not, based on the AT&T invoices. IVANS’ USF classification strictly followed AT&T’s classification.

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The foregoing declaration has been prepared using facts of which I have personal knowledge or belief or upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.


Jeff Dobish
Executive Vice President
ABILITY Networks, Inc.

August 6, 2013

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Exhibit 1

**Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS
October 19, 2012**



John J. Malone
Client Signature Director

Mr. Jeff Dobish
President Shared Services and CFO
IVAN, Inc.

Dear Jeff:

After a significant amount of research and review, AT&T has determined that IVAN, Inc., a retail customer of AT&T, does not, in fact, qualify for a waiver of the Federal Universal Service Fund (FUSF) surcharge on Services to which the FUSF surcharge applies and that any waiver of the FUSF on the applicable Services IVAN, Inc. has purchased to date was granted in error. AT&T apologizes for any inconvenience. AT&T will reinstate the FUSF on the applicable Services effective immediately but will not back bill IVAN, Inc. for any FUSF surcharges.

Please contact me if you have any additional concerns.

Regards,
John

John J. Malone
Signature Client Director
443-307-1943 - Primary Contact Number
jm6766@att.com

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Exhibit 2

**Letter from Jeff Dobish, IVANS, to John J. Malone, AT&T
October 22, 2012**

October 22, 2012

Mr. John J. Malone
Client Signature Director
1316 Ruthridge Court
Bel Air, MD 21014

Dear John,

Re: FUSF Surcharge

I received your email letter dated October 19, 2012. In this letter you state that due to an error by AT&T, FUSF charges to IVANS, Inc have been waived and that AT&T would "reinstate" the FUSF on the applicable services effective immediately but would not back bill IVANS, Inc. for any FUSF charges.

Please confirm that AT&T has properly filed and paid all applicable FUSF fees associated with the services that IVANS, Inc has purchased from AT&T up until the receipt of your October 19, 2012 email. Also, it is important to understand the exact charges that IVANS, Inc. will be receiving associated with FUSF in the future. Please provide us with a detail accounting of the FUSF charge IVANS would have received on its September 2012 invoices from AT&T as soon as possible but no later than October 24, 2012.

Sincerely,



Jeff Dobish
President, Shared Services, CFO, and Treasurer
813-288-3210

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Exhibit 3

**Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS
November 19, 2012**



John J. Malone
Client Signature Director

November 19, 2012

Mr. Jeff Dobish
President Shared Services and CFO
IVAN, Inc.

Dear Jeff:

AT&T has determined that, among other services, it is providing IVAN, Inc. with interstate telecommunications, the revenues from which AT&T includes in its Federal Universal Service Fund (FUSF) contribution base. Like other contributors, AT&T recovers its FUSF contribution costs from its end users via FUSF fees. After much research and review, it appears that AT&T erroneously waived these fees for IVAN, Inc. AT&T will assess FUSF fees on all interstate telecommunications purchased by IVAN, Inc. starting on October 19, 2012.

If IVAN, Inc. determines that it has a direct FUSF contribution obligation on these purchases, it must provide AT&T with a FUSF reseller certification form that complies with the Federal Communications Commission's requirements. Upon receipt of the FUSF reseller certification form and verification that IVAN, Inc. is a direct FUSF contributor, AT&T will exempt IVAN, Inc. from its FUSF fees. In the absence of a valid FUSF reseller certification from IVAN, Inc., AT&T has estimated IVAN's FUSF-related fees, which was delivered in previous correspondence. Finally, as discussed previously, AT&T will not back bill IVAN, Inc. for FUSF-related fees that AT&T failed to assess on interstate telecommunications previously billed to IVAN, Inc.

AT&T's affiliates that provide interstate telecommunications are current with required FCC Form 499 filing requirements and prepare modifications to previously filed FCC Form 499s as appropriate. These filings correctly report AT&T retail revenues inconsistent with FCC rules.

As you are aware, all providers of interstate telecommunications services, including AT&T, are required to contribute to the federal universal service fund (USF) based on a percentage that the FCC sets each month (the contribution factor). The FCC permits providers to recover their contribution costs from their end-user customers. If a provider seeks to recover its contribution costs from its customers through a universal service line-item charge, then the provider must adhere to a particular methodology set forth in the FCC's rules. Section 54.712(a) of the FCC's rules provides that, if a carrier uses a universal service line-item charge, that amount cannot exceed the interstate telecommunications charges on the customer's bill multiplied by the relevant contribution factor. 47 C.F.R. § 54.712(a).

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Like other carriers, AT&T does recover its USF contribution costs from its end users via a universal service line-item charge. This charge is comprised of interstate and international telecommunications charges (including interstate fees, such as the end-user common line charge) that are summed together and then multiplied by the relevant contribution factor.

AT&T's affiliates that provide interstate telecommunications calculate the federal universal service fund (USF) line-item charge on their customers' bills by (1) calculating the net total of the interstate and international telecommunications portion of the customer's bill, after application of any adjustments or discounts, for the applicable billing period and (2) multiplying the total from step 1 by the applicable federal universal service contribution factor.¹

As previously mentioned in my letter of October 19, 2012, AT&T's billing systems were incorrectly programmed not to assess the USF charge to the retail telecommunication services IVANS has been purchasing from AT&T. AT&T has corrected the error and IVANS' invoices will now align with AT&T's USF contribution recovery practices.

Sincerely,

John J. Malone
Signature Client Director
443-307-1943 - Primary Contact Number
jm6766@att.com

¹ AT&T Mobility and AT&T's providers of interconnected VoIP service include a percentage derived from a traffic study (AT&T Mobility) or an FCC-provided safe harbor (interconnected VoIP offerings) in this calculation. Moreover, consistent with the FCC's rules, some of AT&T's affiliates apply a variation of this methodology to multi-line business customers. See 47 C.F.R. § 69.158 (permitting LECs to apply "equivalency" relationships established for the multi-line business PICC for Primary Rate ISDN service and for Centrex lines).

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Exhibit 4

**Letter from John Malone, AT&T, to Jeff Dobish, IVANS, Inc.
March 19, 2013**



John J. Malone
Signature Client Director

March 19, 2013

Mr. Jeff Dobish
President Shared Services and CFO
IVANS, Inc.
225 High Ridge Rd
Stamford, CT 06905

Dear Mr. Dobish:

This letter follows up on my letter to you dated November 19, 2012, in which I indicated that AT&T Corp. ("AT&T") had erroneously waived Federal Universal Service Fund ("FUSF") charges for IVANS, Inc. on the interstate telecommunications that AT&T has been providing to IVANS. I also indicated that AT&T would begin assessing FUSF charges on all interstate telecommunications purchased by IVANS, which it has now done.

You have indicated that IVANS will begin filing FCC Form 499s with the Universal Service Administrative Company ("USAC") and making direct FUSF contributions as a reseller of AT&T's telecommunications offerings. I further understand that IVANS will provide AT&T a FUSF reseller certificate identifying which facilities it is reselling as interstate telecommunications. At that time, AT&T will exempt those facilities that IVANS identifies from AT&T's FUSF charges and AT&T will report revenues from those facilities as carrier's carrier revenues.

While AT&T did not charge IVANS FUSF fees based on the interstate telecommunications that it was providing to IVANS, AT&T nonetheless has always treated IVANS as an end-user customer of interstate telecommunications because it had no reasonable expectation that IVANS was a direct FUSF contributor. Through 2012, AT&T appropriately reported the interstate telecommunications revenues it received from IVANS as end user revenue, which it included in its FUSF contribution base. As you can see from the FCC's web site, AT&T Corp. is a current FUSF contributor.¹

We understand that you will be providing this letter to USAC to support your filings and payments. Please let us know if you have any questions or we can be of any further assistance.

Sincerely,


John J. Malone
Signature Client Director

¹ See <http://apps.fcc.gov/egb/form499/499detail.cfm?FilterNum=806172>.

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Exhibit 5

AT&T January 2013 Bill for CSLLC

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THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

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Exhibit 6

CSLLC: January 2013 AT&T Billing Summary

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THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

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Exhibit 7

Excerpt of IVANS 2012 Billing Summary

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THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

REDACTED FOR PUBLIC INSPECTION

Exhibit 8

Excerpt of IVANS 2008 Billing Summary

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THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

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Attachment 3

**IVANS' Filing With USAC
April 16, 2013**

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Alfred M. Mamlet
202 429 6205
amamlet@steptoe.com

Steptoe
STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoel.com

APR 16 2013
USAC

April 16, 2013

By Hand Delivery

Mr. David Capozzi
Universal Service Administrative Company
2000 L Street, NW
Suite 200
Washington, D.C. 20036

Dear Dave:

On behalf of IVANS, Inc. ("IVANS"), attached are the FCC Forms 499 necessary to initiate IVANS' registration with the Universal Service Administrative Company ("USAC"). Specifically, we are filing Form 499As for filing years 2009-2013 (reporting revenues from 2008-2012). IVANS has also prepared FCC Forms 499-Q for November 2012 and February 2013 to facilitate USAC invoicing of IVANS on a going-forward basis.¹ We include this cover letter to describe how the filings are put together consistent with the presentation we made in our April 8, 2013 meeting (attached).

As we explained in our meeting, IVANS resells its EVPN service from AT&T. The EVPN service includes an MPLS line re-sold from AT&T (and the predecessor MDNS service resold an AT&T Frame Relay line.) Until the Fall of 2012, AT&T had never charged IVANS USF for any portion of EVPN (or MDNS). In October 2012, a due diligence review of IVANS' operations caused IVANS to ask AT&T about the Universal Service Fund ("USF") treatment of MDNS. In response, AT&T has told IVANS (1) that the access portion of its EVPN (and previously MDNS) offering is assessable; (2) that AT&T has been appropriately reporting the revenues it receives from IVANS on the access portion of EVPN and it is current on its USF contributions; (3) that AT&T erroneously did not assess USF recovery surcharges to IVANS on access portion; and (4) that AT&T would begin passing through the USF charges to IVANS beginning with the November 2012 billing (for October 2012 services). *See* AT&T Letter of March 19, 2013 (attached).

¹ IVANS understands that these FCC Form 499-Q submissions may be "rejected" through the normal USAC processing but believes they will be helpful in USAC developing its invoices for IVANS.

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Mr. David Capozzi
April 16, 2013
Page 2



Despite the unsettled nature of the FCC's treatment of MPLS for Universal Service Fund USF treatment,² IVANS has determined that it should treat the EVPN services it sells to end users in the same manner that AT&T treats it.

Consequently, IVANS has reviewed its customer and accounting records from the past five years (2008-2012) to determine which revenues were assessable down to a customer-by-customer level and has prepared the attached FCC Forms 499-A, for the past five years (filing years 2009-2013 reporting revenues from 2008-2012). On Line 406 of the Forms 499A, IVANS is reporting the revenue from its EVPN service using the difference between net and gross revenues as AT&T has paid USF on the revenues it derived from IVANS. This offset is necessary to avoid double collection of USF contributions for the time period that AT&T confirmed it made the USF contributions directly,³ because FCC and USAC procedures prevent AT&T from revising its reports to reclassify these revenues.

By sending these forms, IVANS is requesting the issuance of a 499 Filer ID number. This will permit IVANS to provide a reseller's certificate to AT&T. IVANS will report gross revenues once its reseller's certificate becomes effective.

Thank you for taking the time to meet with us on April 8. IVANS is committed to working with you to register with and comply with its USF contribution obligations. Please address any questions regarding this filing to the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Alfred Mamlet".

Alfred Mamlet
Christopher Bjornson
Counsel to IVANS, Inc.

Enclosures

² The FCC has "not formally addressed enterprise communications services such as Dedicated IP, VPNs, WANS, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations." Universal Service Contribution Methodology, *Further Notice of Proposed Rulemaking*, 27 FCC Red. 5357, 5382 ¶ 44 (2012). The FCC has also acknowledged that, in the absence of definitive guidance from the FCC, carriers have taken vastly differing opinions on whether MPLS and Frame Relay are assessable. *Id.* at 5381 ¶ 42.

³ Universal Service Contribution Methodology, WC Docket No. 06-122, *Order*, FCC 12-134, ¶ 44 (rel. Nov. 5, 2012) ("the same revenue should not be assessed twice for USF contributions purposes.").

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Mr. David Capozzi
April 16, 2013
Page 3

Step toe
STEP TOE & JOHNSON LLP

cc: Kristin Berkland
Michelle Garber
Fred Theobald
Jeff Dobish
Joe Fry
Steven Augustino
Jameson Dempsey

IVANS, Inc.

Presentation to the Universal
Service Administrative Company

April 8, 2013

IVANS

- IVANS was founded by 21 insurance companies
- IVANS provides the healthcare and property-casualty insurance industries with fully managed network and electronic data and solutions
- ABILITY Network Inc. and IVANS have entered into a definitive merger agreement, which is expected to close within 90 days, subject to standard closing conditions

Background of IVANS Review of Its Services and Potential USF Obligations

- IVANS resells services of AT&T and other providers
 - Although an end user, IVANS was not assessed USF by AT&T or other providers prior to November 2012
 - IVANS has been assessed USF by Verizon for LIME transmission pipe discussed below
- Due diligence raised query about the USF status of three of its offerings: “*Broadband VPN*”, “*LIME*”, and “*EVPN*” (and predecessor “*MDNS*”)

“Broadband VPN”

- Broadband VPN is broadband Internet access service
 - Reselling DSL and cable modem service from ILECs and cable operators
 - Includes options for AT&T router and security software
 - Service includes options for:
 - managed VPN solution that provides Internet connections with data center VPN tunneling services
 - broadband managed Internet or wireless service for remote sites
 - IVANS project management and Help Desk services are included in this solution
- Broadband VPN not subject to USF obligations
 - FCC has long held that Internet access is an information service, not subject to USF obligations
 - Hardware and software components are also not telecommunications services subject to USF obligations
 - No ILEC or cable operator has charged IVANS USF for the DSL or cable modem service

Forced DSL/Voice Bundle

- A few ILECs required IVANS to purchase a voice line along with each DSL, assessing USF on voice but not on DSL
- IVANS passed through voice services, long distance charges and USF at cost with no mark-up on separate invoice line items
- No USF due because no mark-up on voice services and USF paid by ILEC, like systems integrator

LIME

- Bundled solution consisting of a portal, database applications, protocol and information processing and secure connections to Medicare and other payers for processing claims
 - Users connect securely to the LIME portal using their own Internet connection obtained from another vendor
 - No LIME user obtains Internet access from IVANS
- LIME is an “information service” because it processes and changes the information sent by the user
- The modest transmission component – pipe between portal and Medicare (CMS) -- is “inextricably intertwined” with the information service
 - Verizon charges IVANS USF for transmission pipe
 - IVANS “consumes” the pipe as an input to the bundled solution, and does not sell the transmission component separately

EVPN (Previously MDNS)

- IVANS' EVPN service offering is an enterprise IP solution that provides secure connections to the "IVANS Cloud"
 - communicate securely with other health care and financial services enterprises in the IVANS Cloud
 - connect with other clouds (e.g., McKesson Cloud) that are similar to the IVANS Cloud
 - connect directly with entities like CMS.
- The solution includes access to the IVANS Cloud, routers, security and network software, protocol processing, and applications.
- Access to the IVANS Cloud is provided by the IVANS router at the customer's premises and a MPLS line re-sold from AT&T.
- Previously, IVANS' EVPN customers bought MDNS, using Frame Relay access
 - Between 2009 and 2011, all of IVANS' MDNS customers were converted from Frame Relay access to MPLS access with EVPN service

USF Status of MPLS

- FCC has “not formally addressed enterprise communications services such as Dedicated IP, VPNs, WANs, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations.” *USF FNPRM*, 27 FCC Rcd. 5357, 5382 ¶ 44 (2012)
- FCC has also acknowledged that, in the absence of definitive guidance from the FCC, carriers have taken vastly differing opinions on whether MPLS and Frame Relay are assessable

AT&T Treatment of IVANS

- IVANS resells EVPN (MDNS) from AT&T
- AT&T had never charged IVANS USF for any portion of EVPN (or MDNS)
- In October 2012, IVANS asked AT&T about the USF treatment of MDNS
- AT&T has told IVANS
 - That the access portion of its EVPN (and previously MDNS) offering is assessable
 - That it has been making USF contributions on access portion of revenues from IVANS
 - That it erroneously did not assess USF recovery surcharges to IVANS on access portion
 - That it began passing through the USF charges to IVANS in October 2012

IVANS Action Items

- IVANS has prepared for filing 499As from 2008-2012
- IVANS has adopted the AT&T USF methodology, including the assumption that USF is assessable on MPLS access
- IVANS has reviewed its customer and accounting records from the past five years (2008-2012) to determine which revenues were assessable down to a customer-by-customer level
- For Lines 406, 420 and 423 on the Form 499-As, IVANS will be reporting the difference between net and gross revenues as AT&T has paid USF on the revenues it derived from IVANS
- The above offset is necessary to avoid double collection of USF contribution for the time period that AT&T confirmed it paid USF directly. FCC orders prevent AT&T from revising its reports to reclassify this revenue

Next Steps

- Provide USAC heads-up
- IVANS will file for an FRN from the FCC
- IVANS will file 499-As for the past five years and file 499-Qs on a going forward basis. (IVANS will late-file Nov 2012 and Feb 2013 499-Qs)
- IVANS intends to pay valid USF invoices issued by USAC
- Need clarification on procedure to transfer filer ID after transaction with ABILITY Network



John J. Malone
Signature Client Director

March 19, 2013

Mr. Jeff Dobish
President Shared Services and CFO
IVANS, Inc.
225 High Ridge Rd
Stamford, CT 06905

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We understand that you will be providing this letter to USAC to support your filings and payments. Please let us know if you have any questions or we can be of any further assistance.

Sincerely,


John J. Malone
Signature Client Director

¹ See <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=806172>.

REDACTED FOR PUBLIC INSPECTION

THE REMAINDER OF THIS ATTACHMENT HAS BEEN REDACTED

REDACTED FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

I, Georgios A. Leris, hereby certify that on this 6th day of August 2013 I served a copy of the redacted version of the foregoing Request for Review and Petition for Declaratory Ruling on the following party:

David Capozzi
Kristin K. Berkland
Universal Service Administrative Company
2000 I Street NW
Suite 200
Washington, DC 20036

/s/

Georgios A. Leris

August 6, 2013