

**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

**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION IN SUPPORT
OF REQUEST FOR REVIEW OF DECISION OF UNIVERSAL SERVICE
ADMINISTRATOR**

On May 19, 2014, Cablevision Systems Corporation (“Cablevision”) filed a request for review of a decision by the Universal Service Administrative Company (“USAC”) that improperly held Cablevision responsible for outstanding Universal Service Fund (“USF”) contributions related to the 2003 revenue of Cleveland PCS, a now-defunct wireless provider in which Cablevision once held an indirect minority ownership interest.¹ The only comments filed in response to the Request express support for Cablevision’s position that USAC’s decision must be reversed.² Cablevision submits these reply comments only to bring to the Commission’s attention an opinion of the U.S. Court of Appeals for the Fifth Circuit, issued the day initial comments in this proceeding were due, that provides strong support for one of Cablevision’s principal arguments.

As Cablevision set forth in its Request, USAC’s decision should be reversed because, among other reasons, the applicable four-year statute of limitations imposed by 28 U.S.C. §

¹ Request for Review of Decision of Universal Service Administrator by Cablevision Systems Corporation, WC Docket 06-122 (filed May 19, 2014) (“Request”).

² See Comments of the United States Telecom Association, WC Docket 06-122 (filed July 7, 2014).

1658(a) expired long before USAC assessed the relevant debt against Cablevision.³ Cablevision explained that USAC cannot rely on the Debt Collection Improvement Act (“DCIA”) or related regulations to exempt its actions from Section 1658’s limitations period because those apply only to debts that have been previously “determined by an agency official,” 31 C.F.R. § 900.2(a), and not to a new assessment of debt.⁴ A July 7, 2014 opinion of the Fifth Circuit makes clear that there is an additional reason why the DCIA and related regulations cannot be used to circumvent the four-year limitations period imposed by Section 1658: those authorities apply only to debts or claims owed “to the United States,” 31 U.S.C. § 3701(b)(1); 31 C.F.R. § 900.2(a). *See United States ex rel. Shupe v. Cisco Sys., Inc.*, No. 13-40807, -- F.3d --, 2014 WL 3057093, at *7 (5th Cir. July 7, 2014).

Because USAC is an independent subsidiary of the National Exchange Carrier Association that administers the USF, *see* 47 C.F.R. § 54.701(a), and the contributions USAC collects are disbursed to eligible recipients without ever having been deposited in the federal treasury or in an account connected with the Commission, 47 C.F.R. § 54.702(b), the Fifth Circuit unambiguously confirmed, in the context of a claim arising under the False Claims Act, that USAC is not the United States: “Although USAC came about through the actions of Congress and the FCC, and the FCC retains some oversight and regulation, it is explicitly a private corporation owned by an industry trade group.” 2014 WL 3057093, at *7. The court held that False Claims Act liability does not extend to requests for reimbursement from USAC’s Education Rate Program because the United States government does not provide any portion of USAC’s funds, finding that “[t]he money in the USF is untraceable to the United States Treasury,” *id.* at *4, and thus cannot be considered government funds even though contributions

³ Request at 17-21.

⁴ *Id.* at 18-19.

are made pursuant to a mandatory scheme established by Congress. *Id.* at *7. This holding makes clear that universal service contributions are not debts or claims owed “to the United States.”⁵

The same reasoning dictates that the DCIA and related regulations do not apply to USAC’s collection efforts, and cannot be relied upon by USAC to defend a decision that improperly exceeds the relevant statute of limitations by issuing debt to Cablevision nearly eleven years after the charges were supposedly incurred by a former affiliate.

CONCLUSION

For the foregoing reasons and the reasons stated in the Request, Cablevision respectfully asks that the Commission instruct USAC to reverse its decision and to retract the invoice issued to Cablevision for the contributions USAC claims are due from Cleveland PCS.

Respectfully submitted,

/s/ Samuel L. Feder

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⁵ Courts have previously observed that neither the Commission nor any other part of the government can directly control or spend USF contributions, and that USF contributions remain entirely separate from the monies that generally fund the government. *See Rural Cellular Ass’n v. FCC*, 685 F.3d 1083, 1090-91 (D.C. Cir. 2012); *Universal Serv. Admin. Co. v. Post-Confirmation Comm. of Unsecured Creditors of Incomnet Commc’ns Corp. (In re Incomnet, Inc.)*, 463 F.3d 1064, 1074 (9th Cir. 2006); *Farmers Tel. Co. v. FCC*, 184 F.3d 1241, 1250-51 (10th Cir. 1999).

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 July 22, 2014.

/s/ Luke C. Platzer

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