

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

In the Matter of)	
)	
Request for Review by)	WC Docket No. 06-122
Deltacom, Inc. of Universal Service)	
Administrator Decision)	
)	

COMMENTS OF TDS METROCOM, LLC

TDS Metrocom, LLC (“TDS Metro”) submits the following comments¹ in support of the Request by Deltacom, Inc. (“Deltacom”) for Review of a Universal Service Administrator Decision.² TDS Metro agrees that the Commission should reverse the private line revenue audit finding of the Universal Service Administrative Company (“USAC”) that is described in the Deltacom Request. As it did in the audit of US Link, Inc. (“US Link”), a TDS Metro affiliate, USAC erroneously concluded that Deltacom should have reported as interstate all private line revenue for which it did not provide documentation demonstrating that ten percent *or less* of the traffic carried over the private lines was interstate.³

USAC’s application of the ten percent rule rests on the erroneous assumptions that circuits are interstate until proven otherwise and that carriers have an obligation to verify the traffic carried over physically intrastate private line circuits. Nothing in the Commission’s Rules or orders supports these assumptions, which have been repeatedly challenged.⁴ The

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on Deltacom, Inc.’s Request for Review of a Decision by the Universal Service Administrative Company*, WC Docket No. 06-122, DA 13-2116 (Nov. 1, 2013).

² Request for Review by Deltacom, Inc. of Universal Service Administrator Decision, WC Docket No. 06-122 (Sept. 30, 2013) (“Deltacom Request”).

³ See Deltacom Request at 3.

⁴ See Request for Review by US Link, Inc. of Universal Service Administrator Decision, WC Docket No. 06-122 (filed Sept. 30, 2013); Puerto Rico Telephone Company Request for Review of Decision of the Universal Service

Commission's separations rules provide that “[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.”⁵ Prior to 1989, revenue from private lines carrying both local and interstate traffic was “generally assigned to interstate jurisdiction”⁶ which “deprive[d] state regulators of the authority over largely intrastate private line systems” that carried only a *de minimis* amount of interstate traffic.⁷ The ten percent rule was adopted to ensure that a geographically intrastate private line would be treated as jurisdictionally intrastate. Only *if* the customer provides a certification that more than ten percent of the traffic on the line is interstate should the line be classified as interstate. The Joint Board recommended that “verification of customer representations concerning relative state and interstate traffic levels be carefully circumscribed,”⁸ in part because of “the need to avoid the substantial administrative burdens involved in a more precise verification system.”⁹ The FCC emphasized 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 USAC’s audit practice requires the burdensome verification requirements that the Joint Board and FCC refused to impose.

Administrator, Docket No. 06-122 (filed June 25, 2012); Request for Review of PaeTec Communications, Inc. of Universal Service Administrator Decision, WC Docket No. 06-122 (filed Apr. 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); McLeodUSA Telecommunications Services, Inc. Request for Review of Universal Service Administrator Decision, CC Docket Nos. 96-45 and 97-21 (filed Oct. 1, 2007).

⁵ 2011 FCC Form 499-A Instructions at 22 (citing 47 C.F.R. § 36.154(a)) (emphasis added).

⁶ *MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Dockets 78-72 and 80-286, Recommended Decision and Order, 4 FCC Rcd 1352, ¶ 1 (1989).

⁷ *Id.*

⁸ *Id.* at ¶ 32.

⁹ *Id.*

¹⁰ *MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Dockets 78-72 and 80-286, Decision and Order, 4 FCC Rcd 5660, ¶ 3 (1989).

The Commission's Rules provide that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress" and require USAC to seek guidance from the Commission "[w]here the Act or the Commission's rules are unclear, or do not address a particular situation."¹¹ USAC can point to no FCC authority supporting its audit practice that *assumes interstate jurisdiction*. Nothing in the Commission's Rules, the 1998 Joint Board's recommendation, or subsequent Commission orders requires carriers to collect jurisdictional certifications from their customers who purchase physically intrastate private lines. Although the FCC Form 499-A Instructions impose general record keeping obligations, they do not impose any specific obligation to obtain traffic data for private lines. Where the FCC requires carriers to collect certifications or conduct traffic studies, the 2011 FCC Form 499-A Instructions set forth these requirements quite clearly.¹² Moreover, nothing in the Commission's Rules, the Joint Board's recommendation, subsequent Commission orders, or the 2011 FCC Form 499-A Instructions permits USAC to classify private lines as interstate absent a customer certification of interstate usage. Because current FCC rules and worksheet instructions do not address this situation, USAC may not make policy to (1) require carriers to collect jurisdictional use certificates for private lines in the first instance or (2) default private line revenue to the interstate jurisdiction in the absence of a customer certification. If the Commission wishes to require carriers to collect customer certifications of jurisdictional usage, it must adopt any such new rule through a notice and comment rulemaking.¹³

¹¹ 47 C.F.R. § 54.702(c). See also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, Third Report and Order, 13 FCC Rcd 25058, ¶ 16 (1998).

¹² See 2011 FCC Form 499-A Instructions at 21 (requiring filers to obtain reseller certifications), 24 (discussing wireless and VoIP traffic study requirements).

¹³ The Administrative Procedure Act requires notice and comment on any new rules or revisions to existing rules. See 5 U.S.C. § 553 (b), (c).

Finally, even if USAC’s interpretation of the ten percent rule were correct, the rule is inapplicable to Deltacom and cannot form the basis for reclassification of the revenue in question because it is a separations rule contained in Section 36.154(a) of the Commission’s Rules¹⁴ that does not apply to non-incumbent LECs such as Deltacom. As the Bureau recently held, “the Commission’s formal separation process that governs how ILECs assign their costs to intrastate and interstate jurisdictions”¹⁵ does not apply to CLECs. Because the separations process does not apply, CLECs must allocate and report revenues “for USF contribution reporting purposes, in a manner that is consistent with their supporting books of accounts and records, or the Commission’s good faith estimate requirement.”¹⁶ Deltacom is under no obligation to obtain and retain certifications from customers regarding the jurisdiction of its private lines.

Because Deltacom’s request for review presents a recurring issue of industry-wide importance, the Commission should reverse USAC’s Audit Finding, instruct USAC to refer issues regarding lack of documentation to the Commission as “Other Matters,” and institute a notice and comment rulemaking to establish the documentation that carriers must collect, if any, to establish the jurisdiction of their physically intrastate private lines for purposes of USF reporting.

¹⁴ 47 C.F.R. § 36.154(a).

¹⁵ *Universal Service Contribution Methodology; Petition for Declaratory Ruling by the Rural Independent Competitive Alliance; Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, Declaratory Ruling and Order, WC Docket No. 06-122, DA 13-2254, at ¶ 12 (2013).

¹⁶ *Id.* at ¶ 13.

Respectfully submitted,

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Dated: December 2, 2013

CERTIFICATE OF SERVICE

I, M. Renee Britt, hereby certify that on this 2nd day of December 2013, I have caused a copy of the foregoing Comments of **TDS Metrocom, LLC** to be served upon the parties below via electronic mail:

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