



WILTSHIRE
& GRANNIS LLP

November 26, 2013

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Universal Service Contribution Methodology (WC Docket No. 06-122)

Dear Ms. Dortch,

On November 25, 2013, Rick Hitz, Vice President, Regulatory Economics & Finance, General Communications, Inc. (“GCI”), John T. Nakahata, Jennifer P. Bagg, and Traci D. Galbreath of Wiltshire & Grannis LLP met with Chin Yoo, Charles Eberle, Carol Pomponio and Claudia Fox of the Wireline Competition Bureau (“Bureau”) regarding the above-referenced proceeding. Mr. Hitz and Ms. Fox participated in the meeting via conference call. Specifically, we discussed the proposed changes in the FCC Form 499-A instructions that impact attributing revenues from contributing resellers.¹

GCI explained the difficulty some filers will have in certifying reseller revenues under the new FCC Form 499-A instructions that implement the *2012 Wholesaler-Reseller Clarification Order*.² In particular, GCI pointed out that some filers must both produce certifications to upstream carriers from who they purchase wholesale services and obtain

¹ *Wireline Competition Bureau Seeks Comment on Proposed Changes to FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, Public Notice, DA 13-2090 (rel. Oct. 29, 2013).

² *See Universal Service Contribution Methodology; Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc. et al.*, Order, 27 FCC Rcd. 13780 (2012).

certifications from downstream resellers who purchase services from the filer. Moreover, GCI explained that all filers will not have systems in place to correlate specific wholesale purchases with specific retail sales and that implementing such systems, which generally have no independent business purpose, would be costly and difficult. Such filers may seek to avail themselves of the proposed safe harbor procedures for meeting the “reasonable expectation” standard, but GCI stressed that additional language in the FCC Form 499-A instructions is necessary to account for the added complexity of the upstream and downstream certification process.

Accordingly, GCI requested the Bureau amend the FCC Form 499-A instructions to include the following language:

When a filer’s systems do not directly correlate particular wholesale purchases with particular retail service sales, the filer may utilize a reasonable and auditable method (such as random sampling) to estimate the percentage of wholesale service purchases that, in whole or part, support services on which the filer contributes directly to the universal service fund. The filer would be responsible for retaining documentation of its methodology.

GCI explained the simple clarification allowing for sampling, especially where the number of circuits purchased is too large to track manually on the retail side, will further the goal of the *2012 Wholesaler-Reseller Clarification Order*. It will also ensure appropriate contributions are made by those entities that do not have systems in place that enable the direct correlation of purchases and sale.

The Bureau staff explained that if the proposed language is not adopted in the current draft of the 499-A instructions, then the sampling process GCI described could constitute “other reliable proof” under the existing instructions and the *2012 Wholesaler-Reseller Clarification Order*. In order to aid the audit process, GCI urged the staff to be explicit in the instructions regarding the processes and materials that would constitute such proof or, at a minimum, add language in the instructions that prohibits an auditor from automatically rejecting as “other reliable proof” any reasonable method utilized to comply with the requirements.

Accordingly, GCI requests the Bureau also include the following language in the FCC Form 499-A instructions:

The use of “other reliable proof” to demonstrate a “reasonable expectation” shall not be deemed evidence of unreliability and shall be evaluated based on the reasonableness of the utilized method or proof.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,



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