

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

In the Matter of

Coral Wireless d/b/a Mobi PCS Request for
Review of the Decision of the Universal
Service Administrator

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

Federal-State Joint Board on Universal Service
High-Cost Universal Service Support

WC Docket No. 05-337

PETITION FOR RECONSIDERATION

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SUMMARY

Coral Wireless d/b/a Mobi PCS (“Coral”) respectfully petitions the Federal Communications Commission (the “FCC” or “Commission”) to reconsider the order by the Wireline Competition Bureau (the “Bureau”) denying Coral’s Request for Review on a basis for which there is no support in the record (the “Order”). Indeed, the sole basis upon which the Bureau relied to deny the Request for Review had never once been raised in the underlying proceedings or in the Request for Review itself. The profound and fundamental flaws in the Order are readily apparent from the face of the Order itself, which Coral would have explained had it been given the opportunity to do so as required by law. These errors are merely the latest of the incurable irregularities that have plagued the proceedings following the audit of Coral for which the independent auditor disclaimed its opinion.

The Bureau denied Coral’s Request for Review based solely on its conclusion that Coral did not provide any telecommunications services whatsoever to its customers during the sixty-day period before disconnection for non-payment. The Bureau based this conclusion solely on the fact that Coral’s Terms of Service *permitted* Coral to route calls during the sixty-day period before disconnection for non-payment to Coral’s customer service desk, which the Bureau cited as support for a series of unsupportable assumptions it made with respect to issues that had never been discussed during the disclaimed audit, the subsequent proceedings or the Request for Review. Specifically, the Bureau assumed, without any support in the record or response from Coral, that:

- (a) Coral routed every single call during the sixty-day period to its customer service desk (which is untrue);
- (b) None of Coral’s customers wanted to call the customer service desk during the sixty-day period (which is untrue);

- (c) None of Coral's customers consented to the routing of calls to the customer service desk during the sixty-day period (which is untrue);
- (d) Excluding the lines at issue in the underlying audit for which the independent auditor disclaimed its opinion would necessarily mean that Coral's total reported line count exceeded the total line count for which Coral was entitled by law to receive Universal Service Support (which is untrue); and
- (e) There was a valid underlying audit upon which the Commission, or USAC, could rely to recover the Universal Service Support funds at issue (which is untrue).

Each and every one of these assumptions would have had to be true and supported by facts on the record in order for the Bureau's action here to be valid and enforceable. However, each of the Bureau's assumptions is false, as the record demonstrates. Accordingly, the Commission must reverse the Order as unlawful.

In addition to reversing the Order, the Commission should not take any further actions to recover the universal service support at issue here from Coral. Coral substantially underreported the lines for which it is entitled by law to receive universal service support, and thus Coral in fact received less universal service support than it was legally entitled to receive even if the lines at issue here were excluded. To the extent the Commission nonetheless wishes to continue this proceeding, it would have to cure the flaws described in this Petition and Coral's Request for Review by directing USAC to conduct a new audit. Coral respectfully submits, however, that ordering a new audit rather than simply reversing the Order and closing this proceeding would merely waste more taxpayer funds, interfere with the goals of the Universal Service system by unjustly imposing additional unnecessary costs on an Eligible Telecommunications Carrier ("ETC"), and delay the inevitable conclusion that the line count which Coral submitted to USAC was lower than the total number of lines for which Coral was entitled to receive universal service support.

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PETITION FOR RECONSIDERATION

Pursuant to 47 C.F.R. § 1.106, Coral Wireless d/b/a Mobi PCS (“Coral”) respectfully petitions the Commission to reconsider the Order¹ by the Bureau denying Coral’s Request for Review² on grounds that were never before raised in the underlying proceeding and for which there is no support in the record. The profound and fundamental flaws in the Order are readily apparent from the face of the Order itself, which Coral would have explained had it been given the opportunity to do so as required by law. Accordingly, the Commission must reverse the Order as unlawful. For these same reasons, Coral is also submitting a companion filing requesting that the Commission issue a stay of the effective date of the Order pending consideration of, and action on, this Petition.

¹ *Coral Wireless d/b/a Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, CC Docket No. 96-45, WC Docket No. 05-337, Order (rel. Aug. 7, 2014) (*Order*).

² Request for Review of the Decision by Universal Service Administrator by Coral Wireless d/b/a Mobi PCS, CC Docket No. 96-45, WC Docket No. 05-337 (filed Dec. 10, 2012) (*Request for Review*).

In addition to reversing the Order, the Commission should not take any further actions to recover the universal service support at issue here from Coral. Coral substantially underreported the lines for which it is entitled by law to receive universal service support, and thus Coral in fact received less universal service support than it was legally entitled to receive even if the lines at issue here were excluded.

To the extent the Commission nonetheless wishes to continue this proceeding, it would have to cure the flaws described in this Petition and Coral's Request for Review by directing USAC to conduct a new audit. Coral respectfully submits, however, that ordering a new audit rather than simply reversing the Order and closing this proceeding would merely waste more taxpayer funds, interfere with the goals of the Universal Service system by unjustly imposing additional unnecessary costs on an ETC, and delay the inevitable conclusion that the line count which Coral submitted to USAC was lower than the total number of lines for which Coral was entitled to receive universal service support.

I. INTRODUCTION AND BACKGROUND

The Order is the latest in a series of inexplicable irregularities that have rendered the underlying "audit" and subsequent proceedings fundamentally and incurably flawed. In 2008, USAC, through the use of an independent auditor, Deloitte, subjected Coral to an audit concerning line counts for FCC Form 525. However, the auditor erroneously interpreted and applied a wireline rule to Coral's wireless services, leading to the incorrect conclusion that certain of Coral's lines were not revenue producing. When Coral demonstrated that Deloitte had

incorrectly, and impermissibly,³ interpreted the Commission's rules and erroneously excluded the lines at issue here, Deloitte, as the independent auditor conducting the audit, appropriately disclaimed its opinion in the final audit report.

Rather than ordering a new audit in the face of a disclaimed opinion, on April 21, 2011, USAC's Internal Audit Division ("IAD") notified Coral that it had reviewed the audit results and determined that it had adequate documentation to support its finding that certain line counts were not revenue producing despite the independent auditor's disclaimed opinion. The IAD's April 2011 letter did not (A) explain the IAD's reasoning for ignoring the conclusion of the independent auditor or (B) respond to the arguments by Coral that had caused the independent auditor to disclaim its opinion. IAD then offered to Coral the opportunity to review the "updated finding." Coral promptly requested an opportunity to review the "updated finding," but USAC inexplicably refused to respond to Coral's request, and Coral was never permitted to review the "updated finding." Coral nonetheless responded to the IAD April 2011 letter to preserve its rights and repeat its demand for an opportunity to review the "updated finding."

Rather than responding to Coral's repeated demands to review the IAD's "updated finding" and the legal basis and record evidence upon which the "updated finding" allegedly is based, USAC inexplicably notified Coral on June 12, 2012, that it would begin to recover support payments made to Coral based on the excluded lines at issue here. On July 19, 2012, USAC responded to Coral's continued requests for a copy of the final audit report with a letter that merely repeated portions of the April 2011 letter without providing the audit report or any further guidance.

³ The FCC's rules expressly provide that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress," and that where "the Act or the Commission's rules are unclear, or do not address a particular situation, [USAC] shall seek guidance from the Commission." 47 C.F.R. § 54.702(c).

With no other available options to protect its rights, Coral responded to USAC on August 10, 2012, by requesting that USAC either (A) rescind its decision to recover payments or (B) provide Coral with a copy of the underlying audit report and time to respond. Coral also requested, in the alternative, that USAC treat Coral's letter as an appeal of the decision to recover funding to the extent USAC refused to rescind its decision or provide Coral with the underlying documentation and additional time necessary to provide a substantive response so that Coral could not be falsely accused of failing to exercise its right to appeal. In response, USAC treated Coral's letter as an appeal, which it summarily denied soon after, without explaining its rejection or providing Coral with an opportunity to review the basis for its actions or the "updated finding." USAC merely cited the disclaimed audit opinion as the basis for the denial. Coral subsequently submitted the attached Request for Review, which focuses on three distinct issues relating to USAC's exclusion of lines as non-revenue earning and the procedural irregularities.⁴

On August 7, 2014, the Bureau denied Coral's Request for Review based solely on an allegation that neither the independent auditor nor USAC had ever made before: that Coral does not provide telecommunications services to its customers during the sixty-day period before

⁴ Coral presented the following three questions to the FCC in its Request for Review, in accordance with the requirement of 47 C.F.R. § 54.721(b)(3) that Coral submit specific questions for review:

1. Was USAC's decision unlawful because USAC imported the concept of "revenue producing" from an inapplicable section of Part 36 of the FCC's rules to exclude certain prepaid lines because the customer had not made a payment in the past thirty days?
2. Was USAC's decision to recover high cost support from Coral unlawful because USAC improperly disregarded a final finding by the Independent Auditor that the definition of "working loops" as used in Section 54.307 is "unclear" as applied to wireless ETCs, and instead relied upon canons of statutory interpretation to reach a contrary decision?
3. Did USAC violate its statutory obligations (*e.g.*, 31 U.S.C. § 3512(b)(3)) and regulatory obligations (*e.g.*, 47 C.F.R. § 54.702) by (a) failing to identify the factual and legal basis of its decisions in a sufficiently clear manner so that Coral could respond meaningfully to those decisions; and (b) reversing the determination of the Independent Accountants' Report via a series of letters and internal memos that failed to address the concerns raised by Coral in its responses and the Independent Auditor in its final report?

disconnection for non-payment. There is no factual support in the record for this new and unexpected allegation. This Petition is the first opportunity that Coral has been provided to address this baseless new allegation.

II. CORAL MEETS THE APPLICABLE STANDARD FOR REVIEW OF A PETITION FOR RECONSIDERATION

Coral meets the standard of review set forth in Section 1.106(b)(2) of the Commission's rules, which provides that the Commission will entertain a petition for reconsideration of a Bureau order denying an application for review where the petition:

relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity."⁵

Coral meets this standard because the Petition challenges an entirely new argument that was unknown to Coral before the Bureau issued the Order that the Petition asks the Commission to reconsider, and unknowable to Coral even through the exercise of ordinary due diligence. Specifically, the sole argument upon which the Bureau based its decision to deny Coral's Request for Review (*i.e.*, that Coral's prepaid wireless services are not telecommunications services) was never raised at any point in audit for which the independent auditor disclaimed its opinion or the subsequent proceedings. Rather, the disclaimed audit and subsequent proceedings focused solely upon whether the lines at issue were producing revenue and the procedural irregularities that have plagued the proceedings following the disclaimed audit. As a result, Coral did not know, and could not have learned through the exercise of ordinary diligence, that there was any question with respect to whether Coral's customers could use the lines at issue to place calls to the destination of their choice. This Petition is the first opportunity that Coral has had to

⁵ 47 C.F.R. § 1.106(b)(2)(ii).

address the issue of whether Coral's customers could use the lines at issue to place calls to the destination of their choice.

III. THE ORDER MUST BE REVERSED DUE TO PROFOUND AND FUNDAMENTAL ERRORS

The Bureau based the denial solely on its conclusion that Coral necessarily must have over-reported lines because Coral allegedly could not have used the lines at issue to provide telecommunications services, which in turn is based on the Bureau's false assumption that Coral's customers could not have chosen the end points of their calls because Coral's Terms of Service *permitted* Coral to route calls during the sixty-day period before disconnection for non-payment to Coral's customer service desk. The Bureau's conclusion, and thus the Order itself, could be sustainable only if *none* of Coral's customers had the possibility⁶ of placing *any* calls to the destination of his or her choice during the sixty-day period before disconnection for non-payment. The record in this proceeding demonstrates that all of Coral's customers had the possibility of placing calls to the destination of his or her choice at all times before disconnection. Therefore, the Order must be reversed because Coral used all of the lines at issue to provide telecommunications services.

A. All Calls Were Routed In Accordance With Each Customer's Choice

Courts have long held that where one party (*e.g.*, a mobile service provider) makes a promissory offer that another party accepts by performing an act (*e.g.*, using the mobile services) rather than making a promise, a valid unilateral contract is recognized.⁷ The "vendor, as master

⁶ It is irrelevant whether any of Coral's customers actually placed any calls at all. Order at ¶ 14. ("Section 54.307 of the Commission's rules does not specify a requirement for customer usage.").

⁷ *See, e.g., Schutz v. AT&T Wireless Servs., Inc.*, 376 F. Supp. 2d 685, 691 (N.D.W. Va. 2005) (citing *Cook v. Hecks*, 176 W.Va. 368, 373-74, 342 S.E.2d 453 (1986)) (finding that by performing the act of using AT&T's device or service, the customer accepted the terms and conditions set forth in AT&T's Welcome Guide.).

of the offer, may invite acceptance by conduct, and may propose limitations on the kind of conduct that constitutes acceptance. A buyer may accept by performing the acts the vendor proposes to treat as acceptance.”⁸ Furthermore, the “contract need not be read to be effective; people who accept take the risk that the unread terms may in retrospect prove unwelcome.”⁹ For these reasons, courts have consistently upheld the validity and binding nature of terms and conditions for mobile services where the contract specified that activation and/or use of a phone would constitute acceptance of those terms and conditions.¹⁰

Coral’s terms and conditions permitted, but did not require, Coral to route all non-emergency outbound calls to its customer service center, starting thirty days after receiving a customer’s last prepayment.¹¹ Each Coral customer consented to Coral’s terms and conditions by using Coral’s services, and thus all calls routed pursuant to these terms and conditions were routed in accordance with the customer’s choice.¹² Therefore, even if Coral had routed every single non-emergency call to customer service during sixty-day period before disconnection for non-payment, the calls nonetheless would have been routed to the destination of each customer’s

⁸ *Hill v. Gateway 2000*, 105 F.3d 1147, 1149 (7th Cir. 1997).

⁹ *Id.* at 1148.

¹⁰ *See, e.g., Schutz*, 376 F. Supp. 2d at 692 (holding that customer's activation and use of his phone constituted acceptance of AT&T's terms and conditions, including the obligation to abide by the arbitration clause within those terms and conditions.). *See also TracFone Wireless Inc. v. Anadisk LLC*, 685 F. Supp. 2d 1304, 1315 (S.D.Fla. 2010) (finding that defendant accepted the terms and conditions of the contract with TracFone by opening the package where language on the retail packaging indicated that such action constituted agreement to terms and conditions), *AT&T Mobility LLC v. S & D Cellular, Inc.*, 2009 WL 3233814 (C.D. Cal. 2009) (holding terms, conditions, and the language on phone packaging enforceable as a valid, binding contract which defendants accepted but violated by reselling the phones in violation of those terms and conditions.).

¹¹ *See Independent Accountants' Report on Compliance Relating to High Cost Support Received by Coral Wireless LLC d/b/a Mobi PCS (HC-2008-126) for the Year Ended June 30, 2008 (Deloitte Disclaimed Opinion)* (“Pursuant to the terms and conditions of the Beneficiary’s service, each customer agrees that the Beneficiary has the right to place various limits upon the service in the 60 to 90 days preceding the disconnect date.”); Order at ¶ 4.

¹² *See id.*

choice. Thus, all of the calls at issue constitute telecommunications services, and none of the lines at issue here should be excluded.

B. The Coral Policy upon which the Bureau Relied Permitted – But Did not Require – Coral To Route Certain Outbound Calls to the Coral Customer Service Center

The fact that all of Coral’s customers had the possibility of placing calls to the destination of their choice is apparent from the face of the Order itself. As the Order noted, Coral’s policy *permitted, but did not require*, Coral to route all non-emergency outbound calls to its customer service center, *starting thirty days after receiving a customer’s last prepayment*.¹³ There is no evidence on the record to demonstrate that Coral actually routed all non-emergency calls to customer service, and Coral did not in fact do so. Since the routing of calls was raised for the first time in the Order itself, neither the independent auditor nor the IAD requested, and Coral did not provide, any evidence for the record regarding the actual routing of calls. As such, there is no basis on the record to exclude any of the lines at issue.

C. There is no Evidence in the Record About Inbound Calls

The Bureau based its denial of Coral’s Request for Review on its false assumptions about Coral’s treatment of outbound calls. Both the Order and the record in this proceeding are silent on the issue of inbound calls. Neither the statutory definition of “telecommunications service”¹⁴ nor the definition of “working loops” in the FCC’s rules¹⁵ requires the provision of two-way service. Indeed, if service providers could avoid common carrier regulation merely by providing only one-way services, it is difficult to imagine that any common carriers would exist. Accordingly, there is no basis on the record to exclude any of the lines at issue.

¹³ Order at ¶ 4.

¹⁴ 47 C.F.R. § 54.5.

¹⁵ 47 C.F.R. § 54.307.

D. Coral Customers Could Always Voluntarily Call Coral Customer Service

In denying Coral's Request for Review, the Bureau assumed that every call routed to Coral's customer service center was routed against the customer's will.¹⁶ However, at all times before disconnection, Coral's customers could voluntarily call Coral's customer service number for any reason, including, for example, to make an additional payment.¹⁷ As such, Coral used all of the lines at issue to provide telecommunications services, because every Coral customer had the possibility of voluntarily placing calls to Coral's customer service number. Accordingly, there is no basis on the record to exclude any of the lines at issue.

E. Coral Customers Could Always Make Calls to Emergency Services

At all times before disconnection, Coral's customers could place calls to 911 emergency services.¹⁸ Calls to 911 emergency services constitute telecommunications services.¹⁹ As such, Coral used all of the lines at issue to provide telecommunications services, because every Coral customer had the possibility of placing calls to 911 emergency services at all times, as the record confirms. Accordingly, there is no basis on the record to exclude any of the lines at issue.

¹⁶ Order at ¶ 6.

¹⁷ See, e.g., *Management Response to Deloitte Disclaimed Opinion* (explaining that "a [Coral] customer can purchase more pre-paid services at any time until the customer's line is disconnected pursuant to the disconnection policy.").

¹⁸ See 47 C.F.R. § 20.18 (requiring wireless service providers to transmit all calls to 911 to a Public Safety Answering Point); Order at ¶ 4 ("As part of its internal policies, Coral Wireless routes *non-emergency outbound calls* to Coral Wireless's customer service center.") (emphasis added).

¹⁹ Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received." 47 C.F.R. § 54.5. A call to 911 emergency services, transmitted by the user to a specified endpoint, therefore constitutes telecommunications services.

F. The Order Is Not Supported by Evidence in the Record

When considering a request for review, the Bureau must articulate a factual basis for its decision, and the decision must be supported by evidence in the record.²⁰ An agency's "declaration of fact that is capable of exact proof but is unsupported by any evidence" is insufficient to qualify the decision as non-arbitrary.²¹ The Bureau must also consider all relevant factors; if it does not have a record supporting its action, the Bureau must expect the case to be remanded for additional investigation or explanation upon any court's review.²²

In the Order, the Bureau provided no statement on, or reference to the record about, the factual basis upon which the Bureau based its decision to deny Coral's Request for Review apart from citing the fact that Coral's policy *permitted, but did not require*, Coral to route all non-emergency outbound calls to its customer service center, starting thirty days after receiving a customer's last prepayment.²³ However, this statement is insufficient on its face to support the Order because, as the Order itself noted, the policy did not require Coral to route *all* non-emergency outbound calls to its customer service center, and Coral in fact did not do so. The Order was also silent with respect to inbound calls. Since the routing of calls was raised for the first time in the Order itself, neither the independent auditor nor the IAD requested, and Coral did not provide, any evidence for the record regarding the actual routing of calls. As such, there is no basis on the record to exclude any of the lines at issue.

²⁰ See *Safe Extensions, Inc. v. F.A.A.*, 509 F.3d 593, 604 (D.C. Cir. 2007) (finding that where the FAA offered rationales for its decision but provided no evidence to support its assertions, the agency's decision was arbitrary and capricious.).

²¹ *Id.* (quoting *McDonnell Douglas Corp. v. Dept. of the Air Force*, 375 F.3d 1182 (D.C. Cir. 2004)).

²² See *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744, 105 S. Ct. 1598, 84 L. Ed. 2d 643 (1985) (holding that, even for informal actions, an agency must rule based on an adequate record supporting its action, and having considered all relevant factors, in order to withstand review).

²³ Order at ¶ 4.

G. The Bureau Exceeded the Permissible Scope Of Review

The independent auditor accurately found that, “[p]ursuant to the terms and conditions of the Beneficiary’s service, each customer agrees that the Beneficiary has the right to place various limits upon the service in the 60 to 90 days preceding the disconnect date.”²⁴ The sole matter at issue until the Bureau issued the Order – apart from procedural irregularities – was whether the lines during this period were earning revenue.²⁵ The independent auditor disclaimed its opinion because it could not conclude that the lines were not earning revenue. Coral focused solely on the revenue issue and the procedural irregularities that rendered the audit and subsequent proceedings incurably and fundamentally flawed in its Request for Review.²⁶ The issue of whether Coral’s customers could choose the destination of their calls during the sixty-day period before disconnection for non-payment was never raised by the independent auditor, USAC or the IAD.

The Bureau ruled in the Order on an issue for which Coral made no request and for which Coral was not afforded any notice or opportunity to be heard. In so doing, the Bureau improperly exceeded the scope of *de novo* review permitted by Section 54.723(a) of the Commission’s rules. Specifically, the Bureau’s Order reviewing the status of Coral’s wireless services as telecommunications services violated Section 54.723(a) of the Commission’s rules because it went beyond the issues raised in the Request for Review.²⁷

²⁴ *Deloitte Disclaimed Opinion*.

²⁵ *Id.* (“We were unable to satisfy ourselves concerning the acceptability of the inclusion of lines 60 to 90 days preceding their disconnect date as the FCC Rules do not clearly indicate these lines would be considered other than working loops as described above. As we are unable to clearly determine whether the Beneficiary’s policy is in conflict with the FCC Rules as discussed in the preceding paragraph, we are unable to express, and we do not express, an opinion on the Beneficiary’s compliance referred to above.”).

²⁶ *Request for Review* at 3.

²⁷ 47 C.F.R. § 54.723 (“Standard of Review. (a) The Wireline Competition Bureau shall conduct **de novo review of request for review** of decisions issue by the Administrator.”) (emphasis added).

The standard of review under Section 54.723(a) of the Commission’s rules provides that the Bureau will give only the specific questions presented in a request for review *de novo* review, not that the Bureau has the authority to reopen every potentially relevant issue, including those that were never considered by the independent auditor, USAC, or the IAD.²⁸ The pleading requirements are designed to reflect and support these limits: “To facilitate prompt resolution ... of appeals of USAC decisions ... we also adopt *specific filing requirements* for such petitions [for reconsideration]. The appellant must state specifically its interest in the matter presented for review... [and] must *state concisely the question presented for review.*”²⁹ If the Bureau had authority to reconsider the entire proceeding, there would be no need to require submission of specific questions. Rather, parties could simply request review and leave the Bureau to reexamine the entire proceeding.

Similarly, the FCC’s rules require submission of “[a] full statement of relevant, material facts.”³⁰ If the scope of review were as broad as the Order suggests, parties would be forced to make voluminous filings that address every potential issue in the proceeding, including those that had previously been decided in their favor, to protect their rights in the event that the Bureau

²⁸ *Id.*

²⁹ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 & 96-45, *Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45*, 13 FCC Rcd. 25058, 25094-95 at ¶ 71 (rel. Nov. 20, 1998) (emphasis added).

³⁰ 47 C.F.R. § 54.721(b)(2).

would not limit its review to the specifically identified issues submitted in compliance with Section 54.721 of the FCC's rules.³¹

For informal adjudication procedures, courts require not only some explanation for an agency's action, but also, "to ensure the adequacy of that explanation, some opportunity for interested parties *to be informed of and comment upon the relevant evidence before the agency.*"³² In this case, the Order is fundamentally flawed, in no small part because the Bureau, like USAC and IAD, failed to inform Coral of, and permit Coral to comment upon, the issues of call routing during the sixty-day period before disconnection for non-payment and whether Coral was using the lines at issue to provide telecommunications services. Accordingly, the Bureau's Order must be reversed.

IV. CORAL WAS LEGALLY ENTITLED TO RECEIVE UNIVERSAL SERVICE SUPPORT FOR MORE THAN THE TOTAL LINES REPORTED

Even if all of the disputed lines at issue were excluded, Coral nonetheless would be entitled to receive more than the amount of universal support it actually received, because Coral substantially unreported the number of lines for which it is legally entitled to receive universal service support. Recovering support from an ETC based on excluding certain lines from eligibility for universal service support when the number of lines reported by the ETC is less than the number of lines for which the ETC is legally entitled to receive universal service support

³¹ Under 47 U.S.C. § 403, the FCC has the authority to review USAC decisions on its own motion, at any time. *See id. at ¶ 68. See also* 47 U.S.C. § 403. However, this review would also presume the exercise of due process: adequate notice and an opportunity for the affected party to be heard, in accordance with principles of administrative law. USAC decisions fall under the scope of the FCC's ultimate authority, consistent with the FCC's ultimate responsibility over the universal service support mechanism as specified in 47 U.S.C. § 254.

³² *Indep. U. S. Tanker Owners Comm. v. Lewis*, 690 F.2d 908, 922-23 (D.C. Cir. 1982) (emphasis added) (holding an agency responsible for ensuring that, in issuing its informal decision, the agency made all relevant evidence available and produced an adequate explanation for its choices. The court also found that it was justified in seeking this production as a means of carrying out its own responsibility to conduct a thorough review.).

would be fundamentally inconsistent with Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, (the “Act”), 47 U.S.C. 254, and the FCC’s rules and policies.³³

Universal service support is distributed based on total line counts that do not have to list the specific customer with whom each line is associated.³⁴ The independent auditor here correctly disclaimed its opinion because it could not find that any lines should be excluded. For this reason, there was no reason for Coral or the independent auditor to supplement the record to reflect that Coral was entitled to support for more lines than it reported even if certain lines were excluded. Since the IAD moved to recover support from Coral without disclosing the reasons for its “updated finding” or seeking any input from Coral, the record on this issue remains deficient. Accordingly, to the extent the Commission is unwilling to cease further actions to recover support from Coral as this petition requests, the Commission would have to direct USAC to conduct a new audit to address this issue and other deficiencies in the record.

V. CONCLUSION

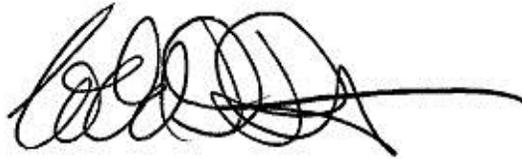
For the foregoing reasons, Coral respectfully requests the Commission to reverse the Bureau’s Order, and cease all further actions to recover the universal service support at issue here from Coral. To the extent the Commission nonetheless wishes to continue this proceeding, it would have to cure the flaws described in this Petition and Coral’s Request for Review by directing USAC to conduct a new audit. Coral respectfully submits, however, that ordering a

³³ Cf. *In the Matter of Universal Service Contribution Methodology; Petition for Clarification and Partial Reconsideration by XO Communications Services, LLC*; WC Docket No. 06-122, FCC 14-104, Order on Reconsideration (rel. July 25, 2014) (ordering USAC to refrain from attempting to recover contributions from a wholesale service provider if the wholesaler’s customer actually contributed to the universal service fund based on the services at issue).

³⁴ 47 C.F.R. § 54.307(b). "In order to receive support... a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area."

new audit rather than simply reversing the Order and closing this proceeding would merely waste more taxpayer funds, interfere with the goals of the Universal Service system by unjustly imposing additional unnecessary costs on an ETC, and delay the inevitable conclusion that the line count which Coral submitted to USAC was lower than the total number of lines for which Coral was entitled to receive universal service support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal flourish extending to the right.

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