

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Request for Review by U.S. TelePacific Corp.) WC Docket No. 06-122
d/b/a TelePacific Communications)
of Universal Service Administrator Decision)

REPLY COMMENTS OF THE AD HOC COALITION OF INTERNATIONAL
TELECOMMUNICATIONS COMPANIES

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I. Introduction

On June 1, 2010, AT&T, Verizon, CenturyLink, and SureWest (“Petitioners”) filed a petition for clarification or partial reconsideration (“Petition”) of the Wireline Competition Bureau’s (“WCB”) order granting TelePacific Corp. d/b/a TelePacific Communications’ (“TelePacific”) Request for Review of a December 2009 Universal Service Administrative Company (“USAC”) decision which reclassified TelePacific’s Internet access service as an interstate telecommunications service subject to Universal Service Fund (“USF”) contributions.¹ On June 3, 2010, the Commission solicited comments² and, in response, the Coalition for Fairness and Restraint in USAC Fund Administration (“Fairness Coalition”) submitted comments supporting Petitioners’ characterization of the TelePacific Order as ambiguous and, importantly, highlighting issues and concerns about the wholesale telecommunications industry’s difficulties administering the Carrier’s Carrier Rule (“CCR”), as adopted by USAC and set forth in the Instructions to Federal Communications Commission (“FCC” or “Commission”) Form 499-A. The Ad Hoc Coalition of International Telecommunications Companies (“Ad Hoc Coalition”) hereby files these Reply Comments and renews its request for the immediate suspension of all USAC and FCC enforcement of the CCR pending the conclusion of a rulemaking proceeding in which to vet issues and resolve industry-wide confusion regarding the CCR.

¹ *In the Matter of Request for Review of a Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Communications, Petition for Clarification or in the Alternative Reconsideration*, CC Docket 06-122 (June 1, 2010).

² Comment Sought on Petition for Clarification and Reconsideration of the Wireline Competition Bureau's TelePacific Order Filed by AT&T Inc., CenturyLink, SureWest Communications, and Verizon, DA 10-1012 (rel. June 3, 2010).

II. Comments Support the Ad Hoc Coalition's Petition for Rulemaking

On February 16, 2010, the Ad Hoc Coalition filed a petition requesting that the Commission suspend all pending and future enforcement of the CCR in its current form, *i.e.*, as embodied in USAC's Form 499-A Instructions ("Instructions").³ The Ad Hoc Coalition further requested that the FCC open a rulemaking proceeding to evaluate previously identified deficiencies with the CCR and to develop a simple, uniform, and easily administered carrier-to-carrier USF exemption process, inclusive of a standard USF Exemption Certification. The Fair Coalition's comments further expose substantial faults with the CCR and USAC's administration thereof and support the Ad Hoc Coalition's request for immediate suspension of all enforcement of the "Rule" pending the completion of a rulemaking proceeding.

Petitioners argued that, to the extent the WCB's Order reclassifying TelePacific's Internet access revenues required the company's wholesale providers to reclassify as end-user revenues those reported as "carrier's carrier" revenues based on TelePacific's reseller certifications, the Order violates the Commission's rules. Such rules limit USF contributions to end-user revenues and entitle wholesale providers to rely upon valid reseller exemption certifications. Petitioners asked the Commission to order USAC to seek any contribution deficiency resulting from the reclassification not from wholesale providers, but directly from the resellers whose revenues the Commission reclassified. The Fairness Coalition noted that such resellers do not qualify as end-users under the FCC's rules and, therefore, cannot be responsible for USF obligations on the transmission inputs they purchase and combine with other elements to provide Internet access.

³ *In the Matter of the Ad Hoc Coalition of International Telecommunications Companies Petition for Rulemaking to Address Inequities in USAC's Interpretation and Application of the Carrier's Carrier Rule*, Petition for Rulemaking (Feb. 16, 2010).

The Fairness Coalition's comments provide prima facie evidence of the widespread confusion over the CCR which continues to plague the industry. The comments shed further light on the unintended consequences and harm caused by USAC's convoluted interpretation and application of the Commission's Rule. During the past several years, USAC's misinterpretation of the purpose and intended scope of the Commission's Rule and its rigid application of its distorted version of the CCR have conspired to substantively affect carrier rights. This outcome violates the law because USAC's expansive "version" of the otherwise limited and legitimate Commission Rule did not flow through the notice and comment process mandated by the Administrative Procedure Act ("APA"). The comments, therefore, wholly support the Ad Hoc Coalition's requested suspension of the USAC "rule" and reinforce the immediacy of the need to address the issues raised in its petition.

Yet, as evidenced by USAC's recent audit and the Commission's TelePacific Order upholding the audit, not only does USAC continue to act outside the scope of its authority, the Commission continues to defer to USAC regarding critical aspects of its statutory responsibilities to implement the FCC's Universal Service mandates. Instead of initiating a rulemaking proceeding as requested by the Ad Hoc Coalition, the Commission has injected further confusion into the debate over the enforcement of the CCR through the TelePacific Order. Clearly, this issue cannot be resolved without a rulemaking proceeding halting USAC's continued *ultra vires* actions.

Despite its limited authority, which precludes USAC from interpreting FCC rules or federal law in its administration of the USF, USAC has continued to misinterpret and misapply the CCR in violation of its authority and Commission rules. Again, the Commission could have

avoided the mess that has resulted from inconsistent application of USF rules simply by initiating a rulemaking proceeding upon the adoption of the CCR. Instead, the Commission has sanctioned USAC's unlawful actions, resulting in countless disputes between wholesale and resale providers that harm both the public and the industry. In order to alleviate pending and future disputes that ultimately harm the public, the Commission must adopt and publish uniform rules and a standard Exemption Form to assist carriers with the USF exemption certification process.

The Petition and responsive comments highlight the magnitude of the problem, revealing that even the largest, most sophisticated wholesale and resale carriers cannot make sense of USAC and the Commission's indecipherable CCR requirements. USAC's convoluted interpretation of the Rule and the WCB's cryptic TelePacific Order have triggered further disputes between wholesalers and retail providers. As the Ad Hoc Coalition has expressed, it is precisely such issues that arise when USAC establishes substantive policies and enforces them as rules, despite its failure to follow the APA. The Commission cannot afford to wait and must act now to immediately suspend USAC's application of its misconstrued CCR and initiate a rulemaking proceeding to address the myriad of concerns raised by industry participants.

III. Conclusion

In light of USAC's continued misapplication of the CCR and the resulting industry-wide confusion, the FCC must act now to protect the industry and the public from illegal enforcement actions. Thus, the Coalition respectfully requests that the Commission immediately suspend all enforcement of the CCR, pending the outcome of a rulemaking proceeding to address the concerns raised by industry participants regarding USF compliance.

Respectfully submitted,

/s/

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