

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Universal Service Contribution	)	WC Docket No. 06-122
Methodology	)	

**JOINT COMMENTS OF THE INDUSTRY GROUP**

As noted in an earlier *ex parte* filing by the undersigned group of industry participants (“Industry Group”), subject matter experts from AT&T, BT, CenturyLink, Orange, Sprint, Verizon, and XO Communications worked together to develop a proposal for revised Form 499-A Instructions language regarding reseller certifications that would be consistent with the 2012 *Wholesaler-Reseller Clarification Order* and could be effectively implemented by providers.<sup>1</sup> The Wireline Competition Bureau (“Bureau”) sought comment on the Industry Group’s proposal before releasing a public notice with proposed revisions to the Form 499-A Instructions (“Draft 499-A Instructions”).<sup>2</sup> The Industry Group greatly appreciates the Bureau releasing a redline of

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<sup>1</sup> Letter from AT&T Services, Inc., BCE Nexxia, BT Americas Inc., CenturyLink, Orange Business Services U.S., Inc., Sprint Corporation, Verizon, and XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed July 26, 2013) (“Industry Group July Proposal”); *Universal Contribution Methodology; Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc. et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780 (2012) (*2012 Wholesaler-Reseller Clarification Order*).

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Proposed Changes to FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, WC Docket No. 06-122, DA 13-2090, PN Attachment 2 - Draft (rel. Oct. 29, 2013) (“Draft 499-A Instructions”). Page references to the Draft 499-A Instructions are to the redlined version of this document.

its proposed changes and providing opportunity for comments on the Draft 499-A Instructions. The Industry Group recently met with the Bureau staff on November 18 to discuss some concerns that the Bureau's revisions to the language proposed by the Industry Group could have unintended consequences. As a result, the Industry Group submits proposed edits to the Draft 499-A Instructions as shown on the Attachment, the rationale for which we provide below.

The Industry Group proposes additional language be added on page 24 of the Draft 499-A Instructions to clarify, as stated in the *2012 Wholesaler-Reseller Clarification Order*, that if a wholesale provider's customer (or another entity in the downstream chain of resellers) actually contributed to the Universal Service Fund ("USF") on revenues from offerings incorporating particular services, there should be no double collection of USF contributions from the wholesale provider, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that the customer would contribute when it filed its Form 499-A for the relevant calendar year. Thus, the Industry Group recommends a footnote (shown as footnote 59 on the Attachment) to this effect be added to the Form 499-A Instructions.<sup>3</sup>

The Industry Group also suggests several edits to the Draft 499-A Instructions that explain reseller certification requirements applicable after January 1, 2014. First, in footnote 61, the Bureau included the Industry Group's recommendation that the Form 499-A Instructions provide examples of acceptable approaches for obtaining reseller certificates (e.g., entity-level, account-level, service-specific).<sup>4</sup> In each of the four examples, the Bureau added "or will be" to

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<sup>3</sup> See Attachment at 23, n.59.

<sup>4</sup> Industry Group July Proposal at 4.

the language initially proposed by the Industry Group.<sup>5</sup> We appreciate that the Bureau intended this addition to allow flexibility to cover *future* purchases on an earlier obtained annual certificate, which we support. But we are concerned that some customers could interpret “or will” to apply to *existing* services. As a result, such customers might include in their certificates services on which they do not currently contribute but on which they *will* contribute at some point in the future. We recommend that the Bureau add a sentence to that footnote clarifying that a customer certifying services “will be purchased for resale” means that the certificate covers *additional* services the customer “will be” purchasing in the calendar year and on which it (or another entity in the downstream chain of resellers) will contribute, rather than that the customer is *currently* purchasing services on which it (or another entity in the downstream chain of resellers) “will be” contributing at some later point in the future.<sup>6</sup>

Second, in the reseller certificate sample language itself, we recommend inserting “at least in part” in the first sentence after “resale.” This is consistent with the Industry Group’s proposal.<sup>7</sup> In the USF contribution context, parties frequently understand the term “resale” only to mean “resale of a telecommunications service.” However, as the Commission explained in its *2012 Wholesaler-Reseller Clarification Order*, a provider may certify to its wholesale provider that it is a “reseller” of the wholesaler’s service even if it is using the wholesaler’s service to provide both an assessable and non-assessable service to an end user.<sup>8</sup> By adding the “at least in

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<sup>5</sup> See, e.g., Draft 499-A Instructions at 25, n.61 (“(1) that all services purchased by the customer are *or will be* purchased for resale pursuant to the certificate . . . .”) (emphasis added).

<sup>6</sup> See Attachment at 24.

<sup>7</sup> Industry Group July Proposal at 4.

<sup>8</sup> See *2012 Wholesaler-Reseller Clarification Order* at n.98.

part” phrase after “resale,” we believe the Commission will limit confusion on the part of resellers, wholesalers, and auditors.

Later in the sample language, we recommend inserting “assessable” prior to “U.S. telecommunications or interconnected Voice over Internet Protocol.” We believe that including this term will foreclose the ability of a customer to certify to its wholesale provider that it is “directly contributing” on the “assessable portion” if that assessable portion is zero and, thus, the customer may not report in its contribution base *any* revenues from incorporating the wholesaler’s service into its finished offering. Not all “U.S. telecommunications” are assessable and many purchasing providers can and do use wholesale “telecommunications” inputs to provide end user information services that are non-assessable. In that scenario, we are concerned that, without including “assessable” before “U.S. telecommunications,” the purchasing carrier could report no assessable revenues for its offerings but nonetheless supply a certificate to its wholesale provider essentially asserting that *if* there are any assessable revenues, the purchasing provider will make direct contributions. The Industry Group does not believe this was the Bureau’s intent, thus we recommend this edit to clarify that a reseller may only provide a certification for purchased services that will be incorporated into offerings that have some assessable revenues.

Third, we suggest some edits to the draft language explaining how providers should account for services purchased after the date that the annual certificate is signed. The Industry Group proposed permitting a wholesale provider to rely on either a “notification” from its customer that it is purchasing the service for resale consistent with its annual certificate or a

subsequent certificate from its customer that covers the additional services.<sup>9</sup> The Bureau modified the Industry Group’s proposal to require wholesale providers to “obtain[] a revised or supplemental certificate prior to the due date of the applicable Form 499-A.”<sup>10</sup> The Bureau also inserted “written” prior to “notification.”<sup>11</sup> We are concerned that the revision on page 25 of the Draft 499-A Instructions eliminates a wholesaler’s flexibility to obtain a “notification” from its customer other than a “revised or supplemental certificate.” We recommend that the Bureau delete that revision from the final 499 instructions.<sup>12</sup>

Additionally, the Industry Group, which includes the largest wholesale providers in the industry, anticipated that a “notification” as proposed could include the customer indicating whether a particular service is assessable or exempt during the ordering process (e.g., via a flag in the ordering system, designating an assessable or exempt account for the service, or other means). The Industry Group is concerned that some providers and perhaps auditors may not view such an indication in the wholesaler’s ordering system as a “written” notification. For that reason, we recommend deleting “written” from the Draft 499-A Instructions. In response to Bureau staff’s concern that a “notification” should be something more than an undocumented communication between the wholesaler and reseller customer, we propose inserting “verifiable” before “notification.”<sup>13</sup> We believe that this edit should address the Bureau’s concern while

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<sup>9</sup> Industry Group July Proposal at 4.

<sup>10</sup> Draft 499-A Instructions at 25.

<sup>11</sup> *Id.* at 26.

<sup>12</sup> *See* Attachment at 24.

<sup>13</sup> *Id.* at 25.

permitting providers to manage orders for tens of thousands of resold services in an administratively feasible manner.

We respectfully request that the Commission adopt the Industry Group's suggestions contained in the Attachment and act quickly to finalize the 499-A and -Q instructions and forms prior to the end of 2013.

Respectfully submitted,

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**ATTACHMENT**

mechanisms based on revenues from those offerings.<sup>55</sup> Specifically, a customer is a reseller if it incorporates purchased wholesale service into an offering that is, at least in part, assessable telecommunications and can be reasonably expected to contribute to the federal universal service support mechanisms for that portion of the offering.<sup>56</sup>

*“Reasonable Expectation” Standard.* Pursuant to the *2012 Wholesaler-Reseller Clarification Order*, a filer may demonstrate that it has a “reasonable expectation” that a customer contributes to federal universal service support mechanisms based on revenues from the customer’s offerings by following the guidance in these instructions or by submitting other reliable proof.<sup>57</sup>

Filers that comply with the procedures specified in this section of the instructions will be afforded a “safe harbor”- *i.e.*, that filer will be deemed to have demonstrated a reasonable expectation. If a wholesale provider follows procedures that deviate in any way from the guidance in this section, the wholesale provider will have to demonstrate a reasonable expectation via “other reliable proof.”<sup>58</sup>

Filers that do not comply with the safe harbor procedures or that do not otherwise meet the reasonable expectation standard will be responsible for any additional universal service assessments that result if their revenues must be reclassified as end user revenues.<sup>59</sup>

*Safe Harbor Procedures for Meeting the “Reasonable Expectation.”* Each filer should have documented procedures to ensure that it reports as “revenues from resellers” only revenues from entities that meet the definition of reseller. The procedures must include, at a minimum, the following information on resellers:

1. Filer 499 ID;
2. Legal name;
3. Legal address;
4. Name of a contact person;
5. Phone number of the contact person; and,
6. As described below, an annual certification by the reseller regarding its reseller status.

Filers shall provide this information to the Commission or the Administrator upon request.

*Certifications.* **Prior to January 1, 2014:** Pursuant to the *2012 Wholesaler-Reseller Clarification Order*,<sup>60</sup> filers may demonstrate a reasonable expectation through December 31, 2013, that particular customers

<sup>55</sup> *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13781-82, para.3.

<sup>56</sup> Thus, for example, if a customer purchases a DSL line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. *See id.* at 13796, para. 34 n.98.

<sup>57</sup> *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13794, para. 32, and 13801-02, paras. 51-52; *see also Global Crossing Order*, 24 FCC Rcd at 1028-29, para. 14.

<sup>58</sup> *See id.* at 13801-02, paras. 51-52.

<sup>59</sup> If a wholesale provider’s customer (or another entity in the downstream chain of resellers) actually contributed to the federal universal service support mechanisms for the relevant calendar year on offerings that incorporate purchased wholesale services, the wholesale provider will not be obligated to contribute on revenues for the wholesale services, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that its customer would contribute when it filed its Form 499-A for the relevant calendar year. *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13799, paras. 43-44.

<sup>60</sup> *See id.* at 13798, para. 41.

were resellers by relying on certificates that are consistent with the sample language included in the 2012 FCC Form 499-A instructions, which is included immediately below for illustrative purposes.

*I certify under penalty of perjury that the company is purchasing service for resale in the form of U.S. telecommunications or interconnected Voice over Internet Protocol service. I also certify under penalty of perjury that either the company contributes 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.*

**Beginning January 1, 2014:**

*Annual Certificates.* A filer may demonstrate that it had and has a reasonable expectation that a particular customer is a reseller with respect to purchased service(s) by providing a certificate signed each calendar year by the customer that:

(1) specifies which services the customer is or is not purchasing for resale pursuant to the certificate;<sup>61</sup> and

(2) is consistent with the following sample language:

*I certify under penalty of perjury that the company is purchasing service(s) for resale, at least in part, and that the company is incorporating the purchased services into its own offerings which are, at least in part, assessable U.S. telecommunications or interconnected Voice over Internet Protocol services. I also certify under penalty of perjury that the company either directly contributes or has a reasonable expectation that another entity in the downstream chain of resellers directly contributes to the federal universal service support mechanisms on the assessable portion of revenues from offerings that incorporate the purchased services.*<sup>62</sup>

*Services Purchased After Date of Annual Certificate.* A filer may sell additional service(s) to a customer after the date that the annual certificate is signed. If the annual certificate does not cover those additional services, ~~the filer must demonstrate that its customer is a reseller for the additional service(s) by obtaining a revised or supplemental certificate prior to the due date of the applicable Form 499-A. For example, the~~

<sup>61</sup> At the filer's discretion, the filer may, for example, -rely on certificates that specify any of the following: (1) that all services purchased by the customer are or will be purchased for resale pursuant to the certificate ("entity-level certification"); (2) that all services associated with a particular billing account, the account number for which the customer shall specify, are or will be purchased for resale pursuant to the certificate ("account-level certification"); (3) that individual services specified by the customer are or will be purchased for resale pursuant to certification ("service-specific certification"); or (4) that all services except those specified either individually or as associated with a particular billing account, the account number(s) for which the customer shall specify, are or will be purchased for resale pursuant to the certificate. A customer may certify that additional services will be purchased for resale pursuant to the certificate if the customer (or another entity in the downstream chain of resellers) will contribute to the federal universal service support mechanisms on revenues attributed to such services for the relevant calendar year.

<sup>62</sup> In some instances, reselling carriers are themselves selling the underlying service to another (non-contributing) reseller, which then sells the same service to another (non-contributing) reseller, and so on until the service is ultimately sold to an entity that is a contributing "reseller." In these instances, an underlying carrier also may include as carrier's carrier revenue any revenues received from service ultimately provided to entities that meet the definition of "reseller" for purposes of the Form 499-A. See Comments of Network Enhanced Telecom, LLP, WC Docket No. 06-122 (filed Sept. 6, 2013); letter from L. Charles Keller, Counsel for Network Enhanced Telecom, LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed June 29, 2010).

filer may demonstrate a reasonable expectation that a customer is a reseller with respect to a service purchased after the date of the annual certificate signed by the customer by relying on either of these received prior to the filing of the applicable Form 499-A:

- (1) a [written-verifiable](#) notification from the customer that the customer is purchasing the service for resale consistent with the valid, previously signed annual certificate, or
- (2) a subsequent certificate covering the purchased service signed by the customer.

### ***Certain International Switched Service Revenues***

An underlying carrier also may include as carrier's carrier revenues any international switched service revenues received from another U.S. reselling carrier where that reselling carrier is using the underlying carrier's service to re-file the foreign-billed traffic of a foreign telephone operator. In this case, the reselling carrier must certify to the underlying carrier that it is using the resold international switched service to handle traffic that both originates and terminates in foreign points.

### ***Intercarrier Compensation and Universal Service Support***

The following categories of revenues are not end-user revenue and are reported in Block 3. For these revenue items, the filer is not required to retain Filer 499 ID information or verify that the customer is a reseller.

<b>Category of Revenue</b>	<b>Report on</b>
Per-minute switched access charges and reciprocal compensation	Line 304
Revenues received from carriers as payphone compensation for originating toll calls	Line 306
Charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6)	Line 307
Revenues that filers receive as universal service support from either states or the federal government	Line 308
Revenues received from another U.S. carrier for roaming service provided to customers of that carrier	Line 309

### ***Revenues from Entities Exempt from USF Contributions***

For the purposes of filling out this Worksheet—and for calculating contributions to the universal service support mechanisms—certain telecommunications carriers and other providers of telecommunications may be exempt from contribution to the universal service support mechanisms. These exempt entities, including “international only” and “intrastate only” providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues in Block 3. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Lines 403–417 of Block 4 of the Telecommunications Reporting Worksheet, as appropriate. Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues. In Block 5, Line 511, however, filers may elect to report the