

**US Link, Inc.
Request for Review of a Universal Service Administration Company
("USAC") Decision
WC Docket No. 06-122**

EXHIBIT A

USAC FINAL AUDIT REPORT



Internal Audit Division

July 30, 2013

Sandy L. Gaylor
Assistant Treasurer
US Link, Inc.
10025 Investment Drive
Suite 200
Knoxville, TN 37932

Re: Final USAC Audit Report for US Link, Inc. (Filer ID 809008)

Dear Ms. Gaylor,

Please find enclosed a copy of the final audit report for US Link, Inc. On July 30, 2013, the USAC Board of Directors (Board) approved the final audit report. The final Board-approved audit report constitutes a final decision of the federal Universal Service Administrator (Administrator) for purposes of seeking review from the Federal Communications Commission (FCC) in accordance with 47 C.F.R. § 54.719(c). This letter constitutes the first formal notice to US Link, Inc. that the final audit report has been approved by the Board.

The filing deadline for requesting FCC review of the Administrator's decision is set forth in 47 C.F.R. § 54.720(a) and provides that requests for review must be filed within sixty (60) days of "issuance" of the decision from which review is sought. The date of this letter shall constitute the date of issuance of the final audit report for purposes of seeking FCC review.

Please contact me if you have any questions.

Sincerely,

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

Akanchya Sharma
Senior Internal Auditor

Enclosures (1)

Cc Kim Anderson, US Link, Inc., Finance Manager
Sara Cole, US Link, Inc., Manager of Telecom Regulatory Compliance
Chang-Hua Chen, Senior Financial Analyst of Contributions (USAC)

Charles Salvator, Director of Internal Audit (USAC)
Nikki-Blair Carpenter, Manager of Internal Audit (USAC)
Brandon Ruffley, Internal Audit Supervisor (USAC)

To: David Case, Vice President and Chief Financial Officer

From: Wayne Scott, Vice President of Internal Audit

Date: April 29, 2013

**Re: USAC Internal Audit Division Report on the Audit of US Link, Inc. – 2011
FCC Form 499-A Rules Compliance (USAC Audit No. CR2012CP006)**

Introduction

The Universal Service Administrative Company (USAC or Administrator) Internal Audit Division (IAD) audited the compliance of US Link, Inc., Filer Identification Number 809008, (the Carrier) in completing its 2011 Telecommunications Reporting Worksheet, FCC Form 499-A, using Federal Communications Commission (FCC or Commission) rules, orders and the 2011 FCC Form 499-A Instructions. The applicable rules, orders and instructions are set forth primarily in 47 C.F.R. Part 54, as well as in other FCC rules, FCC orders, and the 2011 FCC Form 499-A Instructions (collectively, the Rules). Compliance with the Rules is the responsibility of the Carrier. IAD's responsibility is to make a determination regarding the Carrier's compliance with the Rules based on the audit.¹

IAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2011 revision, as amended).² Those standards require that IAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the data used to calculate the Carrier's Universal Service Fund (USF) reporting and contribution obligations, as well as performing such other

¹ *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, et al.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16382, ¶ 19 (2007) ("Audits are a tool for the Commission and the Administrator, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse. Audits can reveal violations of the Act or the Commission's rules. Commission rules authorize the Administrator to conduct audits of contributors to the universal service support mechanisms.").

² 47 C.F.R. § 54.702(n) ("When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards.").

procedures as IAD considered necessary to make a determination regarding the Carrier's compliance with the Rules. The evidence obtained provides a reasonable basis for IAD's findings and conclusions based on the audit objectives.

Purpose, Scope and Procedures

The primary objective of the audit was to determine the accuracy and completeness of the revenues reported by the Carrier on its 2011 FCC Form 499-A and to identify any potential misstatements that may result in a change to the Carrier's USF reporting and contribution obligations for the period audited. IAD reviewed the Carrier's 2011 FCC Form 499-A (covering the period January 1, 2010 through December 31, 2010) and performed procedures to determine whether the Carrier was compliant with the Rules.

IAD conducted audit procedures to determine whether the Carrier correctly reported revenues from all sources on its 2011 FCC Form 499-A by performing a reconciliation of the total revenues reported on the 2011 FCC Form 499-A compared to the Carrier's trial balance. IAD also evaluated the classification of the Carrier's revenue accounts on the different 2011 FCC Form 499-A line items for all products by reviewing descriptions of the Carrier's product offerings.

The Rules also require the Carrier to classify its revenues on the FCC Form 499-A as intrastate, interstate, and/or international through the use of good faith estimates, safe harbor percentages, or actual revenue amounts. IAD obtained supporting documentation for the Carrier's classification methods of these percentages or amounts to ascertain whether the Carrier was compliant with the Rules.

IAD also tested customer invoices to determine whether the Carrier was compliant with the Rules as they relate to USF recovery charges on end-user customer invoices.

Background

The Carrier operates as a competitive local exchange carrier and interexchange carrier, and does business as TDS Metrocom. During the period under audit, the Carrier's telecommunications products included fixed local, long distance, interconnected VoIP and private line services, and the Carrier's non-telecommunications products included Internet access, equipment sales and various repair and maintenance services. The Carrier is headquartered in Wisconsin and primarily provides services in Minnesota. The Carrier reported the following revenues on its 2011 FCC Form 499-A as subject to USF contribution assessment:

	US Link, Inc.'s 2011 FCC Form 499-A	
Interstate Revenue		
International Revenue		
Total		



Following are a summary conclusion and brief statement of the audit findings as determined by IAD. Detailed discussions of the audit findings are attached to this executive summary.

Conclusion

IAD concludes that the Carrier was not compliant with the applicable Rules for the period reviewed. The audit produced [REDACTED] findings as described in detail in the attachments to this executive summary.

For the purpose of this report, an audit finding (Finding) is a condition that shows evidence of non-compliance with the Rules that were in effect during the audit period. Following is a summary of the Findings.

Audit Finding(s) – Summary

Finding #	Finding	Finding Description	Estimated USF Contribution Base Effect
1	Private Line	Carrier incorrectly reported reseller private line revenue as end user private line revenue and in the incorrect jurisdiction of its 2011 FCC Form 499-A. The Carrier incorrectly reported end user private line revenue as 100 percent intrastate and did not maintain documentation to support its intrastate reporting on the form.	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		Total	[REDACTED]

Monetary Effect

As a result of the audit findings, the estimated effect on the contribution base is an increase of [REDACTED] for the period audited. Based on this amount, the Carrier’s additional USF contribution obligation is [REDACTED] for the period audited.



Post-Audit Activities

Once deemed final by the USAC Board of Directors, the audit report will be provided to the Carrier. Shortly thereafter, USAC Financial Operations will notify the Carrier that it has 60 days to submit a properly certified revised 2011 FCC Form 499-A for the period audited that is consistent with the findings in the audit report. In the event the Carrier does not submit a revised 2011 FCC Form 499-A, USAC Financial Operations will prepare a 2011 FCC Form 499-A for the Carrier based on the findings and will begin invoicing the Carrier for the additional USF contribution amounts owed.

The Carrier will have 60 days from the date the final audit report is sent to the Carrier to appeal the decisions of the Administrator reflected in this audit report to the FCC pursuant to 47 C.F.R. Part 54, Subpart I.

US Link, Inc.
Filing Year 2011
Detailed Audit Finding #1
Private Line

Criteria

FCC Rules state:

1. "Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules. These records shall include without limitation the following: Financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation." 47 C.F.R. § 54.706(e).
2. "State Private Line and State WATS Lines. This subcategory shall include all private lines and WATS lines carrying exclusively state traffic as well as private lines and WATS lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes ten percent or less of the total traffic on the line... Interstate private lines and interstate WATS lines. This subcategory shall include all private lines and WATS lines that carry exclusively interstate traffic as well as private lines and WATS lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes more than ten percent of the total traffic on the line." 47 C.F.R. § 36.154(a).

The *Universal Service First Report and Order* states:

3. "[U]nder the Commission's rules, if over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate." *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, ¶ 778 (1997).

The *USF Comprehensive Review Order* states:

4. "*Contributors*. We also require contributors to the USF to retain all documents and records that they may require to demonstrate to auditors that their contributions were made in compliance with the program rules, assuming that the audits are conducted within five years of such contribution. We clarify that contributors must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the...USF Administrator, and to [its] auditors. These documents and records should include without limitation the following: financial statements and supporting

documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.” *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 02-6, 97-21, WC Docket Nos. 05-195, 02-60, 03-109, Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16385, ¶ 27 (2007).

The Instructions to the 2011 FCC Form 499-A (Instructions) state:

5. “Line 305 and Line 406. – Local private line and special access service should include revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths. Line 406 should include revenues from special access lines resold to end users unless the service is bundled with and charged as part of a toll service, in which case the revenues should be reported on the appropriate toll service line....Line 305.1 – Revenues for service provided to contributing resellers for resale as telecommunications.” 2011 FCC Form 499-A Instructions, § III.C.1 at 16, ¶ 3.
6. “Filers shall maintain records and documentation to justify information reporting on the Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for five years. Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf...to the Universal Service Administrative Company (USAC), and to [its] auditors upon request.” 2011 FCC Form 499-A Instructions, § II.E at 8, ¶ 3.
7. “If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.” 2011 FCC Form 499-A Instructions, § III.C.3 at 22, ¶ 4 (citing the FCC rule for treatment of mixed use (i.e., intrastate and interstate) special access lines for jurisdictional separations purposes as codified at 47 CF.R. § 36.154(a) and cited in criterion 2 above).

Condition

The Carrier incorrectly reported revenue from private line circuits sold to one of its reseller customers as intrastate end user revenue on Line 406 instead of interstate reseller revenue on Line 305.1 of its 2011 FCC Form 499-A. The Carrier also reported the entire amount on Line 406 of the form as 100 percent intrastate and did not maintain documentation to support its intrastate reporting.

Private line revenue and jurisdiction

The Carrier reported private line revenue totaling [REDACTED] from general ledger (GL) account [REDACTED] on Line 406 of its 2011 FCC Form 499-A as 100 percent intrastate. Based on a review of the Carrier's documentation and discussions with the Carrier, IAD determined that the Carrier should have reported the private line revenue from one of its contributing reseller customers, totaling [REDACTED], also from GL account [REDACTED], on Line 305.1, rather than Line 406 of its 2011 FCC Form 499-A (criterion 5). With respect to jurisdiction, the Carrier stated that it should have reported the reseller revenue totaling [REDACTED] as interstate on Line 305.1, rather than intrastate on Line 406. The Carrier also stated that all of its reseller customers, including the incorrectly classified customer, verified that they were purchasing the private line circuits for resale to carry interstate traffic. The Carrier relied on this information when reporting interstate revenue on Line 305.1. Therefore, consistent with the Carrier's methodology, IAD notes that the Carrier should have reported the private line revenue totaling [REDACTED] from its reseller customer on Line 305.1 of the form as interstate. Based on this misclassification, IAD also determined that the Carrier should only have reported revenue totaling [REDACTED] from the private line circuits sold to its end user customers on Line 406 of the form.

Regarding jurisdiction, the Carrier reported the [REDACTED] in revenue from the private line circuits it sold to its end user customers as 100 percent intrastate on Line 406 of its 2011 FCC Form 499-A. Based on discussions with the Carrier, IAD determined that the Carrier did not consider whether more than ten percent of the traffic carried over each circuit was interstate when reporting jurisdiction on Line 406 of the form. The Carrier's intrastate reporting was solely based on the physical end points of the end user private line circuits. Specifically, during the audit, the Carrier stated that it reported revenue from its end user private line circuits as 100 percent intrastate because both end points of those private line circuits were located in the same state. However, IAD notes that the Rules specify that when classifying the jurisdiction of a private line as intrastate or interstate, the traffic carried over the private line, and not its physical end points, must be evaluated (criteria 2, 3 and 7). Specifically, the Rules state that if more than 10 percent of the traffic on the private line is interstate, the entire private line should be classified as interstate (criteria 2, 3 and 7). Therefore, to determine the jurisdiction for the Carrier's private line revenue totaling [REDACTED], IAD requested that the Carrier provide documentation to support the type of traffic (i.e., intrastate or interstate) carried over the end user private line circuits.

In response to IAD's request, the Carrier provided end user private line customer certifications from [REDACTED] of its calendar year 2010 customers, with private line revenue totaling [REDACTED]. These [REDACTED] customers purchased [REDACTED] of the [REDACTED]³ private line circuits that the Carrier sold to its end users during calendar year 2010 and verified that more than 90 percent of the traffic carried over their private line circuits was intrastate. Based on IAD's review of the Carrier's end user private line certifications, which indicated that less than 10 percent of the traffic carried over the end user private lines was interstate, IAD determined that the Carrier appropriately reported end user private line revenue

³ IAD's calculation of the [REDACTED] circuits does not include circuits with [REDACTED] revenue during calendar year 2010.



totaling [REDACTED] as 100 percent intrastate on Line 406 of its 2011 FCC Form 499-A (criteria 2, 3, and 7). For the remaining private line revenue, totaling [REDACTED] the Carrier did not provide any documentation to support the intrastate jurisdiction reported on Line 406 of the form (criteria 1, 4 and 6). Therefore, because the Carrier provided no documentation to demonstrate that 10 percent or less of the traffic carried over its remaining end user private lines was interstate, IAD determined that the Carrier should have reported the remaining end user private line revenue, totaling [REDACTED] as 100 percent interstate on Line 406 of the form (criteria 1, 2, 3, 4, 6 and 7).

Documentation retention

Based on discussions with the Carrier, IAD determined that the Carrier did not obtain or maintain any documentation to support the reported intrastate jurisdiction on Line 406 of its 2011 FCC Form 499-A. Rather, the Carrier provided [REDACTED] end user private line certifications from its calendar year 2010 customers, which the Carrier obtained during the audit. IAD notes that, pursuant to the Rules, the Carrier should have maintained, for at least five years, all records required to demonstrate that the Carrier’s contributions made were in compliance with the Rules including, but not limited to, historical customer records (criteria 1, 4 and 6).

Cause

The Carrier recorded a portion of its reseller private line revenue in the same GL account in which it also recorded revenue from its end user private line customers. However, the Carrier did not have sufficient procedures to separate its reseller private line revenue from its end user private line revenue recorded in the GL account. The Carrier only considered the end-points of a private line circuit, not the traffic on the circuit, when determining jurisdiction and did not have a process to determine whether more than ten percent of the traffic carried over a private line circuit was interstate for its end user private line revenue. In addition, the Carrier did not obtain or maintain documentation, as required by the Rules, to support its reported jurisdiction for its end user private line revenue.

Effect

The Carrier understated the USF contribution base on its 2011 FCC Form 499-A by [REDACTED] as detailed below:

2011 FCC Form 499-A	Total Amount Reported	Interstate Amount Reported	International Amount Reported	Total Audited Amount	Interstate Amount Audited	International Amount Audited	Estimated Effect on USF Contribution Base
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
Total Estimated Effect on USF Contribution Base							\$ [REDACTED]

Recommendation

IAD recommends that the Carrier properly classify and report the revenue from each of its private line circuits in the correct jurisdiction and re-file its 2011 FCC Form 499-A to accurately report its revenue information. Any filings where similar errors may have



occurred should also be re-filed and the revenue reported on the appropriate lines of the applicable FCC Form(s) 499-A in accordance with the Instructions. In addition, the Carrier should implement a process to properly separate its reseller private line revenue from its end user private line revenue. IAD further recommends that the Carrier implement a process to determine whether more than ten percent of the traffic carried over its private line circuits is interstate and retain supporting documentation for the Carrier's classification.

Carrier's Response

During the audit, US Link explained that intrastate private line service is supplying dedicated circuits to retail customers connecting two points within a state.⁴ However, based on a flawed interpretation of the FCC's rules, [REDACTED] in private line revenues is reclassified in this audit from the intrastate to the interstate jurisdiction. US Link requests that this finding be reversed as contrary to FCC rules. In the alternative, US Link requests that this matter be reclassified from a finding to an "other matter" for referral to the FCC. Assuming, arguendo, that the flawed interpretation upon which this finding is based is correct; the finding should be modified because the certifications obtained separately support the original intrastate classification of the revenue.

As noted in the Criteria section above, Section 36.514(a) [sic] provides that "*if* over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate."⁵ However, the finding rests on an assumption not present in the rules or Commission orders that circuits are interstate in nature until proven otherwise. Nothing in the rule supports this assumption.

The history and purpose of the 10% rule establishes the exact opposite of the key assumption at issue here. Before 1989, revenue from private lines carrying both local and interstate traffic was "generally assigned to interstate jurisdiction."⁶ According to the Joint Board, this classification posed a problem because it "tended to deprive state regulators of the authority over largely intrastate private line systems" that carried only a de minimis amount of interstate traffic.⁷ As a result, the 10% rule was adopted to ensure that a geographically intrastate private line would be treated as jurisdictionally intrastate. Only *if* the customer provides a

⁴ US Link acknowledges that it inadvertently misclassified one wholesale private line customer as a retail customer.

⁵ 47 C.F.R. § 36.154(a) (emphasis added) [USAC notes that the Carrier actually quotes the *First Universal Service Order* (criterion 3), not section 36.154(a) of the FCC's rules (criterion 2)].

⁶ *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision and Order, 4 FCC Rcd 1352, ¶ 1 (1989) ("MTS and WATS Recommended Decision and Order").

⁷ *Id.*

certification that more than 10% of the traffic on the line is interstate should the line be classified as interstate. In fact, the Joint Board recommended that “verification of customer representations concerning relative state and interstate traffic levels be carefully circumscribed.”⁸ The Joint Board made this recommendation recognizing that “[t]his approach may occasionally allow customers to misrepresent their traffic patterns in order to obtain favorable tariff treatment. However, in light of the fact that the typical situation involves physically intrastate systems carrying very small amounts of interstate traffic... the risk of tariff shopping is greatly outweighed by the need to avoid the substantial administrative burdens involved in a more precise verification system.”⁹ The FCC adopted the Joint Board’s reasoning as its own, emphasizing that the Joint Board’s “carefully circumscribed” verification was necessary “to ensure that the benefits of direct assignment were not lost through burdensome verification requirements.”¹⁰

Commission decisions issued since adopting the 10% rule confirm that carriers have no obligation to verify with customers the intrastate use of private line circuits connecting two points within a state. In 1995, the Commission noted that private lines with mixed traffic will be “deemed to be interstate if the customer certifies that ten percent or more of the calling on that line is interstate.”¹¹ In its review of GTE’s DSL service, the Commission found the service should be governed by a federal tariff “where the service will carry more than a de minimis amount of inseparable interstate traffic,” which GTE would establish by “ask[ing] every ADSL customer to certify that ten percent or more of its traffic is interstate.”¹² In 2001, the Commission again affirmed that “mixed-use lines would be treated as interstate if the customer certifies that more than ten percent of the traffic on those lines consists of interstate calls.”¹³ As the decisions make clear, private line circuits connecting two points within a state are correctly classified as intrastate circuits and only when customers provide certification to the contrary are the intrastate circuits to be reclassified.

⁸ *Id.* at ¶ 32.

⁹ *Id.*

¹⁰ *MTS-WATS Market Structure (Jurisdictional Separations for Mixed Use Special Access Lines)*, Order, 4 FCC Rcd 5660, ¶ 3 (1989) (“MTS and WATS Order”).

¹¹ *Petition for an Expedited Declaratory Ruling filed by National Association for Information Services, Audio Communications, Inc., and Ryder Communications, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 4153, ¶ 17 (1995) (emphasis added).

¹² *GTE Telephone Operating Company, DSL Solutions-ADSL Service*, Memorandum Opinion and Order, 13 FCC Rcd 22466, ¶ 28, n.95 (1998).

¹³ *MTS WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, Order, 16 FCC Rcd 11167, ¶ 2 (2001) (emphasis added).

The assumption underlying this finding has been repeatedly challenged and those challenges show that the industry shares a common understanding of the 10% rule.¹⁴ Each appeal has challenged USAC's finding that the *absence* of a customer's interstate certification results in the automatic classification of the line as interstate under current FCC rules. Although USAC has argued that customer certifications are necessary to determine the jurisdictional classification of private lines, and that the "Joint Board's recommendation does not permit a carrier to assume intrastate jurisdiction of its private lines,"¹⁵ USAC can point to no requirement that carriers produce customer certifications of interstate usage. Nothing in the rule, the 1998 Joint Board's recommendation or subsequent Commission orders require carriers to collect jurisdictional certifications from their customers. Requiring US Link to verify its customers' intrastate usage contradicts the Joint Board and FCC findings that verification of customer certifications should be carefully circumscribed. Moreover, nothing in the rule, Joint Board Recommendation, subsequent Commission orders, or the Form 499-A Instructions permit USAC to classify private lines as interstate absent a customer certification of interstate usage. USAC may not make policy¹⁶ to (1) require carriers to collect jurisdictional use certificates in the first instance or (2) default revenue to the interstate jurisdiction in the absence of a customer certification. If the FCC wishes to require that carriers collect customer certifications of jurisdictional usage, it must adopt any such new rule through notice and comment.¹⁷ Rather than make up a rule that defaults private lines to the interstate jurisdiction, USAC must remove the private line finding and seek guidance from the Commission. For example, USAC has sought guidance in similar scenarios concerning the audit implications of missing documentation.¹⁸ Given the weight of the

¹⁴ See Request for Review of PaeTec Communications, Inc. of Universal Service Administrator Decision, WC Docket No. 06-122 (filed April 3, 2012); XO Communication Services, Inc., Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Dec. 29, 2010); Request for Review by Madison River Communications, LLC of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Dec. 12, 2008); and McLeodUSA Telecommunications Services, Inc. Request for Review of Universal Service Administrator Decision, CC Docket Nos. 96-45 and 97-21 (filed Oct. 1, 2007).

¹⁵ Final USAC Audit Report for PaeTec Communications, Inc., at 17-18 (issued Nov. 21, 2011), available at <http://apps.fcc.gov/ecfs/document/view?id=7021906601>.

¹⁶ *Universal Service, Appointment of Universal Service Administrator Co. as Permanent Administrator*, Third Report and Order, 13 FCC Rcd 25058, ¶ 16 (1998) ("USAC may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed.").

¹⁷ The Administrative Procedures Act requires notice and comment on any new rules or revisions to existing rules. See 5 U.S.C. § 553 (b)-(c).

¹⁸ Letter to Julie Veach, Acting Chief, Wireline Competition Bureau, FCC from Richard A. Belden, COO, USAC, Re: Policy Guidance Regarding Universal Service Fund Matters Previously Submitted to Commission Staff, at p.3 (Aug. 19, 2009) (requesting guidance on what "remedial actions should be initiated against carriers that did not maintain documentation for periods being audited....").

law contrary to the assumption underlying this finding and the growing dispute within the industry, USAC should reverse the audit finding as currently drafted. USAC should seek guidance from the Commission through a referral as an “Other Matter.”

If this finding is not rejected because it is contrary to well established Commission rules or reclassified as an Other Matter and referred to the Commission; it would also be appropriate to reject the revenue reclassification based on the additional evidence provided by US Link. Although US Link is under no obligation to obtain customer certifications to support the classification of revenue from private line circuits connecting two points within a state to the intrastate jurisdiction; during the course of the audit US Link sought certifications. US Link obtained and presented certifications for over [REDACTED] of the circuits. That sample confirms the intrastate private line circuits were correctly classified as originally reported.

USAC IAD Response

IAD properly applied the 10% rule to the Carrier's end user private line revenue.

In its response, the Carrier contests IAD's determination that the Carrier incorrectly classified and reported as intrastate [REDACTED] of revenue from the Carrier's private line service that IAD determined should have been classified and reported as interstate revenue on the Carrier's 2011 FCC Form 499-A. The Carrier generated the revenue at issue from [REDACTED] private line circuits, which amounts to approximately [REDACTED] percent of the total [REDACTED] private line circuits sold by the Carrier to its customers. IAD determined that the revenue from the [REDACTED] private line circuits should have been reported as interstate because the Carrier provided no documentation to demonstrate that the traffic carried over the lines was intrastate.

The Carrier states that the Federal-State Joint Board (Joint Board) recommended that “verification of customer representations concerning relative state and interstate traffic levels be carefully circumscribed.”¹⁹ However, IAD notes that for federal universal service purposes, the Carrier is responsible for retaining, for at least five years, all records that may be required to demonstrate that the Carrier's federal universal service contributions were made in compliance with the Rules including, but not limited to, historical customer records (criteria 1, 4 and 6). During the audit, IAD requested documentation from the Carrier to support the intrastate reporting on the Carrier's 2011 FCC Form 499-A. However, the Carrier was not able to provide historical customer records, or any other documentation, to demonstrate that the traffic on the [REDACTED] private line circuits was intrastate. Therefore, IAD determined the Carrier did not obtain documentation to support the intrastate jurisdiction of the private line revenue from the [REDACTED] private line circuits at the time the Carrier submitted its form.

¹⁹ See Carrier Response at 10 (quoting the *Recommended 10% Order*, 4 FCC Rcd at 1357, ¶ 32).

Further, contrary to the Carrier's assertion that IAD required customer certifications to determine the jurisdictional classification of private lines,²⁰ IAD informed the Carrier during the audit that IAD would review any documentation the Carrier could provide to support the intrastate jurisdiction of the Carrier's [REDACTED] private line circuits. While IAD did state that customer certifications are one form of acceptable private line documentation, IAD did not state that customer certifications were the only form of acceptable documentation that the Carrier could provide to IAD to support the reported intrastate private line jurisdiction on the Carrier's 2011 FCC Form 499-A. Had the Carrier been able to provide any documentation during the audit to demonstrate that the traffic carried over the Carrier's private lines was intrastate including, but not limited to, customer certifications, IAD would have reviewed the documentation as part of IAD's standard audit procedures to determine whether the Carrier accurately reported its private line revenue on its form. However, in order to complete its audit procedures, IAD may not rely solely on the Carrier's statement that less than ten percent of the traffic carried over the Carrier's private lines was interstate during calendar year 2010. To be compliant with GAGAS,²¹ and the Rules,²² IAD must review the documentation retained by the Carrier to verify whether the Carrier properly reported the jurisdiction of its private line revenue on the form.

Regarding IAD's finding that the Carrier should have reported the [REDACTED] of revenue from its [REDACTED] private line circuits as interstate revenue, IAD does not concur with the Carrier's statement that IAD's "finding rests on an assumption not present in the rules or Commission orders that circuits are interstate in nature until proven otherwise."²³ To the contrary, IAD notes that, for federal universal service purposes, it is the Carrier's intrastate presumption that is not supported by the Rules. In the *Recommended 10% Order*, the Joint Board recommended that the jurisdiction of special access circuits be determined based on the type of traffic carried over the circuit²⁴ and the Commission subsequently adopted the Joint Board's recommendation.²⁵ Specifically, the Joint Board recommended and the Commission adopted a move away from separations rules that assumed special access lines were used exclusively for either state *or* interstate traffic, in favor of a separations process that "directly assign[s] the cost of mixed use special access

²⁰ See Carrier Response at 11 (stating that "USAC has argued that customer certifications are necessary to determine the jurisdictional classification of private lines," IAD required the Carrier to "produce customer certifications," and "[n]othing in the rule, the 1998 Joint Board's recommendation or subsequent Commission orders require carriers to collect jurisdictional certifications from their customers").

²¹ Government Auditing Standards, GAO-12-331G, §6.56 – 6.59 (2011) ("Auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions....").

²² See 47 C.F.R. § 54.702(n) ("When the Administrator...conducts audits of...contributors to the Universal Service Fund...such audits shall be conducted in accordance with generally accepted government auditing standards."); 54.706(e); 54.707; 54.711(a).

²³ See Carrier Response at 9 (emphasis in original).

²⁴ *In the Matter of MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 78-72, 80-286, Recommended Decision and Order, FCC 89J-1, 4 FCC Rcd 1352, 1352, ¶ 1 (1989) (*Recommended 10% Order*).

²⁵ See generally, *In the Matter of MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, FCC 89-224, 4 FCC Rcd 5660 (1989) (*Final 10% Order*).

lines to the intrastate jurisdiction when the lines carry de minimis amounts of interstate traffic in addition to intrastate traffic.”²⁶ In so doing, the Joint Board further recommended, and the Commission adopted the Joint Board’s recommendation that, “interstate traffic on a special access line...be deemed de minimis for separations purposes when it amounts to ten percent or less of the total traffic on the line.”²⁷

FCC Rule (47 C.F.R. §) 36.154 also indicates that the type of traffic carried across a private line circuit is used to determine whether a private line circuit should be classified as a “state private line” or an “interstate private line” (criterion 2). After adoption of the Joint Board’s recommendations in the *Final 10% Order*, the FCC included this rule, known as the “10% Rule,” in the *Universal Service First Report and Order* and the FCC Form 499-A Instructions for the purpose of identifying whether revenues are interstate for FCC Form 499 reporting and federal universal service contribution purposes (criteria 3 and 7). Accordingly, the Instructions corresponding to the Carrier’s 2011 FCC Form 499-A state that if over 10% of the traffic carried over a private line is interstate, the revenues associated with the entire private line are to be classified as interstate (criterion 7).

IAD notes that in order to evaluate the traffic carried over a private line to determine whether the traffic is governed by the “10% Rule,” the Joint Board concluded that the direct assignment method (between intrastate and interstate) “can be best achieved through customer certification that each special access line carries more than a de minimis amount of interstate traffic.”²⁸ According to the Joint Board, “customers should be able to develop sufficiently accurate certifications based on information concerning system configuration and the nature of their communications needs.”²⁹ The FCC accepted the Joint Board’s reasoning, determining that customer certifications attesting to the nature of the traffic carried over a private line would be the best method for assigning jurisdiction.³⁰ Although the FCC agreed that customer certifications would be the best method for assigning jurisdiction for special access purposes, as previously discussed, for FCC Form 499-A reporting purposes, IAD informed the Carrier that IAD would review any documentation the Carrier could provide to demonstrate that the traffic on its [REDACTED] private line circuits was intrastate during calendar year 2010. Based on the Rules, it was reasonable for IAD to conclude that in order for the Carrier to certify the truthfulness and accuracy of its 2011 FCC Form 499-A and be compliant with the Instructions, FCC Rule (47 C.F.R. §) 36.154 and FCC orders, the Carrier was required to evaluate the traffic on its private lines, whether through a traffic study, customer certifications, or other means. The Joint Board’s recommendation, adopted by the Commission, does not permit a carrier to assume intrastate jurisdiction of its private lines.

²⁶ *Id.* at 5660, ¶ 2.

²⁷ *Recommended 10% Order*, 4 FCC Rcd at 1357, ¶ 30.

²⁸ *Recommended 10% Order*, 4 FCC Rcd at 1357, ¶ 32.

²⁹ *Id.* at n.137.

³⁰ *Final 10% Order*, 4 FCC Rcd at 5660-61, ¶¶ 3, 7.



In addition, IAD does not concur with the Carrier's statement that "[o]nly if the customer provides a certification that more than 10% of the traffic on the line is interstate should the line be classified as interstate."³¹ Allowing a carrier to presume, for purposes of FCC Form 499-A reporting, that its private line traffic is intrastate in the absence of supporting documentation is contrary to the federal universal service document retention rules and compromises a carrier's ability to certify the truthfulness and accuracy of its FCC Form 499-A.³² In this case, such a presumption prevents IAD from complying with GAGAS and the Rules when performing its audit and could result in an underreporting of the Carrier's interstate private line revenues because the Carrier did not verify the nature of the traffic on its private lines prior to filing its 2011 FCC Form 499-A. In other words, in contravention of the Rules,³³ the Carrier is seeking to classify all of its private line traffic as intrastate without obtaining supporting documentation or confirming the nature of the traffic on its private lines. Because the Carrier was unable to provide any documentation to support that the traffic on the [REDACTED] private line circuits was intrastate in nature, IAD determined that the Carrier should have reported the revenue from these circuits as interstate.

USAC did not exceed its authority under 47 CFR § 54.702(c).

The Carrier "requests that [IAD's private line] finding be reversed as contrary to FCC rules" or "that this matter be reclassified from a finding to an 'other matter' for referral to the FCC."³⁴ The Carrier further asserts that USAC may not make policy to require carriers to collect jurisdictional use certificates in the first instance, default revenue to the interstate jurisdiction in the absence of a customer certification or apply a rule that defaults private lines to the interstate jurisdiction.³⁵

FCC Rule (47 C.F.R. §) 54.702(c) states that "[t]he Administrator may not *make policy*, interpret *unclear* provisions of the statute or rules, or *interpret the intent of Congress*."³⁶ It is only where "the Act or the Commission's rules are *unclear*, or *do not address a particular situation*," that IAD must seek guidance from the Commission.³⁷ To help prevent and detect waste, fraud and abuse in the USF, USAC verifies through a number of methods, including in this case an audit of the information contained in the Carrier's 2011 FCC Form 499-A, any methodologies used to estimate or report the revenues on the form.³⁸ IAD does not concur that the statute and rules are unclear as they pertain to determining the jurisdiction of the Carrier's private line revenue. As part of conducting the audit of the Carrier's 2011 FCC Form 499-A, IAD reviewed the relevant Rules and applied them to the Carrier's private line revenue. IAD's application of existing FCC precedent and regulations does not amount to IAD interpreting unclear provisions of the statute or rules. Nor does applying existing FCC precedent and regulations constitute

³¹ See Carrier Response at 9-10.

³² See 47 C.F.R. §§ 54.706(e); 54.707; 54.711(a).

³³ *Id.*

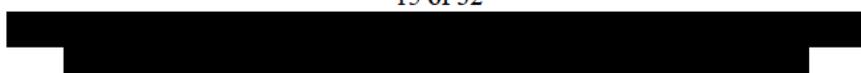
³⁴ See Carrier Response at 9.

³⁵ See Carrier Response at 11.

³⁶ 47 C.F.R. § 54.702(c) (emphasis added).

³⁷ *Id.*

³⁸ See 47 C.F.R. §§ 54.706(e), 54.707, 54.711(a).



making policy or interpreting the intent of Congress. Rather, IAD is applying established FCC decisions and regulations to the factual circumstances of this audit based on the documentation and information, or lack thereof, provided by the Carrier. Therefore, IAD did not exceed its authority in its role as the Administrator of the federal universal service program and it is not necessary for USAC to seek guidance from the FCC with respect to this finding.

The Carrier's [REDACTED] certifications are not sufficient to support the original intrastate classification of all of the Carrier's private line revenue.

The Carrier states that IAD's private line finding should be modified because the certifications obtained by the Carrier for [REDACTED] of its customers after the audit commenced support the Carrier's original intrastate classification for all of its end user private line revenue.³⁹ IAD concurs that the [REDACTED] customer certifications provided after the audit commenced support the Carrier's intrastate reporting for the [REDACTED] private line circuits associated with those certifications. As a result, IAD concluded that the Carrier appropriately reported the end user private line revenue from the [REDACTED] private line circuits, totaling [REDACTED], as 100 percent intrastate on Line 406 of its 2011 FCC Form 499-A.⁴⁰ However, IAD notes that the [REDACTED] private line circuits comprise only approximately [REDACTED] of the Carrier's total [REDACTED] end user private line circuits and that the [REDACTED] private line circuits only represent the traffic for the [REDACTED] customers who chose to respond to the Carrier's request for certifications. Further, the Carrier did not select a statistical sample that is representative of the Carrier's entire private line customer base to support the Carrier's intrastate reporting for all [REDACTED] end user private line circuits. IAD may not assume, in the absence of a statistical sample, that the traffic carried over the [REDACTED] private line circuits is indicative of the traffic carried over the Carrier's [REDACTED] other end user private line circuits. Therefore, IAD does not concur with the Carrier's assertion that the [REDACTED] customer certifications confirm that the Carrier correctly reported all of its end user private line revenue as intrastate on its form. Accordingly, IAD declines to modify its finding to classify the Carrier's [REDACTED] in revenue from the remaining [REDACTED] private line circuits as intrastate.

USAC Management Response

USAC management concurs with USAC IAD's Finding.

Regarding the private line portion of IAD's Finding, USAC management notes that in the 1989 *Recommended 10% Order* concerning separations treatment of mixed use lines, the Joint Board determined that the direct assignment method of jurisdiction for special access circuits should be based upon the type of traffic carried over the circuit.⁴¹ Specifically, the Joint Board recommended the "direct intrastate assignment of mixed use special access lines carrying de minimis amounts of interstate traffic."⁴² It also recommended that the "interstate traffic on a special access line would be deemed de

³⁹ See Carrier Response at 9, 12.

⁴⁰ See Condition section of this document at 7.

⁴¹ See *Recommended 10% Order*, 4 FCC Rcd at 1352, ¶ 1.

⁴² *Id.* at 1357, ¶ 30.

minimis for separations purposes when it amounts to ten percent or less of the total traffic on the line.”⁴³

The Joint Board’s recommended “10% Rule” for assigning jurisdiction to special access circuits was approved by the FCC later the same year⁴⁴ and was subsequently included in *Universal Service First Report and Order* and the FCC Form 499-A Instructions. Specifically, the 2011 FCC Form 499-A Instructions specify that when classifying the jurisdiction of a private line (intrastate or interstate), the traffic carried over the private line, and not the geographical location, must be evaluated. If greater than 10% of the traffic across the private line is interstate, the entire private line should be classified as interstate (criterion 7). Thus, in order to be compliant with the FCC’s Form 499 reporting requirements, companies must use the “10% Rule” to determine the jurisdiction of their special access revenues.

The Carrier states that “[a]s the [FCC’s] decisions make clear, private line circuits connecting two points within a state are correctly classified as intrastate circuits and only when customers provide certification to the contrary are the intrastate circuits to be reclassified.”⁴⁵ USAC management does not concur with this statement and the Carrier’s assertion that the absence of customer certifications regarding the traffic across a private line allows the Carrier to conclude the jurisdictional nature of such traffic as intrastate and, therefore, non-assessable for FCC Form 499 reporting purposes. In the *Recommended 10% Order*, the Joint Board recommended that the jurisdiction of special access circuits be determined based on the type of traffic carried over the circuit⁴⁶ and the Commission subsequently adopted the Joint Board’s recommendation.⁴⁷ Thus, it is clear that the type of traffic carried over the circuit must be analyzed to determine the jurisdiction for private line circuits. The Carrier failed to perform and provide such an analysis to USAC IAD in support of the private line revenue the Carrier reported as intrastate on its 2011 FCC Form 499-A.

USAC management would also like to emphasize that during the audit, the Carrier provided only a limited sample of certifications from a portion of its end user customers that purchased intrastate private line services during calendar year 2010 to support the Carrier’s assertion that all of its private line traffic was intrastate during that calendar year. USAC management concurs with USAC IAD that such certifications verify the traffic for the specific customers’ circuits that submitted the certifications, but may not be used as a representative sample to determine the type of traffic carried over the private line circuits of the Carrier’s remaining private line customers. Moreover, the language in the 2011 FCC Form 499-A Instructions states “[i]f over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate” (criterion 7). Thus, the instructions clearly indicate

⁴³ *Id.*

⁴⁴ See generally *Final 10% Order*, 4 FCC Rcd 5660.

⁴⁵ See Carrier Response at 10.

⁴⁶ See *Recommended 10% Order*, 4 FCC Rcd 1352, 1352, ¶ 1.

⁴⁷ See generally *Final 10% Order*, 4 FCC Rcd 5660.

that whether a particular line is interstate must be determined based on the interstate percentage of traffic specific to each individual line. In other words, in the absence of further data, usage patterns of one customer's private line circuit(s), or even the private line circuits of a subset of customers, may not be used to presume similar usage patterns by other customers. In this case, the Carrier only provided USAC IAD with customer specific certifications for [REDACTED] of the Carrier's customers that chose to respond to the Carrier's documentation request and, therefore, USAC IAD determined that these certifications were not a representative sample of the Carrier's total population of end user private line customers. USAC management concurs that USAC IAD appropriately considered the [REDACTED] customer certifications solely to determine the nature of the traffic on the [REDACTED] private line circuits of the [REDACTED] customers that provided the certifications to the Carrier.

USAC management concurs with USAC IAD's finding that the Carrier, by reporting its private line revenue on its form as intrastate without obtaining or maintaining documentation to substantiate its intrastate jurisdiction, was not compliant with the reporting requirements of the 2011 FCC Form 499-A Instructions.

