Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
Request for Review by Cablevision Systems Corporation of Decision of Universal Service Administrator	)	**WC Docket No. 06-122**

REQUEST FOR REVIEW OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR BY CABLEVISION SYSTEMS CORPORATION

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Cablevision Systems Corporation ("Cablevision"), by its undersigned counsel and pursuant to 47 C.F.R. § 54.719(c), seeks review of a decision made by the Universal Service Administrative Company ("USAC") on March 19, 2014.[1] Cablevision respectfully requests reversal of USAC's decision, which improperly holds Cablevision responsible for outstanding Universal Service Fund ("USF") contributions related to the 2003 revenue of Cleveland PCS, LLC ("Cleveland PCS"), a now-defunct wireless provider in which Cablevision once held only an indirect minority ownership interest. The Commission should reject USAC's belated effort to collect USF contributions from the wrong entity many years after the applicable statute of limitations had expired.

SUMMARY

According to USAC, Cleveland PCS, a CMRS provider that ceased operations in 2004 and formally dissolved in 2008, never paid a balance of over seven hundred and fifty thousand dollars for USF contributions owed on 2003 revenue. Cleveland PCS may have been unaware of this balance, as USAC did not invoice Cleveland PCS for that amount until after the company had transferred all of its assets to a buyer, Cleveland Unlimited, LLC ("Cleveland Unlimited"), and ceased operations. After unsuccessful attempts to collect Cleveland PCS's supposed USF debt from the buyer (Cleveland Unlimited) between 2005 and 2008, USAC appeared to have abandoned its pursuit. Last year, however, USAC turned its attention to Cablevision, which had once held a minority, indirect ownership interest in Cleveland PCS. On March 19, 2014, USAC issued a new invoice to Cablevision for Cleveland PCS's USF debt, of which Cablevision now seeks review.

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[1] March 19, 2014 Letter from USAC to Tamar Finn, outside counsel to Cablevision, regarding Cleveland PCS, LLC (attached hereto as Exhibit A).

USAC's effort to shift Cleveland PCS's debt to a former indirect minority shareholder, nearly eleven years after the charges were supposedly incurred, should be rejected. First, to state the obvious, Cablevision is not Cleveland PCS. They are separate corporate entities, headquartered in different states, with separate directors, separate operations, separate corporate records, and different owners. USAC does not have authority, statutory or otherwise, to shift charges from one company to another at will, in complete disregard for corporate formalities, simply because they once enjoyed a corporate affiliation with one another. Cablevision did not own a controlling stake in Cleveland PCS, did not control any of the company's operations or directors, has no operational records from Cleveland PCS, and owned only a minority interest in Cleveland PCS's former parent company. Under the Commission's precedent, piercing the corporate veil to hold one entity liable for the actions or responsibilities of another requires a much closer degree of control and proximity between the two entities than Cablevision and Cleveland PCS ever enjoyed with each other. USAC's disregard for the corporate form, without even attempting to meet the Commission's standards for piercing the corporate veil or successor liability, must be rejected.

Second, even if Cablevision could be held liable (which it cannot) for the responsibilities of a former affiliate in which Cablevision had never owned a controlling share, the applicable statute of limitations ran out a long time ago. Because the Communications Act is silent as to the statute of limitations for collecting USF contributions, the federal default statute of limitations of four years controls. *See* 28 U.S.C. § 1658(a). USAC cannot simply issue debt to Cablevision nearly *eleven years* after the charges were supposedly incurred by a former affiliate that ceased operations *ten years* ago and formally ceased to exist *six years* ago. To do so not only violates the governing statute, but is also inconsistent with basic principles of equity. Until last year,

Cablevision had no notice that USAC believed that Cleveland PCS had outstanding USF obligations, nor would it have had any reason (even if Cablevision maintained Cleveland PCS's operational records, which it did not) to retain the records necessary to investigate or challenge USAC's claims. Cablevision today has no way of knowing whether Cleveland PCS actually owed USAC the amounts invoiced or whether USAC attributed that debt to Cleveland PCS improperly. Nor can Cablevision possibly investigate the issue, because so much time has passed that it would be impossible for Cablevision to gather the relevant records from or interview the relevant third parties (assuming they can even be identified). The statute of limitations exists precisely to protect parties against this kind of prejudice.

For both of these reasons, Cablevision respectfully requests that the Commission reverse USAC's decision.

QUESTION PRESENTED FOR REVIEW

Cablevision seeks review of the following question: Whether USAC improperly invoiced Cablevision for USF contributions allegedly owed by Cleveland PCS by (1) piercing the corporate veil without legal grounds to do so, and/or (2) exceeding the applicable statute of limitations and violating the equitable mandate that governs the Universal Service regime.

Cablevision requests that, pursuant to its authority under 47 C.F.R. § 54.719(c), the Commission reverse USAC's decision and instruct USAC to retract the invoice issued to Cablevision for the USF contributions USAC claims are due from Cleveland PCS.

STATEMENT OF FACTS

A. Cleveland PCS's Operations and Corporate History.

Cleveland PCS was a regional broadband personal communication services company that was formed in November 2000 to provide Commercial Mobile Radio Services ("CMRS") to

customers in Ohio.[2] In May 2004, Cleveland PCS effectively ceased operations and sold its customers and assets, including its wireless licenses, to another wireless provider, Cleveland Unlimited, which went on to provide CMRS services, principally in the Ohio, Pennsylvania, and Indiana regions, under the "Revol Wireless" brand.[3]

Four years after it sold its assets and ceased operating as a CMRS provider, Cleveland PCS formally dissolved, filing a certificate of dissolution with the Ohio Secretary of State in 2008.[4]

B. <u>Cleveland PCS's USF Contributions.</u>

Cleveland PCS began reporting telecommunications revenue subject to Universal Service contribution obligations to USAC in April 2002 and continued to do so through April 2004.[5] Based on Cleveland PCS's reports, USAC initially invoiced Cleveland PCS less than $5,000 for calendar year 2003.[6] However, in 2005—after Cleveland PCS had ceased operating and transferred its assets to Cleveland Unlimited—USAC determined that Cleveland PCS actually owed a substantially larger figure of $800,771.64.[7] Cablevision was not a party to any correspondence or conversations regarding USAC's significant upward revision to Cleveland

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[2] May 16, 2014 Declaration of Michael Gorman ("Gorman Decl."), ¶ 3 (attached hereto).

[3] Revol Wireless continued to operate until early 2014, when it transferred its wireless licenses to Sprint Corporation. *See* Public Notice: Sprint Corporation and Cleveland Unlimited, Inc. Seek FCC Consent to the Assignment of 12 Personal Communications Licenses Covering Parts of Indiana, Ohio, and Pennsylvania, 28 FCC Rcd 15,759 (Nov. 14, 2013).

[4] Certificate of Dissolution for Limited Liability Company/Cancellation of Foreign LLC filed by Cleveland PCS on April 21, 2008 (attached hereto as Exhibit B).

[5] Ex. A at 1.

[6] *See* January 13, 2014 Email from Michelle Garber, USAC, to Tamar Finn, outside counsel to Cablevision (attached hereto as Exhibit C), including chart of 2004 true-up adjustments reflecting invoicing of amounts totaling $4,826.16 in July-September 2004 and subsequent reversal of these charges and invoicing of amounts totaling $800,771.64 in 2005.

[7] *Id.*; Ex. A at 1-2.

PCS's invoice, but insofar as Cablevision can determine, USAC questioned Cleveland PCS's reported ratio of inter- and intrastate traffic and instead applied its default rules, thereby dramatically increasing Cleveland PCS's apparent USF liability.[8] Upon receiving from Cleveland PCS a copy of the Bill of Sale (effective May 5, 2004) documenting that Cleveland PCS's assets had been transferred to Cleveland Unlimited, USAC partially reversed charges relating to revenues accruing after that date, leaving a balance of $752,568.20.[9]

C. <u>USAC's Initial Efforts to Collect from Cleveland PCS and Cleveland Unlimited.</u>

Having made a substantial upward revision to Cleveland PCS's apparent USF liability after the company had ceased operating, Cablevision believes that USAC initially attempted to collect the claimed debt by sending Cleveland PCS's invoices to Cleveland Unlimited's address.[10] Cablevision was not a party to (and has no records of) any communications between USAC and Cleveland Unlimited.[11] However, insofar as Cablevision is now aware, Cleveland Unlimited did not agree to pay those invoices on behalf of Cleveland PCS, and USAC (in July 2005) transferred all but $20 of the balance on Cleveland PCS's account to the Commission for collection.[12] USAC continued to send invoices for the $20 amount to Cleveland Unlimited's address until August 2008, when Cleveland Unlimited eventually paid it.[13] At no point prior to 2013, as far as Cablevision can determine, did either USAC or Cleveland Unlimited ever make Cablevision aware of any of these invoices or that such communications were taking place.[14]

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[8] *See* Ex. A at 2.

[9] Ex. A at 2.

[10] *Id.* at 3.

[11] Gorman Decl. ¶ 6.

[12] Ex. A at 2.

[13] *Id*.

[14] Gorman Decl. ¶ 6.

Nor, for that matter, is Cablevision aware of *any* effort by USAC to do anything related to the claimed outstanding amounts owed by Cleveland PCS during the four-year period between the summer of 2008 and the summer of 2012.[15]

D. USAC's 2012 Revival of Efforts to Collect on Cleveland PCS's Apparent USF Liability.

In June 2012, USAC recalled Cleveland PCS's outstanding balance in order to transfer it to the United States Department of Treasury for collection.[16] It then began sending invoices reflecting Cleveland PCS's debt to Cleveland Unlimited's address from September 2012 through March 2013.[17] In April 2013, Cleveland Unlimited finally responded to those invoices, claiming in a letter to USAC that USAC had been erroneously sending invoices for Cleveland PCS to Cleveland Unlimited, and forwarding Cleveland PCS's April 2008 certificate of dissolution.[18]

Having been unsuccessful in its renewed attempts to invoice Cleveland PCS at Cleveland Unlimited's address, USAC then for the first time turned its attention towards Cablevision. Beginning in October 2013, USAC initiated attempts to invoice Cleveland PCS at Cablevision's address instead (which Cleveland PCS's Certificate of Dissolution had listed as the forwarding address).[19]

Cablevision initially responded to USAC in October 2013 by explaining that the company whose apparent USF liability USAC was pursuing, Cleveland PCS, had long since

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[15] *Id*. Although USAC claimed that it undertook no efforts during this time "because all amounts were due to the FCC" rather than to USAC, Ex. A. at 3, Cablevision is unaware of any efforts, by any party, to communicate with or collect the supposed debt from Cablevision during this period.

[16] Ex. A at 2.

[17] *Id*. at 3.

[18] *Id*.

[19] *Id*.

dissolved.[20] In December 2013, after receiving additional collection letters from USAC directed to Cleveland PCS at Cablevision's address, Cablevision contacted USAC to further explain that Cleveland PCS no longer existed and that Cablevision was not a stand-in for the defunct carrier.[21] At USAC's request, Cablevision provided documentation showing both that Cablevision had held only an indirect minority ownership interest in Cleveland PCS, and that Cleveland PCS had transferred its assets to Cleveland Unlimited in 2004.[22]

Cablevision also explained to USAC that any applicable statute of limitations had long since run and that Cablevision was in any event not the proper entity to invoice for USF contributions that had been supposedly owed by Cleveland PCS a decade prior.[23] Cablevision, a New York-based company, did not maintain any operational records of Cleveland PCS (which was based in Independence, Ohio) and had no operational control over the company during the time that Cleveland PCS still existed.[24]

Cablevision's corporate relationship with Cleveland PCS, moreover—when one existed—was that of an indirect minority shareholder. Cleveland PCS had been a wholly-owned subsidiary of Northcoast Communications, LLC ("Northcoast Communications"), the majority of which (50.1%) had been owned by Northcoast PCS, LLC ("Northcoast PCS"), a separate entity with no formal or corporate relationship to Cablevision.[25] Cablevision, through its

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[20] October 28, 2013 Letter from Amy Groveman, Cablevision Systems Corporation, to USAC (attached hereto as Exhibit D).

[21] Ex. A at 3.

[22] February 10, 2014 Email from Tamar Finn, Outside Counsel to Cablevision, to David Capozzi, Acting General Counsel, USAC (attached hereto as Exhibit E).

[23] *Id*.

[24] Gorman Decl. ¶ 4.

[25] *Id*. ¶ 3.

affiliate Cablevision PCS Investment, Inc. ("Cablevision PCS"), had owned only a minority (49.9%) stake in Northcoast Communications.[26]

More importantly, Cablevision had played no meaningful role in the operation of Cleveland PCS when that company existed. Cleveland PCS operated out of offices in Independence, Ohio while Cablevision operated out of offices in Bethpage, New York. Cablevision did not maintain any operational records of Cleveland PCS's business activities.[27] None of Cleveland PCS's directors were directors or employees of any Cablevision entity.[28] Moreover, Cablevision PCS had only a single representative on the three-director Board of Cleveland PCS's parent company, Northcoast Communications.[29]

Notwithstanding Cablevision's explanation and documentation that it was not Cleveland PCS nor the appropriate entity to stand in Cleveland PCS's shoes for purposes of any alleged USF liability from a decade prior, USAC proceeded on March 19, 2014, to send a letter to Cablevision taking the position that it would "invoice Cablevision for the past due federal Universal Service reporting and contribution obligations of Cleveland PCS" and "considers such contribution obligations to be a debt due from Cablevision."[30] USAC predicated this attribution of Cleveland PCS's supposed debt to Cablevision based on only two facts: (1) that "Cablevision was, to USAC's knowledge at least, a 49 percent owner of Cleveland PCS," and (2) that "the Cleveland PCS certificate of dissolution directed that any claims against the company be sent to

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[26] *Id*.

[27] *Id*. ¶ 4.

[28] *Id*.

[29] *Id*.

[30] Ex. A at 4.

the Bethpage, New York address, which is the address of Cablevisions offices."[31] Based on those two facts, USAC wrote that it "can only reasonably assume that, absent reasonable evidence to the contrary, Cablevision is a successor in interest to Cleveland PCS and is responsible for all past due federal Universal Service reporting and contribution obligations of Cleveland PCS."[32] On April 3, 2014, USAC followed up with a collections letter addressed to "Cablevision Systems Corporation, successor in interest to Cleveland PCS," seeking payment for the $752,548.20 balance supposedly owed by Cleveland PCS.[33]

ARGUMENT

USAC's decision to hold Cablevision liable for the alleged debts of Cleveland PCS must be reversed for two independent reasons. First, USAC's decision improperly pierces the corporate veil between separate entities that maintained an arms-length relationship. And second, USAC's decision ignores the applicable statute of limitations by attempting to issue a debt to Cablevision over ten years after the relevant charges were supposedly incurred.

A. <u>The USAC Decision Improperly Pierces the Corporate Veil.</u>

USAC's decision to hold Cablevision liable for the USF contributions of Cleveland PCS improperly pierces the corporate veil and must be reversed. Cablevision held only an indirect minority interest in Cleveland PCS, had no operational control over Cleveland PCS, and had no records of Cleveland PCS's business activities. This relationship falls far short of the high bar required for the Commission to disregard the corporate form and attribute the liabilities of one entity to another.

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[31] *Id*.

[32] *Id*.

[33] April 3, 2014 Letter from USAC Collections Department to Cablevision Systems Corporation, Successor in interest to Cleveland PCS (attached hereto as Exhibit F).

The Commission's standard for piercing the corporate veil was established in the *Telecable* decision:

> The critical question, therefore, is whether the conduct of the [two] corporations in light of the relationship which exists among them requires that the legal concept of separate corporate identities be disregarded in order to preserve the integrity of [the Communications Act] and to prevent the [corporations] from defeating the purpose and objective of the statutory provisions....Other criteria include: (1) a common identity of officers, directors and shareholders; (2) sharing the same principal offices; [and] closeness of relationship between entities.

In re Publix Network Corp., Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11,487, 11,505 ¶ 39 (2002) (quotation marks omitted) (citing *Petition of Telecable to Stay*, Decision, 19 F.C.C.2d 574, 585-87 (1969)).

The Commission has warned that "absent exceptional circumstances, the corporate veil should be pierced only with great caution," *In re Applications of Las Misiones de Bejar Television Co.*, 93 F.C.C.2d 191, 197 ¶ 13(1983), and that it will not disregard the corporate form unless it is clear that two entities share a near-total operational overlap or that their corporate arrangement was specifically designed to circumvent the Commission's regulations. *See, e.g., In re BankAmerica Corp. v. Am. Tel. & Tel. Co.*, Memorandum Opinion and Order, 8 FCC Rcd 8782, 8785 ¶ 6 (1993) (refusing to pierce corporate veil "[i]n the absence of persuasive evidence to support the Banks' claims of non-arms length transactions between [affiliate entities]"); *In re Applications of Las Misiones de Bejar Television Co. et al.*, 93 F.C.C.2d at 197 ¶ 13 (refusing to pierce corporate veil where corporate relationship did not involve significant control of one entity over the other and there had been "no showing that the separate corporation was established to circumvent the Commission's authority.").

Instead, veil-piercing is limited to situations in which there is abundant evidence that one entity dominated the business activities of the other. For instance, in the only decision to address piercing the corporate veil in the context of liability for USF contributions, the Commission

disregarded the corporate form where an entity acted as an obvious corporate vehicle for "the activities of just one person." *In re Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15,558, 15,572 ¶ 28 (2012). That individual was the company's sole owner, sole officer and sole director, and exercised complete control over all of its business activities. *Id*.

Commission decisions outside the USF context similarly restrict veil-piercing to scenarios in which one entity exercises near-complete control over another entity or a group of related entities. *See, e.g., APCC Services, Inc. v. Networkip, LLC (In re APCC Services, Inc.)*, Memorandum Opinion and Order, 22 FCC Rcd 4286 (2007) (veil pierced where two entities shared officers, directors, and phone numbers, and held themselves out to the public as interchangeable); *In re Publix Network Corp.*, 17 FCC Rcd at 11,505 ¶ 40 (2002) (veil pierced where affiliated entities were managed by a single individual with "little or no regard to corporate identity," expenses were paid from a single account, and companies shared officers and directors); *In re Petitions to Reconsider the Grant of SMR Trunked License WNMJ-686 at Bowman, North Dakota*, Memorandum Opinion and Order, 4 FCC Rcd 7025(1989) (veil pierced to parent of wholly-owned subsidiary where two companies had identical directors, registered agents, and business addresses). Federal common law, which relies on a nearly identical veil-piercing test, similarly imposes liability only where control of one entity over the other is virtually absolute. *See, e.g., Capital Tel. Co. v. FCC*, 498 F.2d 734, 738 (D.C. Cir. 1974) (piercing corporate veil between two entities where both were owned and controlled by the same individual who operated them from the same office); *MCI Telecomms. Corp. v. O'Brien Mktg., Inc.*, 913 F. Supp. 1536, 1541 (S.D. Fla. 1995) (piercing veil to affiliated entity where sole shareholder fully controlled both companies and had attempted to use one company to evade obligations incurred by the other, and stating that piercing requires "[c]ontrol, not mere majority

or complete stock control, but complete domination, not only of finances, but of policy and business practices" (quotation marks omitted)).

USAC's decision does not address this standard, much less meet it. Instead, it rests entirely on the dual facts (1) that "Cablevision was, to USAC's knowledge at least, a 49 percent owner of Cleveland PCS," and (2) that "the Cleveland PCS certificate of dissolution directed that any claims against the company be sent to the Bethpage, New York address, which is the address of Cablevision's offices."[34] Neither of these facts, either alone or in combination, can satisfy the Commission's standard for holding one corporate entity responsible for the liabilities (or, in this case, alleged liabilities) of another.

The former relationship between Cablevision and Cleveland PCS comes nowhere even close to the sort of inter-company relationship required to pierce the corporate veil. While the scenarios in which the Commission pierces the corporate veil have typically involved closely-held corporations or wholly-owned subsidiaries, *see supra*, Cablevision had only an indirect minority interest in Cleveland PCS, by means of a minority ownership in Cleveland PCS's former parent.[35] Their relationship respected corporate formalities, so there is no basis on which USAC could have concluded that Cablevision used Cleveland PCS a mere "vehicle" for Cablevision's activities. *Telseven, LLC*, 27 FCC Rcd at 15,572. Nor is there any basis to even allege, much less conclude, that Cablevision established Cleveland PCS in order to avoid regulatory restrictions or obligations that would otherwise apply to Cablevision. *See Telecable*, 19 F.C.C.2d at 587. Moreover, the two companies were located in different states, maintained

[34] Ex. A at 4.

[35] Gorman Decl. ¶ 3.

separate offices, and did not share any corporate officers or directors.[36] Cablevision did not and does not maintain any records of Cleveland PCS' former business activities.[37]

USAC cannot circumvent its inability to meet the veil-piercing standard by characterizing Cablevision as a "a successor in interest to Cleveland PCS,"[38] as it did in its decision. To begin with, successor liability is not even the correct legal doctrine to determine the responsibility of a parent for the obligations of a dissolved subsidiary—instead, courts rely on the veil-piercing analysis discussed *supra*. *See, e.g., P.F. Collier & Son Corp. v. FTC*, 427 F.2d 261, 275 (6th Cir. 1970) (applying veil-piercing and alter ego analysis to determine if parent liable for acts of dissolved subsidiary); *Rondout Valley Cent. Sch. Dist. v. Coneco Corp.*, 339 F. Supp. 2d 425, 429 (N.D.N.Y. 2004) (same); s*ee also Excel Energy, Inc. v. Cannelton Sales Co.*, 337 F. App'x 480, 485 (6th Cir. 2009) (noting that plaintiff mistakenly attempted to argue that parent company was a successor in interest to dissolved subsidiary rather than advancing veil-piercing arguments).

In any case, even if "successor liability" were the correct legal doctrine to apply in this instance, USAC's decision did not and cannot make the showing required to hold Cablevision responsible for any debts that Cleveland PCS left behind when it dissolved. The Commission employs the "substantial continuity" test, as do the federal courts, to assess successor liability. *See, e.g., In re Alltel Commc'ns, Inc.*, Order, 20 FCC Rcd 8112, 8113-14 ¶ 4 (2005); *In re Applications Filed for the Transfer of Certain Spectrum Licenses*, 23 FCC Rcd 514, 534 ¶ 34 (2008). This test looks to whether "one entity steps into the shoes of, or replaces, another entity" in order to assess "substantial continuity." *Alltel*, 20 FCC Rcd at 8113-14. Key markers of the

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[36] *Id*. ¶ 4.

[37] *Id*.

[38] Ex. A at 4.

"substantial continuity" needed for successor liability include acquisition of the assets used to carry on the predecessor's business operations and continuation of the predecessor's business activities without significant interruption or change. *See, e.g., Transfer of Certain Spectrum Licenses*, 23 FCC Rcd at 534 ¶ 34 ("substantial continuity" test met where successor entity acquired assets necessary to carry on other entity's business and would effectively take over other entity's operations) (citing *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43 (1987) for key factors in test being whether company "acquired substantial assets of its predecessor and continued, without interruption or substantial change, the predecessor's business operations"); *see also Alltel*, 20 FCC Rcd at 8114 ¶ 5 (rejecting successor liability where two entities continued to operate in separate markets with their own assets and customers rather than one taking up the other's operations).[39]

Nothing here remotely suggests this sort of "substantial continuity" between Cablevision and Cleveland PCS. Cleveland PCS formally dissolved in 2008, but had already sold its customers and assets, including its wireless licenses, to Cleveland Unlimited and effectively ceased operations in 2004.[40] Thus, at the time of its dissolution, none of the assets used in operating the company remained—it would not even have been possible for Cablevision to continue Cleveland PCS's activities in the manner required for successor liability. Indeed, Cablevision (primarily a video, Internet, and voice provider in the New York/New

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[39] The instructions that accompany the 2004 version of Form 499-A similarly reflect the Commission's practice of looking for "substantial continuity" in assets or operations between entities when assessing successor liability: "[I]n the event that a filer that submitted a Form 499-A no longer exists, *the successor company to the contributor's assets or operations* is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period." Instructions to the Telecommunications Reporting Worksheet, Form 499-A (2004) (emphasis added.).

[40] Gorman Decl. ¶ 5.

Jersey/Connecticut area) is in an altogether different line of business from Cleveland PCS, which was a CMRS provider operating in Ohio.

The facts USAC relies upon—that Cablevision was a minority owner of Cleveland PCS and that Cleveland PCS's certificate of dissolution directs that any claims against the company be sent to Cablevision's address—do not come close to the required showing. It is well-established that merely having an ownership interest in or even being the direct parent of a dissolved company is insufficient to deem an entity a successor. *See, e.g.*, *Nature's Plus Nordic A/S v. Natural Organics, Inc.*, No. 09–CV–04256 (ADS)(AKT), -- F. Supp. 2d --, 2013 WL 5942257, at *7 (E.D.N.Y. Nov. 6, 2013) (observing that a subsidiary's dissolution does not imply that the parent company somehow becomes its successor).

And the inclusion of Cablevision's address on Cleveland PCS's Ohio certificate of dissolution is no better. Courts occasionally consider whether one entity became the successor of another by expressly or impliedly agreeing to assume its obligations, but the bar for such a finding is extremely high. Even a written agreement contemplating indemnification or a general transfer of liabilities between two companies does not guarantee a finding that one entity expressly assumed an obligation of another unless the language of the agreement specifically enumerates the obligation at issue and the nature of the responsibility assumed. *See, e.g.*, *Software Freedom Conservancy, Inc. v. Best Buy Co.*, No. 09-CV-10155 (SAS), 2010 WL 4860780, at *5 (S.D.N.Y. Nov. 29, 2010) (corporation had not assumed liability for lawsuit of company from which it purchased assets despite generally assuming the company's monetary liabilities), subsequent determination, 783 F. Supp. 2d 648 (S.D.N.Y. 2011); *Waters v. NMC-Wollard, Inc.*, Civ. A. No. 06-0032, 2008 WL 90241, at *5 (E.D. Pa. Jan. 9, 2008) (parent corporation's agreement to indemnify subsidiary for certain claims does constitute assumption of

liability for those claims). Implied assumption of liability theories are held to an even higher standard. Indeed, they are often rejected even where the alleged successor entity has actively litigated or settled claims on behalf of the dissolved entity. *See, e.g., Cooper v. Lakewood Eng'g & Mfg. Co.*, 45 F.3d 243, 246 (8th Cir. 1995) (corporation had not impliedly assumed liability for claims against company from which it purchased assets despite maintaining liability insurance specifically for such claims and voluntarily settling some of them); *Hayes v. Equality Specialties*, 740 F. Supp. 2d 474, 481 (S.D.N.Y. 2010) (corporation had not impliedly assumed liability for claims against company from which it purchased assets despite voluntarily settling a similar claim); *Liberty Mut. Ins. Co. v. Household Int'l*, 136 F. Supp. 2d 5, 8 (D. Mass. 2001) (corporation did not impliedly assume responsibility of another for payment of retroactive adjustments to insurance premiums despite having paid one retroactive adjustment and posted letter of credit to cover future charges).

In light of the very stringent standards for attributing "successor" liability, the mere fact that Cleveland PCS listed Cablevision's address on its certificate of dissolution for the delivery of notices or claims against Cleveland PCS is woefully insufficient to transfer Cleveland PCS's alleged liabilities to Cablevision. As the boilerplate certificate filed by Cleveland PCS itself makes clear, the filer includes such an address merely to temporarily replace the dissolved entity's registered agent (as the certificate of dissolution revokes the authority of the dissolved entity's registered agent in Ohio to accept service on behalf of the corporation), not to indicate a successor entity that will bear responsibility for any claims against the dissolved entity.[41] Indeed, it would be bizarre if a dissolved entity could designate another company as the successor to its liabilities without the latter's express acceptance.

[41] Ex. B at 2-3.

Absent the factors required to pierce the corporate veil (whether styled as "successor" liability or otherwise), any USF debt owed by Cleveland PCS to USAC was owed by Cleveland PCS—and USAC cannot arbitrarily transfer such debts to Cablevision simply because Cleveland PCS is unable to pay them. USAC's decision improperly pierces the corporate veil and must be reversed.

B. <u>The USAC Decision Exceeds the Applicable Statute of Limitations.</u>

USAC's decision to invoice Cablevision in 2014 for a debt relating to 2003 charges incurred by an entity that disbanded in 2008 is also contrary to the applicable statute of limitations and must also be independently reversed for that reason.

Because the statutory provisions governing USF contributions do not specifically prescribe a statute of limitations, they are governed by the default four-year limitations period set by 28 U.S.C. § 1658(a).[42] That provision states that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues." *Id*.

Courts have held both that Section 1658's four-year statute of limitations was intended to apply broadly, *see, e.g., Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004), *Harris v. Allstate Ins. Co.*, 300 F.3d 1183, 1190 (10th Cir. 2002), and that the statute is generally applicable to claims arising under the Communications Act. *See, e.g., E. Spire Commc'ns, Inc. v. Baca*, 269 F. Supp. 2d 1310, 1320 (D.N.M. 2003) (*citing Verizon Md. Inc. v. RCN Telecom Servs., Inc.*, 232 F. Supp. 2d 539, 553 (D. Md. 2002), aff'd in part, dismissed in part, 377 F.3d

[42] The fact that the USF statute does not itself specify a statute of limitations does not mean that USAC can pursue such claims without limitation. *See Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987) (courts should select "the most appropriate or analogous" statute of limitations where none is prescribed), superseded by statute, *Jones v. R.R. Donnelly & Sons Co.*, 541 U.S. 369 (2004).

355 (4th Cir. 2004)), aff'd, 392 F.3d 1204 (10th Cir. 2004). Section 1658 has been found specifically applicable to causes of action created by post-1990 amendments to the Act. *See Verizon*, 232 F. Supp. 2d at 553-54; *see also Jones*, 541 U.S. at 382 (Section 1658's 4-year statute of limitations applies "if the plaintiff's claim against the defendant was made possible by a post-1990 enactment."). Section 1658 has also been held applicable to actions brought by federal agencies. *See, e.g., Reich v. Sea Sprite Boat Co.*, 50 F.3d 413, 417 (7th Cir. 1995) (Section 1658 applied to action brought by secretary of labor against a private company); *SEC v. Buntrock*, Fed. Sec. L. Rep. (CCH) P92, 833, 2004 WL 1179423, at *7 (N.D. Il. May 25, 2004) (Section 1658 applied to an action by the SEC). Because the current incarnation of the Universal Service program was created by 1996 amendments to the Communications Act, and enforcement of USF contributions is carried out through civil actions brought by USAC, 47 C.F.R. § 54.713(c), Section 1658 precludes USAC from invoicing debts beyond the four-year limitations period.

USAC's decision does not address the applicable statute of limitations at all. However, in discussions with Cablevision prior to its decision, USAC relied upon the Debt Collection Improvement Act ("DCIA") and related GAO regulations regarding debt collection to argue that no statute of limitations bars its current enforcement efforts. The DCIA, however, does not exempt USAC from Section 1658 here. Although certain regulations require agencies to "demand payment" on outstanding debts (such that the statute of limitations would not cause debts to "expire" once assessed), *see, e.g.*, 31 C.F.R. § 901.2 & 901.4, these regulations do not apply until the debts have already been "determined by an agency official." 31 C.F.R. § 900.2(a). Thus, these regulations may permit USAC to continue pursuing a debt that has been outstanding for more than four years, but cannot allow USAC to assess a debt *against a new*

entity (in this case, Cablevision) more than four years after the debt was allegedly incurred. As the Commission has held, the DCIA only "relates to the time period within which we must act to collect the debt once established"—it does not govern the period "within which we must bring action *to establish a debt* due to a violation of…program rules or the statutory provisions." *In re Sch. & Libraries Universal Serv. Support Mechanism*, Fifth Report and Order, 19 FCC Rcd 15,808, 15,819 ¶ 33 n.55 (2004) (emphasis added).[43] Because the period in which USAC can assess and charge a debt against a service provider in the first instance is not subject to the DCIA, it must respect the default four-year limitations period.

USAC's decision to invoice Cablevision for Cleveland PCS's supposed USF debt a decade after those debts were supposedly incurred substantially exceeds Section 1658's four-year statute of limitations and accordingly must be reversed. The contributions for which USAC seeks to invoice Cablevision stem from revenue earned by Cleveland PCS in 2003 and reported to USAC in 2004.[44] Cleveland PCS formally dissolved almost six years ago in 2008.[45] USAC cannot now simply decide that Cablevision should be invoiced for contributions related to activity so far beyond the four-year limitations period without running afoul of Section 1658.

USAC's delay also raises serious equitable concerns. Not only does USAC's attempt to collect such a substantial amount so long after the fact upset long-settled expectations, but as discussed *supra*, Cablevision does not maintain any records regarding Cleveland PCS's

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[43] This distinction also precludes any argument that USAC can avoid the statute of limitations entirely by employing administrative actions that fall short of the "civil action" contemplated by Section 1658. The administrative mechanisms available to USAC pursuant to the DCIA apply only to the collection of debts for claims already determined, not to actions to establish and invoice new debts. *See In re Sch. & Libraries Universal Serv. Support Mechanism*, 19 FCC Rcd 15,808.

[44] Ex. A. at 1.

[45] Gorman Decl. ¶ 5.

business.[46] Even if it did, pursuant to the Commission's document-retention guidelines for Universal Service contributors, it would have not been obligated to maintain them for more than five years. 47 C.F.R. §54.706(e). Cablevision also did not receive any communication or notification from USAC regarding the debt for which it is now being invoiced during the first nine years after it was allegedly incurred.[47] By seeking to newly invoice Cablevision for this debt a full decade later, when memories have faded, persons with personal knowledge have moved on or may be difficult if not impossible to locate, and the relevant records are no longer accessible, USAC has completely deprived Cablevision of any ability to question USAC's calculation of the debt, to convince USAC that the actual debt owed should be for a different amount, or to assess whether USAC ever presented a valid claim to the debt in the first place. Allowing USAC to assess debts so long after both the applicable limitations period and the document retention period have expired would create a contribution regime inconsistent with the "equitable and nondiscriminatory" mandate set forth in 47 U.S.C. § 254(d).

Indeed, USAC's unreasonable delay in attempting to enforce this debt against Cablevision should also bar any attempt to collect Cleveland PCS's alleged debt from Cablevision here under the similar equitable doctrine of laches. USAC has known of Cleveland PCS's sale of assets and cessation of telecommunications operations since May of 2005, when USAC received a copy of the Bill of Sale. Yet USAC apparently continued to invoice Cleveland PCS for outstanding contributions, s*ee* Ex. A at 2-3, rather than undertake any effort to pursue Cablevision or another supposed "successor" company for that debt. It cannot be permitted to do so now after having slept on whatever claim it thinks it might have had against Cablevision for nearly ten years, effectively ensuring that Cablevision would no longer have the ability to access

[46] *Id*. ¶ 4.

[47] *Id*. ¶ 6.

any of the relevant records or memories to investigate or meaningfully dispute the claim when USAC finally pursued it.

CONCLUSION

For the foregoing reasons, Cablevision respectfully requests reversal of USAC's decision to invoice Cablevision for the allegedly outstanding USF contributions of Cleveland PCS.

Respectfully submitted,

/s/ Samuel L. Feder_____

Samuel L. Feder
Luke C. Platzer
Rochelle P. Lundy
Jenner & Block LLP
1099 New York Avenue NW, Suite 900
Washington, DC 20001

Counsel to Cablevision Systems Corporation

CERTIFICATE OF SERVICE

I certify that in accordance with 47 C.F.R. § 54.721(c) I served a copy of this Request for Review on the USAC Administrator consistent with the requirement for service of documents set forth in 47 C.F.R. § 1.47 on May 19, 2014.

/s/ Luke C. Platzer_____

Luke C. Platzer