

September 27, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: Submission for Record in WC Docket No. 06-122
InComm Solutions, Inc.

Madam Secretary:

We represent InComm Solutions, Inc. (“InComm”) in connection with the request for review of a decision of the universal service administrator (“USAC”) and petition for waiver filed on February 6, 2012 (“Request”). On July 17, 2013, E. Paul Cooke, President of InComm, and undersigned counsel met with attorneys in the Telecommunications Access Policy Division of the Wireline Competition Bureau (“Bureau”) to discuss the Request.¹ In response to matters discussed at this meeting, InComm hereby submits additional information for consideration in connection with the Request.

Background

The Request seeks relief for InComm from being forced to pay universal service fund (“USF”) contribution assessments based on specific revenue amounts that were already reported to USAC as USF assessable by InComm’s underlying wholesale carrier. InComm is not seeking relief from late-filing penalties assessed by USAC, and is not seeking the refund of USF surcharges paid to its underlying carrier.

There is no dispute that there was in fact a double-payment – the dispute is over whether InComm has provided adequate information to support a determination of the amount of the double payment. There is also no dispute that the amount of the double payment can be precisely determined if we know the amount of USF assessable revenue InComm’s underlying carrier reported to USAC – *i.e.*, wholesale revenue derived from sales to InComm – during the double-reporting period.

¹ See Letter from Jeffrey Mitchell, Counsel for InComm, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-122 (filed July 19, 2013).

InComm submitted with its Request a letter from the underlying carrier in which the carrier identified wholesale revenue derived from sales to InComm, broken out by quarter, for the entire double-reporting period. There is no dispute that at all times during the double-reporting period the underlying carrier was in compliance with its USF contribution revenue reporting obligations.

Notwithstanding, at the July 2013 meeting, Bureau staff asked whether InComm could further corroborate the revenue information provided by the underlying wholesale carrier for a sample period of several months. InComm's efforts to do so are discussed below.

Analysis of First Quarter 2010 Invoices

In order to corroborate the revenue information provided by InComm's underlying wholesale carrier, InComm analyzed monthly invoices covering the period January through March 2010. This analysis produced a billed revenue number that is within \$54 dollars of the total our underlying carrier indicated it reported as assessable USF revenue for the same period. Specifically, our underlying carrier indicated that it reported \$190,781.08 in USF assessable revenue derived from InComm for the first quarter of 2010. Our analysis of the billings to InComm covering the same period showed billed USF assessable revenue of \$190,726.77, a difference of \$54.31. A detailed summary of our calculations is attached and discussed further below.

Although we consider this to be strongly corroborative, before discussing our methodology, we do not believe it is reasonable to expect these invoices to tie-out exactly with the revenue reported by the underlying carrier. Firstly, these invoices and the billing systems that create them are complex. This can easily be seen in how voluminous the monthly invoices are, typically 600 to 700 pages in length for InComm. InComm has no access to the billing system that generated them. As a result, InComm was forced to make assumptions regarding which of the billed categories of service were USF assessable. While this appeared a straightforward exercise, we are unable to process the data on the billing system and are not in a position to make exact determinations on behalf of our underlying carrier.

In addition, in order to determine assessable revenue, we had to manually calculate the impact of contractually negotiated discounts against jurisdictional traffic categories. For example, during the invoice period we analyzed, InComm enjoyed a particular per minute discount rate. Because this discount rate is applied to total minutes – both intrastate and interstate – it is necessary to calculate the discount on intrastate minutes and add that amount back into the total. Put another way, when we remove billings for intrastate calls we must use the undiscounted amount (*i.e.*, tariff rates) which removes too much revenue from the final USF assessable amount. To correct for this, we calculate the discount on the intrastate minutes and add that number back into the total of USF assessable amount.

As indicated, our detailed calculations are attached. The source monthly invoices we analyzed are available for inspection upon request; however as noted above, the invoice for each of the three months is 600 to 700 pages in length and is available in paper form only.

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In conclusion, although the information submitted with the Request represents clear and convincing evidence to support granting relief, the attached analysis further corroborates the accuracy of the information supplied by our underlying wholesale carrier and submitted with the Request.

Finally, due to length of time the Request has been pending, we respectfully request a prompt decision on this matter.²

Please contact me if you have further questions.

Sincerely,



Jeffrey A. Mitchell
Counsel for InComm Solutions, Inc.

cc Chin Yoo, Esq.

Attachment

² See 47 C.F.R. § 54.724 (providing for ninety (90) days for the Bureau or the Commission to take action in response to requests for review of USAC decisions).

USAGE CHARGES	USF	JAN 2010	FEB 2010	MAR 2010	1ST QTR 2010	1ST QTR 2010
INTRALATA	N	13,153.41	17,403.77	17,093.70	\$ 47,650.88	\$ 47,650.88
IN-STATE	N	1,468.38	1,455.42	1,313.42	4,237.22	4,237.22
STATE TO STATE	Y	92,276.40	114,041.17	109,127.29	315,444.86	315,444.86
CANADIAN	Y	7,700.62	9,619.66	12,570.54	29,890.82	29,890.82
INTERNATIONAL	Y	5,758.98	10,507.75	14,625.60	30,892.33	30,892.33
DIR ASST	N	10.95	14.43	20.41	45.79	45.79
USAGE SURCHARGES	N	321.68	400.66	425.27	1,147.61	1,147.61
TOTAL		120,690.42	153,442.86	155,176.23	\$ 429,309.51	\$ 429,309.51
NON-USAGE CHARGES						
SERVICE FEE	Y	6,187.50	6,195.00	6,195.00	\$ 18,577.50	\$ 18,577.50
FEATURES	Y	19,637.50	12,530.00	9,795.00	41,962.50	41,962.50
ACCESS	Y	15,320.00	15,320.00	15,320.00	45,960.00	45,960.00
EQUIPMENT	N	68.00	68.00	68.00	204.00	204.00
ONE-TIME	Y	6,300.00	2,400.00	5,200.00	13,900.00	13,900.00
TOTAL		47,513.00	36,513.00	36,578.00	\$ 120,604.00	\$ 120,604.00
DISCOUNTS						
NON-USAGE DISCOUNTS	Y	(550.00)	(550.00)	(550.00)	\$ (1,650.00)	\$ (1,650.00)
LOCATION DISCOUNTS	N	(2,590.00)	(2,590.00)	(2,590.00)	(7,770.00)	(7,770.00)
CONTRACTUAL DISCOUNT*	Y	(83,361.29)	(104,822.84)	(107,971.65)	(296,155.78)	(296,155.78)
PROMOTIONS	Y	(8,523.75)	(4,970.00)	(3,602.50)	(17,096.25)	(17,096.25)
CONTRACTUAL PROMOTIONS	Y	(3,150.00)	(1,200.00)	(2,600.00)	(6,950.00)	(6,950.00)
TOTAL DISCOUNTS		(98,175.04)	(114,132.84)	(117,314.15)	\$ (329,622.03)	\$ (329,622.03)
CARRIER UNIVERSAL SVC CHG		8,438.13	8,837.41	8,647.53	\$ 25,923.07	
INTRASTATE DISCOUNT ADJUSTMENT*						\$ 15,950.79
INCOMM CALCULATION OF USF ASSESSABLE REVENUE:						\$ 190,726.77
SPRINT REPORTED USF REVENUE (LETTER to E.P. Cooke):						190,781.08
DIFFERENCE:						\$ 54.31

***INTRASTATE DISCOUNT:**

INTRALATA REVENUE	\$ 47,650.88
IN-STATE REVENUE	4,237.22
TOTAL	\$ 51,888.10

TARIFF RATE PER MINUTE	\$ 0.054
INTRASTATE MINUTES	960,890.74

DISCOUNT PER MINUTE \$ 0.016600

*INTRASTATE DISCOUNT ADJUST. \$ 15,950.79

* Contractual Discount applies to Interstate and Intrastate revenue. Adjust for Intrastate discount to reconcile total Interstate revenue.