

May 9, 2014

SENT VIA ELECTRONIC FILING

Diane Cornell
Special Counsel to Chairman Wheeler
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: InComm Solutions, Inc.
Appeal of USAC Decision (filed Feb. 6, 2012)
WC Docket No. 06-122**

Dear Ms. Cornell:

I am writing on behalf of InComm Solutions, Inc., (“InComm”) to urge prompt resolution of the above-reference matter.¹ As the Federal Communications Commission (“Commission” or “FCC”) implements process reform to include improved accountability for timely decision making,² matters such as this – relatively small financially, affecting a small business, and involving a relatively non-complex policy area – should not be deprioritized behind larger and more complex Commission policy issues (such as net neutrality). Rather, timely resolution of small, routine matters is essential to the efficient operation of the Commission, USAC, and the universal service fund (“USF”).³

InComm’s Appeal has been pending for over two years and concerns a clear-cut universal service contributions issue:⁴ the double-assessment of end-user revenue reported separately by two contributors – first by InComm’s underlying wholesale carrier and later by InComm after it had come into full compliance with its USF revenue reporting obligations. InComm paid and is not disputing penalties and late filing fees associated with the period during which it was not in compliance. Review of the record will show no dispute that the same revenue has been assessed

¹ See *InComm Request for Review of Decision of the Universal Service Administrator and Petition for Waiver*, WC Docket No. 06-122 (filed Feb. 6, 2012) (“InComm Appeal”).

² See *Report on FCC Process Reform*, GN Docket No. 14-25, Staff Working Group, Recommendation 1.3 (“Ensure Accountability for Timely Decision-making”) (rel. Feb. 14, 2014) (*Report on Process Reform*).

³ Section 54.724 of the Commission’s rules establishes that the Wireline Competition Bureau (“Bureau”) “shall, **within ninety (90) days**, take action in response to a request for review of a [USAC] decision that is properly before it.” 47 C.F.R. § 54.724(a) (emphasis added).

⁴ See Letters from Jeffrey Mitchell, Counsel for InComm, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122 (Dec. 14, 2012) (*ex parte* meeting with Bureau staff), (Jul. 19, 2013) (*ex parte* meeting with Bureau staff), (Sep. 27, 2013) (providing data analysis to Bureau staff corroborating accuracy of InComm revenue), (Jan 9, 2014) (*ex parte* meeting with D. Alvarez, Legal Advisor to Chairman Wheeler).

twice for USF purposes – the apparent issue is neither USAC nor the FCC have a mechanism for resolving double-assessment cases brought by resellers.⁵

Not only does the Commission have a long-standing policy against double-counting end-user revenues, in December 2012, the Commission formally adopted a “clear and convincing” evidentiary standard to be applied in cases where a wholesale provider of telecommunications services claims its revenue has been double-assessed.⁶ In doing so, the Commission provided a clear policy statement that: “USAC Should Not Double Collect if Clear and Convincing Evidence Shows that Another Provider Actually Contributed on the Subject Revenues.”⁷ Common sense dictates the same clear and convincing standard should apply to resellers with double assessment claims⁸ – yet over a year after this decision, InComm’s Appeal remains pending.

The failure of the Bureau or the Commission to timely decide this matter continues to impose hardship on InComm’s owners. This lack of resolution creates uncertainty and inefficiency for USAC, at the Commission, and in the economy generally as potentially productive investments (in the form of the disputed funds) remain indefinitely tied up.

For the reasons above, we respectfully request the Commission resolve this matter as soon as reasonably possible.

Respectfully submitted,



Jeffrey A. Mitchell
Counsel for InComm Solutions

Cc Julie A. Veach
Chief, Wireline Competition Bureau

⁵But see 47 C.F.R. § 54.713(a) (“Once a contributor complies with the Telecommunications Reporting Worksheet filing requirements, [USAC] may refund any overpayments made by the contributor, less any fees, interest, or costs”).

⁶ See *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, 13799 (2012) (*2012 Wholesaler-Reseller Clarification Order*).

⁷ *Id.*

⁸ See Letter from Jeffrey Mitchell, Counsel for InComm, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122 (Nov. 16, 2012) (arguing *2012 Wholesaler-Reseller Clarification Order* provides sufficient policy guidance to resolve *InComm Appeal*).