

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

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

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> hereby responds to the Wireline Competition Bureau’s June 6, 2014, Public Notice seeking comment on the request by Cablevision Systems Corporation (“Cablevision”) for review and reversal of a March 19, 2014 decision by the Universal Service Administrative Company (“USAC”). Cablevision alleges that it was improperly held responsible for outstanding Universal Service Fund (“USF”) contributions related to the 2003 revenue of Cleveland PCS, LLC, a now-defunct wireless provider in which Cablevision once held an indirect minority ownership interest.<sup>2</sup> As Cablevision notes in its Request, the relevant statute of limitations ran out long ago – and USAC’s decision should be reversed on this basis.<sup>3</sup>

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

<sup>2</sup> Request for Review of a Decision by the Universal Service Administrator and Request for Waiver by Cablevision Systems Corp., WC Docket 06-122 (filed May 19, 2014) (“Request”).

<sup>3</sup> See Request at 2-3, 17-21. Cablevision also asserts that USAC’s decision ignored the relevant corporate formalities, without attempting to meet the Commission’s standards for piercing the corporate veil or successor liability. See *id.* at 2, 9-17. These Comments do not address that issue.

**I. USF Contribution Actions Are Subject to the Four-Year Statute of Limitations Contained in 28 U.S.C. § 1658.**

According to the Request, USAC invoiced Cablevision in 2014 for USF contributions relating to charges incurred in 2003 – some eleven years prior.<sup>4</sup> While the statutory provisions governing USF contributions do not specifically call out an applicable limitations period, that does not mean that USF obligations are limitless or that USAC can go back and seek additional contributions for any point in time. To the contrary, the Supreme Court has held that, because a particular cause of action did “not contain a statute of limitations, federal courts should select the most appropriate or analogous state statute of limitations.” *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987). In the absence of any other specifically applicable statute of limitations, the U.S. Code provides a default four-year statute of limitations for “a civil action arising under an Act of Congress enacted after” 1990. 28 U.S.C. § 1658.

Courts have held that Section 1658’s four-year statute of limitations applies broadly, *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004),<sup>5</sup> including to claims under the interconnection provisions of the Communications Act. *See, e.g., E. Spire Communications, Inc. v. Baca*, 269 F. Supp. 2d 1310, 1320 (D.N.M. 2003) (*citing Verizon Md. Inc. v. RCN Telecom Servs.*, 232 F. Supp. 2d 539, 553). Actions to recover USF contributions fall squarely within the scope of Section 1658, as they ultimately are enforceable through court proceedings – which unquestionably are “civil actions” – and did not arise until the Communications Act was amended in 1996, when the modern universal service program was created. *See Verizon*, 232 F. Supp. 24 at 553 (holding that section 1658 covers a cause of action under the Communications

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<sup>4</sup> *Id.* at 17.

<sup>5</sup> *See also Harris v. Allstate Ins. Co.*, 300 F.3d 1183, 1190 (10th Cir. 2002) (“In short, the meaning of § 1658 is quite simple: whenever Congress, after December 1990, passes legislation that creates a new cause of action, the catch-all statute of limitations applies to that cause of action.”).

Act that did not exist prior to passage of the 1996 amendments to the Communications Act of 1934); *see also Jones*, 541 U.S. at 382 (cause of action “‘aris[es] under an Act of Congress enacted’ after December 1, 1990 – and therefore is governed by § 1658’s 4-year statute of limitations – if the plaintiff’s claim against the defendant was made possible by a post-1990 enactment”). Thus, section 1658 provides a statutory basis to bar actions to collect contributions to the USF beyond a four-year period.

Courts have explained the reasoning behind the need to enforce a reasonable limitations period in situations similar to USF contribution cases, noting the importance of placing some constraint on government enforcement authority and the need “to promote finality, repose, and the efficient and prompt administration of justice. . . . to tell citizens and businesses when they no longer have to fear finding the government at their front door demanding satisfaction.” *AKM LLC v. Secretary of Labor et al.*, 675 F.3d 752, 767 (D.C. Cir. 2012) (Brown, J. concurring) (citing *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008); *Reading Co. v. Koons*, 271 U.S. 58, 65 (1926); and *Carter v. Wash. Metro Area Transit Auth.*, 764 F.2d 854, 857 (D.C. Cir. 1985) (“[F]inality of outcome, regardless of the merits of the claim, is exactly the purpose of the statute of limitations that the legislature has enacted.”)). Many of those concerns appear at issue in this case, where Cablevision indicates that – after eleven years – it no longer maintains any of the relevant records, memories have faded and persons with personal knowledge have moved on and/or may be difficult to locate – thereby depriving Cablevision of the ability to assess or defend USAC’s claim.<sup>6</sup> As such, USAC’s decision should be reversed.

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<sup>6</sup> *See* Request at 19-20. Indeed, universal service contributors are only required to keep records sufficient to support their Form 499 filings and contribution calculations for five years. *See* 47 C.F.R. § 54.706(e).

## **II. The Debt Collection Act and Related Regulations Do Not Excuse Failure to Comply with the Statute of Limitations.**

Cablevision suggests that USAC has “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.”<sup>7</sup> However, the DCIA and GAO’s debt collection guidance do not allow USAC to avoid the applicable statute of limitations for at least two reasons. First, GAO’s regulations apply only to specific debts that already have been *determined to be due* to the United States and do not require an agency to take affirmative steps to create new debts. Second, USF contributions are not owed “to the United States.”

***The Amounts Were Not Determined to Be Due within the Limitations Period.*** Both the relevant statute and regulations define “debt” or “claim” to mean an “amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States . . .” 31 U.S.C. 3701(b)(1); 31 C.F.R. 900.2(a) (“[C]laim’ and ‘debt’ are interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States[.]”). Thus, an agency’s duties apply to debts that have been “determined” to be due by an “agency official.” The specific duties imposed by the regulations confirm this understanding. For example, an agency must “demand payment” when it knows of a debt. 31 C.F.R. § 901.2. And it must “report” debts to credit bureaus. 31 C.F.R. § 901.4. These are duties that make sense only when collecting on a specific debt, the amount of which has already been determined by the agency. In those instances, the GAO indicates that the agency generally cannot forgive an existing outstanding debt without a statutory basis for doing so.

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<sup>7</sup> Request at 18.

However, as the Commission itself has recognized in the context of the E-rate program, the DCIA “relates to the time period within which we must act to collect the debt *once established.*” *In the Matter of Sch. & Libraries Universal Serv. Support Mechanism*, 19 FCC Rcd 15808 ¶ 32 n.55 (2004) (“*E-rate Order*”) (emphasis added). It does not bar application of a limitation period “within which we must bring action *to establish* a debt due to a violation of E-rate program rules or the statutory provisions.” *Id.* (emphasis added). In the situation presented here, no “debt” had been established – that is, no fixed obligation or amount determined to be due by an agency – within four years after the debt allegedly was incurred. To the contrary, according to the Request, USAC did not seek any amounts from Cablevision until approximately eleven years after the obligation allegedly was incurred. That is well outside the limitations period and not the type of debt to which the DCIA would apply.

***USF Contributions Are Not Owed “To the United States.”*** As noted above, the DCIA and related authorities apply to debts or claims “*owed to the United States.*” 31 U.S.C. 3701(b)(1); 31 C.F.R. 900.2(a). But USF contributions – even once an amount has been determined to be due – are not owed to the United States; they are owed to USAC. USAC is an independent subsidiary of National Exchange Carrier Association, Inc. (“NECA”), which the Commission has designated as the permanent administrator of the USF. 47 C.F.R. § 54.701(a). “The FCC only exercises power over the fund indirectly, essentially by overseeing USAC; it has no ability to control the funds in the USF through direct seizure or discretionary spending.” *Universal Serv. Admin. Co. v. Post-Confirmation Comm.* (“*In re Incomnet, Inc.*”), 463 F.3d 1064, 1074 (9th Cir. 2006). Courts have held that NECA is an agent of its private-entity members and specifically rejected claims that NECA’s conduct in administering the USF

constitutes action by an agent of the Government. *See Farmers Tel. Co. v. FCC*, 184 F.3d 1241, 1250 (10th Cir. 1999),

USAC collects contributions to the USF directly from telecommunications carriers, and it then disburses the funds to eligible recipients. 47 C.F.R. § 54.702(b); *see also In re Incomnet, Inc.*, 463 F.3d at 1072. Contributions to the USF are not at any point deposited in the federal treasury – or any account bearing the Commission’s name, for that matter – and do not fund the government generally. Indeed, the Commission has persuaded courts that universal service contributions are not a “tax” for these very reasons. *See Rural Cellular Ass’n v. FCC*, 685 F.3d 1083, 1090-91 (D.C. Cir. 2012); *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 427–28 (1999). Thus, these USF contributions are not debts or claims owed “to the United States,” and the DCIA does not apply.<sup>8</sup>

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<sup>8</sup> In any event, once the four-year statute of limitations had run, the alleged USF contributions could not be said to be “owed” to anyone – whether to the United States or to USAC.

**CONCLUSION**

For the reasons set forth above and in Cablevision’s Request, USAC improperly sought to impose USF contribution obligations outside of the applicable four-year statute of limitations period and its decision should be reversed.

Respectfully submitted,

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