

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Request for Review of a Decision of the Universal)	USAC Audit CR2008CP001
Service Administrator by Network Enhanced)	
Telecom, LLP)	

ORDER ON RECONSIDERATION

Adopted: April 26, 2011

Released: April 26, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This order addresses a request filed by Network Enhanced Telecom, LLP (NetworkIP) pursuant to section 1.106 of the Commission's rules.¹ NetworkIP seeks reconsideration of certain aspects of a decision by the Wireline Competition Bureau (Bureau) addressing NetworkIP's appeal of a 2008 contributor audit decision of the Universal Service Administrative Company (USAC).² For the reasons set forth below, we deny NetworkIP's petition for reconsideration.

II. BACKGROUND

A. The Act and the Commission's Rules and Requirements

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.³ To this end, the Commission has determined that any entity that provides interstate telecommunications services to the public for a fee must contribute to the universal service fund (Fund or USF).⁴ The Commission further directed that

¹ Network Enhanced Telecom, LLP, Petition for Reconsideration, WC Docket No. 06-122 (filed Nov. 18, 2010) (NetworkIP Petition for Reconsideration); 47 C.F.R. § 1.106.

² Petition for Reconsideration at 1; *Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, USAC Audit CR 2008CP001, Order, 25 FCC Rcd 14533 (Wireline Comp. Bur. 2010) (*NetworkIP Order*).

³ 47 U.S.C. § 254(d).

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund. See, e.g., *Universal Service Contribution Methodology et al.*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet Protocol providers to contribute to the universal service fund because they are providers of interstate telecommunications).

contributions should be based on contributors' interstate and international end-user telecommunications revenues.⁵

3. The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms.⁶ Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) with USAC.⁷ USAC reviews these filings and verifies the information provided by the contributors.⁸ USAC also bills contributors for their universal service contributions.⁹

4. *Contribution Requirements for Wholesale Carriers and Resellers.* Not all carriers that provide interstate telecommunications service contribute directly to the Fund.¹⁰ Since the inception of the Fund, contributions have been based on end user revenues. In adopting this requirement, the Commission recognized that "[b]asing contributions on end-user revenues . . . will relieve wholesale carriers from contributing directly to the support mechanisms" because these carriers do not earn revenues directly from end-users.¹¹ Instead, the reseller that provides the service to the end-user, and thereby earns end-user revenues, contributes directly to the USF.¹²

5. In the *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to compute their federal universal service contributions.¹³ In establishing the methodology for computing contributions, the Commission further clarified the distinction between "end-user revenues" (which are included within the contribution base) and "carrier's carrier revenues" (which are excluded from the contribution base) for purposes of universal service contributions.¹⁴ To address the "double counting" issue identified in the *Universal Service First Report*

⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9171, para. 772; 47 C.F.R. § 54.706.

⁶ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Dockets Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18423-24, para. 41 (1997) (*Universal Service Second Order on Reconsideration*); see 47 C.F.R. § 54.701.

⁷ 47 C.F.R. § 54.711(a) (setting forth reporting requirements in accordance with Commission announcements in the Federal Register). Contributors report historical revenue on the annual Telecommunications Reporting Worksheet (FCC Form 499-A), which is generally filed on April 1 each year. See Universal Service Administrative Company, Schedule of Filings, <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Feb. 18, 2011) (USAC Form 499 Filing Schedule). Contributors project future quarters' revenue on the quarterly Telecommunications Reporting Worksheets (FCC Form 499-Q), which are generally filed on February 1, May 1, August 1, and November 1. USAC Form 499 Filing Schedule.

⁸ 47 C.F.R. § 54.711(a).

⁹ 47 C.F.R. § 54.702(b).

¹⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 9179, para. 787. The Commission's rules exempt certain carriers from the contribution requirement. For example, carriers are not required to contribute directly to the universal service fund in a given year if their contribution for that year would be less than \$10,000. 47 C.F.R. § 54.708. Likewise, carriers with purely intrastate or international revenues are not required to contribute. *Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Sixteenth Order on Reconsideration, 15 FCC Rcd 1679, 1685, para. 15 (1999). Certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers are also exempt from the contribution requirement. See 47 C.F.R. § 54.706(d). Unless a carrier meets one of the exemptions or exceptions, however, it must contribute to the Universal Service Fund.

¹¹ *Universal Service First Report and Order*, 12 FCC Rcd at 9207, para. 846.

¹² *Id.*

¹³ See *Universal Service Second Order on Reconsideration*, 12 FCC Rcd 18400.

¹⁴ *Id.* at 18497.

and Order, while ensuring that all revenues were subject to universal service contribution, the Commission defined a reseller as “a telecommunications service provider that (1) incorporates the purchased telecommunications services into its own offerings and (2) can reasonably be expected to contribute to support universal service based on revenues from those offerings.”¹⁵

6. The Commission also established that a wholesale carrier should have in place documented procedures to ensure that it reports as reseller revenues only revenues from those entities that reasonably would be expected to contribute to universal service.¹⁶ The Commission included a list of the minimum information that could be used to establish a reasonable expectation and noted that absent any other basis to know that a carrier in fact is a contributing reseller, wholesale carriers should obtain signed statements from their reseller customers that they will contribute to universal service.¹⁷ While the Commission did not provide an exhaustive list of procedures that a carrier could implement to meet the “reasonable expectation” standard, the agency has provided guidance in the FCC Form 499-A instructions to assist wholesale carriers regarding how to satisfy the reasonable expectation standard.¹⁸ For example, in 2002, the FCC Form 499-A instructions were updated to: (1) include the reseller’s FCC Form 499 filer identification number (Form 499 Filer ID) as part of the minimum information to be retained; (2) include a link to the Commission’s list of current contributors available on the Internet; and (3) clarify that the signed statement should be certified by the reseller.¹⁹ In 2004, the FCC Form 499-A instructions explicitly alerted the wholesale carrier that it was responsible for any additional universal service assessments that result if its customers are reclassified as end users.²⁰

B. Petition for Reconsideration

7. NetworkIP offers wholesale long-distance capacity (i.e., minutes) to its customers, usually through a web-based software platform that provides the switching and processing capability needed to create and manage prepaid calling cards.²¹ NetworkIP also makes its platform available to customers that purchase long-distance capacity from other wholesale providers.²²

8. In 2008, USAC performed an audit of NetworkIP’s compliance with FCC Form 499-A contributor filing requirements for calendar years 2005 and 2006. As part of that audit, USAC reclassified some of NetworkIP’s carrier’s carrier revenues as end-user telecommunications revenues for

¹⁵ *Id.* at 18507.

¹⁶ *Id.* at 18508.

¹⁷ *Id.* (“The procedures should include but not be limited to maintaining the following information on resellers: legal name; address; name of a contact person, and phone number of the contact person. If the underlying contributor does not have other reason to know that the entity will, in fact, resell service, then the contributor should obtain a signed statement to that effect.”).

¹⁸ The Commission has delegated authority to the Wireline Competition Bureau to “waive, reduce, modify, or eliminate reporting requirements” and “require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.” *See Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18442, para. 81; 47 C.F.R. § 54.711(c). At the time of the delegation, the Wireline Competition Bureau was known as the Common Carrier Bureau.

¹⁹ Telecommunications Reporting Worksheet, FCC Form 499-A (2002), Instructions at 15, http://www.usac.org/_res/documents/about/pdf/499/499a_2002.pdf.

²⁰ Telecommunications Reporting Worksheet, FCC Form 499-A (2004), Instructions at 17, http://www.usac.org/_res/documents/about/pdf/499/499ai_2004.pdf.

²¹ Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP, WC Docket No. 06-122, at 2 (filed June 29, 2009) (portions confidential) (NetworkIP Request for Review).

²² *Id.* at 2–3. NetworkIP charges carrier customers for usage of the platform—whether they purchase it alone or in conjunction with wholesale long distance capacity—at per-minute rates. *Id.* at 3.

two independent reasons.²³ First, USAC found that NetworkIP's platform service was a prepaid calling card service, which is subject to contribution assessment under the Commission's rules and requirements.²⁴ Second, USAC found that NetworkIP could not meet the reasonable expectation standard for classifying revenues as carrier's carrier revenues because: (1) NetworkIP did not have reseller certificates from its non-contributing customers; (2) the reseller certificates that NetworkIP had from some customers were more than a year old; and/or (3) NetworkIP failed to obtain Form 499 Filer ID numbers for certain customers and USAC was unable to locate a Form 499 Filer ID or otherwise verify the contribution status for those customers.²⁵

9. On June 29, 2009, NetworkIP filed an appeal seeking review of USAC's 2008 contributor audit decision.²⁶ On October 19, 2010, the Bureau granted NetworkIP's request for review in part and remanded the case to USAC for further proceedings.²⁷ Specifically, the Bureau agreed with NetworkIP that its platform was not a prepaid calling card service as contemplated by the Commission's orders, rules, and requirements.²⁸ The Bureau also agreed that USAC had erred to the extent it concluded that NetworkIP's reseller certificates for the audit years at issue were invalid solely because they were more than a year old.²⁹ The Bureau, however, ultimately concluded that it was unable to determine from the record what factors USAC relied upon in forming the basis for its audit findings, and therefore remanded the issue of whether NetworkIP incorrectly classified certain revenues as carrier's carrier revenue.³⁰ In so doing, the Bureau noted that "the mere existence of a reseller certificate" is insufficient to demonstrate that an underlying carrier has met the reasonable expectation standard, and that "[t]o the extent NetworkIP did not have its customers' Form 499 Filer ID numbers and did not have other evidence that would allow USAC to locate and verify the customer's filing status, NetworkIP had the burden of providing to USAC independent evidence that demonstrated that it knew or reasonably expected that [its] customers were resellers of telecommunications and contributing directly to the universal service fund during the audit period."³¹

10. On November 18, 2010, NetworkIP filed a petition asking the Bureau to reconsider the *NetworkIP Order*. NetworkIP asks the Bureau to "reverse that portion of the Order concluding that NetworkIP was required, for calendar years 2005 and 2006, to collect Form 499 Filer ID numbers from customers in order to treat them as 'resellers.'"³² NetworkIP also asks the Bureau to reconsider its

²³ Independent Auditor's Report of Network Enhanced Telecom (USAC Audit No. CR2008CP001) (confidential) (USAC Audit Report).

²⁴ *Id.* at 32–33. Prepaid calling cards enable consumers to pay in advance for a specified amount of long distance and international calling without presubscribing to an interexchange carrier. 47 C.F.R. § 64.5000(a). Calling card services are regulated by the Commission as telecommunications services because they provide transmission of information, without a change in form or content, for a fee directly to the public; accordingly, revenues from prepaid calling card services are subject to universal service contribution assessment. *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 02-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827, paras. 3–4 (2005); see 47 C.F.R. § 54.706(a).

²⁵ NetworkIP Request for Review at 17–19 (citing USAC Audit Report at 18).

²⁶ *Id.*

²⁷ *NetworkIP Order*, 25 FCC Rcd at 14533, para. 2.

²⁸ *Id.* at 14538–39, paras. 12–13.

²⁹ *Id.* at 14540, para. 16.

³⁰ *Id.* at 14539, para. 14.

³¹ *Id.* at 14540, para. 17.

³² NetworkIP Petition for Reconsideration at 3.

“implicit conclusion” that NetworkIP had to obtain reseller certifications and Form 499 Filer ID numbers with respect to its ‘intermediate reseller’ customers in order to treat revenue from those customers as reseller revenue.³³

III. DISCUSSION

11. We find that NetworkIP’s petition for reconsideration is premised on a misreading of the *NetworkIP Order*. As explained below, the *NetworkIP Order* neither required NetworkIP to collect Form 499 Filer ID numbers from customers in order to treat them as resellers nor made any conclusions with regard to what NetworkIP calls “intermediate resellers.”³⁴ We therefore deny NetworkIP’s petition for reconsideration.

12. In ruling on NetworkIP’s appeal of the 2008 USAC contributor audit decision, the Bureau did not “require” NetworkIP to collect Form 499 Filer ID numbers from its reseller-customers.³⁵ Instead, as set forth in the *NetworkIP Order*, the Bureau laid out several paths NetworkIP could take on remand to establish that it met the reasonable expectation standard for each customer it classified as a contributing reseller during the audit years in question. Specifically, the *NetworkIP Order* stated that NetworkIP could: (1) provide a Form 499 Filer ID number for each customer (which would have confirmed that the customer had in fact registered with the Commission as a filer of the Telecommunications Reporting Worksheet); (2) provide USAC sufficient information that would allow USAC to locate and verify each customer’s filing status (which would have served that same purpose); or (3) present independent evidence that demonstrated it knew or reasonably expected its customers were contributing to the Fund.³⁶ If NetworkIP chooses to pursue the third path of independent evidence, the company should present objective documentation and verifiable evidence to that end.³⁷ On remand, we expect that USAC would review any information provided by NetworkIP and then “provide NetworkIP

³³ *Id.* at 11.

³⁴ Accordingly, we reject NetworkIP’s arguments that the Bureau violated the Administrative Procedures Act and exceeded its delegated authority, both of which are premised on NetworkIP’s mistaken reading of the *NetworkIP Order*. See Petition for Reconsideration at 8–10.

³⁵ Indeed, the order expressly stated that the “Commission does not dictate what procedures a carrier must implement to meet the reasonable expectation standard.” *NetworkIP Order*, 25 FCC Rcd at 14536, para. 8 (internal quotation marks omitted). Nothing we say here, however, detracts from the obligation of each “telecommunications carrier providing telecommunications service for resale . . . to ascertain whether a potential carrier-customer (i.e., reseller) that is subject to the registration requirement . . . has filed an FCC Form 499-A with the Commission prior to offering service to that carrier-customer.” See 47 C.F.R. § 64.1195(h). To the extent that USAC determines that any telecommunications provider it is auditing is not comporting with this rule (or any other Commission rule), USAC should refer the issue to the Commission for potential enforcement action.

³⁶ *Id.* at 14540, para. 17.

³⁷ NetworkIP asserts that it had “clear procedures in place,” “made a reasonable effort to comply” with the instructions, “obtained signed certifications from most of its carrier customers,” notified its customers of their “obligation to register and contribute,” undertook “efforts to educate its customers and hold them accountable for their contribution obligations,” and “had firsthand knowledge that its customers were telecommunications resellers obligated to contribute.” NetworkIP Petition for Reconsideration at 7–8. We note that NetworkIP’s “firsthand knowledge” apparently stems from its “unique bundled service offering of providing a hosted platform service and reselling network access.” *Id.* at 8. General conclusory assertions such as this—unaccompanied by affidavits or an explanation of how NetworkIP’s service offering would preclude end users that do not contribute to the Fund, including international-only telecommunications providers, government-only contractors, and *de minimis* carriers, from purchasing the service—are insufficient to meet the burden of proof regarding compliance with the reasonable-expectation standard. On remand, NetworkIP should present objective documentation and verifiable evidence to support any assertions it wishes to make in pursuing the independent-evidence path.

with its detailed findings that form the basis for its conclusions with respect to the reclassification of any revenues associated with NetworkIP's non-contributing customers," as directed in the *NetworkIP Order*.³⁸

13. Further, the Bureau did not address the issue of "intermediate resellers" (nor how NetworkIP should treat revenues it received from intermediate-reseller customers) in the *NetworkIP Order* because this issue was not before the Bureau as part of its consideration of the company's request for review of the 2008 contributor audit decision by USAC. NetworkIP did not raise the issue of intermediate resellers in its initial request for review nor did it apparently raise this issue during USAC's initial audit.³⁹ Accordingly, NetworkIP has not explained which customers it thinks are intermediate resellers, has not presented any verifiable evidence that each of these customers is in fact an intermediate reseller, and has not provided objective documentation regarding why it thought each of these customers was an intermediate reseller during the years in question.⁴⁰ Moreover, USAC has not had an opportunity to examine NetworkIP's evidence and documentation or seek further information from NetworkIP in support of its claims. Accordingly, we find that it would be premature for the Bureau to address the treatment of "intermediate resellers" based on the record now before us. On remand, NetworkIP may provide USAC with any evidence and documentation it has to support its contention that many of its customers were in fact intermediate resellers during the reporting periods. In response, USAC should "provide NetworkIP with its detailed findings that form the basis for its conclusions with respect to the reclassification of any revenues associated with NetworkIP's non-contributing customers."⁴¹

IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 254, and pursuant to the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the petition for reconsideration filed by Network Enhanced Telecom, LLP is hereby DENIED.

15. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order on reconsideration SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

³⁸ *NetworkIP Order*, 25 FCC Rcd at 14541, para. 19.

³⁹ We note that the NetworkIP did mention the term "intermediate reseller" in the context of arguing that it could not determine the "face value" of the calling cards produced using its platform, *see* USAC Audit Report at 25, but it apparently did not make the arguments it is now making.

⁴⁰ NetworkIP appears to have first raised this issue in a June 29, 2010 *ex parte* letter, in which NetworkIP claimed to have performed a root cause analysis and uncovered that "[s]ome of NetworkIP's 2005–2006 customers were intermediate resellers." *See* Letter from L. Charles Keller, Counsel to Network Enhanced Telecom, LLP, to Marlene H. Dortch, Secretary, FCC, Attach. at 3 (filed June 29, 2010).

⁴¹ *NetworkIP Order*, 25 FCC Rcd at 14541, para. 19.