

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 Decision of the)	USAC Audit CR2007CP005
Universal Service Administrator by Clear World)	
Communications Corporation)	

ORDER

Adopted: April 29, 2011

Released: April 29, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny in part a request filed by Clear World Communications Corporation (Clear World) pursuant to section 54.719 of the Commission’s rules.¹ Clear World requests review of a 2009 contributor audit decision of the Universal Service Administrative Company (USAC) finding that Clear World did not accurately report certain revenues on its FCC Form 499-A for calendar years 2005 and 2006. USAC revised Clear World’s 2006 and 2007 FCC Forms 499-A consistent with the audit report findings. USAC also determined in the audit that Clear World collected universal service contribution costs through line-item charges in excess of amounts permitted under the Commission’s rules and directed Clear World to refund the excessive charges to Clear World’s customers. USAC also directed Clear World to remit to USAC any excessive charges not refunded to Clear World’s customers.

2. As discussed more fully below, we find that USAC appropriately determined that, for calendar years 2005 and 2006, Clear World incorrectly allocated as international all of its revenue from monthly recurring charges, and that once a portion of those revenues were properly allocated to the interstate jurisdiction, Clear World no longer qualified for the limited international revenues exemption (LIRE) and thus understated its contributions to the Universal Service Fund (Fund). We also find that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission’s rules and requirements. We conclude, however, that USAC erred in directing Clear World to remit to USAC any amount of excessive line-item charges that Clear World does not refund to its customers. To the extent that Clear World cannot, or will not, reimburse its customers for the excessive amounts of contribution costs collected, we direct USAC to refer the matter to the Enforcement Bureau for further investigation.

¹ Request for Review of a Decision of the Universal Service Administrator by Clear World Communications Corporation, WC Docket No. 06-122 (filed Oct. 15, 2009) (Clear World Request for Review); Supplement to Request of Clear World Communications Corporation for Review of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Mar. 25, 2010) (Clear World Supplement); 47 C.F.R. § 54.719.

II. BACKGROUND

A. The Act and the Commission's Rules

3. 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.² 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 Fund.³ The Commission further directed that contributions should be based on contributors' interstate and international end-user telecommunications revenues.⁴ Accordingly, pursuant to the Commission's existing rules and requirements, contributors must determine how much of their end-user telecommunications revenues are derived from the provision of intrastate, interstate and international services for purposes of universal service contribution assessment.⁵

4. 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 Contributors report projected, collected interstate and international revenues on their FCC Forms 499-Q and actual revenues for the preceding calendar year on their FCC Forms 499-A.⁸ USAC reviews

² 47 U.S.C. § 254(d).

³ 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) (*2006 Universal Service Contribution Methodology Order*) (requiring interconnected voice over Internet protocol providers to contribute to the universal service fund because they are providers of interstate telecommunications).

⁴ *Universal Service First Report and Order*, 12 FCC Rcd at 9707, para. 787; see 47 C.F.R. § 54.706.

⁵ 47 C.F.R. § 54.706(b). Telecommunications providers with purely intrastate or international revenues are not required to contribute to the universal service fund. *Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779; *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration and Eighth Report and Order, Sixth Report and Order, 15 FCC Rcd 1679, 1685, para. 15 (1999) (*Universal Service Eighth Report and Order*).

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 at 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 USAC, Schedule of Filings, <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Feb. 17, 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.

⁸ See *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (*2002 Universal Service Contribution Methodology Order*).

these filings to verify the information provided by the contributors, and bills contributors for their resulting universal service contributions.⁹

5. *Limited International Revenues Exemption.* While telecommunications providers are generally required to contribute to the Fund on the basis of their interstate and international end-user telecommunications revenues, the Commission's rules limit the contribution obligation for entities providing predominantly international services.¹⁰ Specifically, a contributor need not contribute on its projected collected international end-user telecommunications revenues if that contributor's projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues.¹¹ This exemption, commonly referred to as the LIRE, is intended to exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user telecommunications revenues.¹²

6. *Recovering Contributions.* The Commission's rules allow contributors to recover the costs of universal service contributions by passing through an explicit charge to their customers. If a contributor chooses to do so, the amount of the federal universal service line-item charge may not exceed the assessable portion of that customer's bills times the relevant "contribution factor."¹³ Further, contributors are prohibited from recovering unrelated costs through universal service line-items and from averaging contribution costs across all end-user customers.¹⁴ In adopting rules governing the recovery of universal service contributions costs from end-user customers, the Commission concluded that elimination of mark-ups in contributors' universal service line-item charges would protect consumers and alleviate end-user confusion regarding the universal service line item and that such action would improve consumers' understanding of their telephone bills.¹⁵

B. Clear World's Petition for Review

7. Clear World is a reseller of intrastate, interstate, and international long distance service.¹⁶ In June 2009, USAC finalized an audit of Clear World's compliance with FCC Form 499-A contributor filing requirements for calendar years 2005 and 2006 (due April 1, 2006 and April 1, 2007, respectively). Consistent with the audit findings, USAC determined that Clear World had not properly allocated by traffic type monthly recurring charges assessed to the company's end-user customers, and that Clear World had not assessed universal service line-item charges in accordance with the Commission's rules and requirements.¹⁷ Specifically, USAC determined that Clear World provided its customers intrastate, interstate and international telecommunications services, but had allocated 100 percent of its monthly

⁹ 47 C.F.R. §§ 54.711(a), 54.702(b).

¹⁰ 47 C.F.R. § 54.706(c).

¹¹ *Id.*

¹² *See Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19.

¹³ 47 C.F.R. § 54.712. The quarterly universal service contribution factor is determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of prior period actual contributions. 47 C.F.R. § 54.709.

¹⁴ *2002 Universal Service Contribution Methodology Order*, 17 FCC Rcd at 24978, para. 51.

¹⁵ *Id.* at paras. 49–50.

¹⁶ Clear World Request for Review, Exh. E at 6 (USAC Audit).

¹⁷ USAC Audit at 3–17.

recurring charges to international revenues.¹⁸ Based on Clear World's actual call traffic percentages, USAC reallocated a portion of Clear World's monthly recurring charge revenue to the interstate category, which increased Clear World's interstate revenues above the 12 percent threshold needed to qualify for the LIRE. Accordingly, USAC determined that the company owed additional USF contributions and directed Clear World to resubmit its 2006 and 2007 FCC Forms 499-A.¹⁹ In addition, USAC determined that Clear World had recovered from its customers universal service line-item charges in excess of amounts permitted under the Commission's rules.²⁰ USAC therefore directed Clear World to refund the overages to its customers, or alternatively, to remit the overages to USAC.²¹

8. Clear World requests that the Commission reverse USAC's audit decision and find that Clear World does not owe outstanding universal service contributions for 2005 and 2006 based on its purported qualification for the LIRE.²² Clear World asserts, among other things, that it correctly reported its revenues from monthly recurring charges for its services as international revenues.²³ In so doing, Clear World disputes the methodology used by USAC to reallocate revenues from its monthly recurring charges and argues that USAC's additional contribution assessment violates section 254(d) of the Act because it is discriminatory and inequitable.²⁴ Clear World also argues that USAC lacks authority to direct Clear World to reimburse customers or remit to USAC universal service line-item overcharges collected from its customers.²⁵ Finally, because Clear World was the subject of a USAC audit in 2006, Clear World argues that USAC waived its right to conduct a second audit of the company in 2008, which resulted in the 2009 audit report.²⁶

III. DISCUSSION

9. Consistent with the Commission's rules and requirements and as discussed in further detail below, we find that USAC appropriately determined that, for calendar years 2005 and 2006, Clear World incorrectly allocated as international all of its revenue from monthly recurring charges for its service offerings, and that once a portion of those revenues were properly allocated to the interstate jurisdiction, Clear World no longer qualified for the LIRE and thus understated its contributions to the Fund. We also affirm USAC's finding that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules. We conclude, however, that USAC erred in directing Clear World to remit to USAC any amount of excessive line-item charges that Clear World does not refund to its customers.

¹⁸ *Id.* at 4–10.

¹⁹ *Id.* USAC submitted the initial draft audit findings to Clear World on January 27, 2009. Clear World responded on February 12, 2009 and USAC updated its findings with respect to the monthly recurring charges. Subsequently, USAC requested that Clear World respond to the updated findings by May 20, 2009. At the time the final audit was finalized, on June 6, 2009, USAC had not received a response to the updated findings. *Id.* at 3.

²⁰ *Id.* at 12–14.

²¹ *Id.* at 14.

²² Clear World Request for Review at 8–9; Clear World Supplement.

²³ Clear World Request for Review at 17–19.

²⁴ *Id.* at 20–23; *see* 47 U.S.C. § 254(d) (“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.”).

²⁵ Clear World Request for Review at 12–15, 22; Clear World Supplement at 8–9.

²⁶ Clear World Request for Review at 26.

A. Clear World's Reporting of Monthly Recurring Charge Revenues for Purposes of Universal Service Contribution Assessment

10. We find that USAC appropriately determined that Clear World incorrectly allocated 100 percent of its monthly recurring charges to its international revenues. As stated above, with limited exceptions, every telecommunications carrier that provides interstate telecommunications services must report and contribute to the Fund based on their interstate and international telecommunications revenues.²⁷ To ensure an accurate reporting of these revenues, the FCC Form 499 filing instructions have directed carriers since the inception of the Fund to separately identify the gross revenues derived from interstate and international service.²⁸ If carriers are unable to determine the interstate and international revenues directly from their corporate books of accounts, carriers can submit a good faith estimate of these revenues and must make their methodology for arriving at those estimates available to the Commission or USAC upon request.²⁹ The record indicates that although Clear World provides intrastate, interstate, and international telecommunications services, all of the monthly recurring charges associated with its service products were allocated to international revenues.³⁰ Pursuant to the Commission's long-standing contribution methodology and the FCC Form 499-A instructions, Clear World should have allocated at least a portion of its monthly recurring charges to its interstate revenues based on the services the company provides to its end-user customers.

11. We find that Clear World failed to provide sufficient evidence to support its claim that Clear World's monthly recurring charges were assessed on international traffic only.³¹ Rather, we find that the evidence submitted by Clear World in the record indicates that Clear World's monthly recurring charges were associated with calling plans that allowed Clear World's customers to make intrastate, interstate and international calls.³² Based on this evidence, USAC determined that the monthly recurring charges provide Clear World's customers with different per minute rates for intrastate, interstate and international calls.³³ Moreover, USAC analyzed the call usage reports submitted by Clear World and found that customers that made only interstate or intrastate calls in September 2005 were charged the

²⁷ See *supra* para. 5.

²⁸ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507-12 (Appendix A, Universal Service Worksheet FCC Form 457). The FCC Form 457 was the precursor to the FCC Form 499. See *1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (consolidating the requirements of the FCC Form 457 with other regulatory forms and creating the Telecommunications Reporting Worksheet (FCC Form 499)); see also, e.g., 2007 FCC Form 499-A Instructions at 21 (directing carriers to “identify the part of gross revenues that arise from interstate and international service for each entry on Line 303 through 314 and Lines 403 through 417”).

²⁹ 47 C.F.R. § 54.711; see 2006 FCC Form 499 Instructions at 19–20; 2007 FCC Form 499-A Instructions at 21–22.

³⁰ USAC Audit at 4. For 2006, the audit found that 61% of Clear World's reported revenue was associated with call traffic and 39% was associated with monthly recurring charges. For 2007, Clear World reported that 55 % of its revenue was from call traffic and 45 % of its revenue was from monthly recurring charges. The call traffic revenue was allocated between intrastate, interstate and international jurisdictions, but the monthly recurring charge revenue was allocated at 100 % international. *Id.*

³¹ USAC noted that the fact Clear World advertises its international service or labels its monthly recurring charges as international is insufficient to establish that these fees were associated solely with international calls. USAC Audit at 60.

³² See, e.g., Clear World Request for Review, Exh. A at 151, 161. USAC determined that the per-minute rate for these calls vary for each calling plan, as well as do the monthly recurring charges. USAC Audit at 60.

³³ See, e.g., Clear World Request for Review, Exh. A at 44, 59, 71, 163.

monthly recurring charge for that month.³⁴ We therefore find that USAC correctly determined that the monthly recurring charges assessed by Clear World were associated with all of its service offerings and should be prorated accordingly.³⁵

12. Clear World challenges USAC's use of Clear World's state tariffs as a basis for its audit decision.³⁶ The record is clear, however, that USAC did not base its decision solely on Clear World's state tariffs. Instead, as reflected in the audit report, USAC noted that the tariffs in question described the services and rates that Clear World offers to its customers in each state, but did not indicate that the monthly recurring charges were strictly international.³⁷ USAC, however, also reviewed Clear World's call detail records and noted that Clear World's customers made intrastate, interstate, and international calls, indicating that the monthly recurring charges should be allocated to the intrastate and interstate jurisdictions as well as to the international jurisdiction.³⁸ Clear World never provided other documentation to USAC to support its claim that the monthly recurring charges were tied solely to its international service, despite multiple opportunities to do so.³⁹ USAC therefore appropriately relied on the evidence provided by Clear World, including rate plans and usage reports provided by Clear World, to develop an appropriate weighting methodology for reallocating a portion of Clear World's revenues from monthly recurring charges to the interstate category.⁴⁰

13. In the absence of evidence supporting the use of a different methodology, we find that USAC's decision to reallocate Clear World's monthly recurring charges based on Clear World's actual call usage reports was appropriate.⁴¹ The Commission has long endorsed the use of percentage of interstate usage (PIU) factors to determine the jurisdictional nature of traffic for access charge purposes.⁴² The instructions to the 2006 and 2007 FCC Forms 499-A that set forth Clear World's contribution obligations during the audit period clearly stated that carriers are required to identify the part of gross

³⁴ USAC Audit at 6.

³⁵ *Id.*

³⁶ Clear World Request for Review at 18; Clear World Supplement at 4–5.

³⁷ USAC Audit at 6.

³⁸ *Id.* at 5, 7.

³⁹ *Id.* at 3, 7. During the audit, Clear World stated to USAC that their monthly recurring charges were international since they filed those charges as such in their tariffs. USAC requested the referenced tariffs on August 12, 2008. *Id.* Clear World responded by providing its state tariffs to USAC but never submitted federal tariffs. *Id.* USAC noted that if Clear World provided additional documentation it would be evaluated during the post-audit process. *Id.*

⁴⁰ *See id.* at 7.

⁴¹ *See id.* at 5–8. USAC determined that on the 2006 FCC Form 499, Clear World reported 22.79% intrastate calls; 16.19% interstate calls; and 61.02% international calls. On the 2007 FCC Form 499, Clear World reported 29.89% intrastate calls, 18.20% interstate calls and 51.91% international calls. Based on these percentages, USAC allocated 16.19% of the monthly recurring charge charges to the interstate jurisdiction and 61.02% to the international jurisdiction for calendar year 2005 and allocated 18.20% to interstate and 51.91% to international jurisdictions for calendar year 2006. *Id.* at 8.

⁴² *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7302, para. 32 (2006); *see, e.g., Expanded Interconnection with Local Telephone Company Facilities; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 91-141, 80-286, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7442–43, para. 137 (1993) (requiring IXCs to report PIUs for switched access traffic); *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, Fourth Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16459, 16501–02, para. 80 (1999) (allowing carriers to use PIU rather than revising their billing systems to implement terminating access revenue sharing in meet-point billing arrangements).

revenues derived from interstate and international service.⁴³ To the extent carriers are unable to determine those amounts from their books of account, they are permitted to use a reasonable methodology for reporting a good faith estimate of those revenues.⁴⁴

14. Having found that USAC appropriately determined that Clear World incorrectly allocated 100 percent of its monthly recurring charges to its international revenues, and that USAC's resulting reallocation of Clear World's assessable revenues was consistent with information in the record, we also affirm USAC's determination that Clear World's assessable revenues for the audit period exceeded the 12 percent threshold allowed for the LIRE.⁴⁵ Specifically, consistent with USAC's reallocation of 16.19 percent and 18.20 percent of Clear World's revenues for the 2005 and 2006 calendar years to the interstate jurisdiction, Clear World no longer qualified for the LIRE and thus understated its contributions to the Fund for those years. USAC therefore correctly assessed Clear World for the additional contribution amounts owed to the Fund. Pursuant to the Commission's rules and requirements, Clear World must therefore remit to USAC any and all additional universal service contributions owed.⁴⁶

15. We reject Clear World's claim that USAC exceeded its authority by revising Clear World's FCC Forms 499 based on the findings of the audit report.⁴⁷ Among other things, USAC is responsible for billing and collecting contributions to the USF and has the authority to verify any information reported in the FCC Forms 499.⁴⁸ Moreover, contributors are required to maintain records and documentation to justify information reported in their FCC Forms 499.⁴⁹ As stated above, the record indicates that Clear World did not provide justification for allocating 100 percent of its monthly recurring charges to the international jurisdiction. We therefore affirm USAC's decision to reallocate Clear World's monthly recurring charges based on a methodology that was supported by the evidence available in the record.⁵⁰

16. In addition, we reject Clear World's argument that USAC's assessment of additional contributions is inequitable and discriminatory.⁵¹ Specifically, Clear World argues that USAC failed to take into consideration Clear World's bad debt and that USAC's reassessment of contributions requires Clear World to contribute 60 percent to 77 percent of every dollar earned on interstate revenues in 2005 and 2006, respectively.⁵² We find that this claim is based on a factually erroneous assertion. Since, based on our findings above, Clear World did not qualify for the LIRE during the audit period, Clear World

⁴³ 2006 FCC Form 499 Instructions at 20–21; 2007 FCC Form 499 Instructions at 21–23.

⁴⁴ 2006 FCC Form 499 Instructions at 20–21; 2007 FCC Form 499 Instructions at 21–23.

⁴⁵ 47 C.F.R. § 54.706(c).

⁴⁶ 47 C.F.R. §§ 54.706, 54.713.

⁴⁷ Clear World Supplement at 9–10.

⁴⁸ 47 C.F.R. §§ 54.702, 54.706.

⁴⁹ 47 C.F.R. § 54.706.

⁵⁰ Clear World asserts that USAC improperly relied on the Commission's 2008 declaratory ruling describing how wireless carriers should use a weighted average methodology for allocating toll revenue to the proper jurisdiction. *See* Clear World Request for Review at 12–17; Supplement at 2–4. This argument is misplaced and we need not address it here: USAC cited the declaratory ruling in a footnote for illustrative purposes only and noted that it was not dispositive for the time period audited. *See* USAC Audit at 4 (citing *Universal Service Contribution Methodology; Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligation; Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket 06-122, Declaratory Order, 23 FCC Rcd 1411 (2008)).

⁵¹ Clear World Request for Review at 19–22.

⁵² *Id.*

should have contributed on both its interstate and international revenues. When properly compared to the total amount of interstate and international revenues, less allowable debt, the additional assessment amounts to only 10.4 percent of Clear World's telecommunications revenue for 2006.⁵³

17. Finally, we reject Clear World's unsupported claim that USAC lacked authority to conduct the audit in the first instance.⁵⁴ The Commission's rules provide USAC with the authority to audit contributors and carriers and to verify any information contained in the FCC Forms 499.⁵⁵ USAC was clearly within its authority in conducting an audit of Clear World's compliance with contributor reporting requirements.

B. Clear World's Recovery of Universal Service Contribution Costs through Line-Item Charges to Customers

18. We also affirm USAC's finding that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules and requirements. The Commission's rules expressly prohibit contributors from marking-up federal universal service line-item charges above the relevant assessment amount.⁵⁶ In addition, the Commission's rules require contributors to recover their universal service charges through a line item on the customer bills and accurately describe the nature of the charge.⁵⁷ USAC determined that Clear World had overcharged a number of its customers by applying a contribution factor that exceeded the factor allowed by the Commission and had combined federal and state universal service charges on the call detail records.⁵⁸ In its request for review, Clear World does not appear to challenge USAC's factual finding; rather, Clear World challenges USAC's authority to require carriers to refund overcharges to customers or in the alternative, to remit overcharges to USAC.⁵⁹ In particular, Clear World asserts that USAC's attempt to do so is an invalid interpretation of the Act.⁶⁰

19. We find that Clear World assessed universal service pass-through charges in excess of amounts permitted under the Commission's rules and requirements during the audit period. Accordingly, we reject Clear World's argument that the amount of overcharges involved is small and the cost and burden to refund the money to customers outweigh any benefit of a refund to individual customers.⁶¹

⁵³ USAC Audit at 7. In the audit report, USAC explained that its reassessment of Clear World's contribution obligation took into consideration Clear World's bad debt, but did not allow a deduction for amounts paid by Clear World to its billing company. *Id.*

⁵⁴ Clear World Request for Review at 1-4, 26 (arguing that USAC waived its right to conduct a second audit following an initial, but uncompleted, audit by KPMG).

⁵⁵ 47 C.F.R. §§ 54.707, 54.711 (a).

⁵⁶ See *2002 Universal Service Contribution Methodology Order*, 17 FCC Rcd at 24978, para. 51 (stating that "[t]o the extent that a carrier recovers its contribution cost through a line item, that line item may not exceed the relevant assessment rate").

⁵⁷ *Id.* at 24975, para. 42.

⁵⁸ USAC Audit at 11.

⁵⁹ Clear World Request for Review at 22-24; see Clear World Supplement at 8 (arguing that USAC has no authority to require a carrier to make universal service contributions in excess of those set by the Commission). We note that although Clear World's argument appears to imply that USAC arbitrarily established a contribution factor, we find no basis to support this allegation and Clear World offers none.

⁶⁰ Clear World Request for Review at 24-25.

⁶¹ *Id.* at 26.

Taken to its logical conclusion, Clear World seems to suggest that a contributor may overcharge its customers in violation of the Commission's rules and retain those monies with impunity.

20. To the extent that Clear World cannot, or will not, reimburse its customers for the excessive amounts of contribution costs collected, we direct USAC to refer the matter to the Enforcement Bureau for further investigation. While the Commission's rules expressly prohibit marking-up federal universal service line-item charges above the relevant assessment amount and require contributors to recover their universal service charges through a line item on the customer bills and accurately describe the nature of the charge, nothing in the Commission's rules and requirements provide that universal service line-item overcharges should be remitted to the Commission or USAC. Accordingly, we conclude that USAC erred in directing Clear World to remit to USAC any amount of excessive line-item charges that Clear World does not refund to its customers.

IV. ORDERING CLAUSES

21. 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 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), the request for review filed by Clear World is hereby DENIED in part.

22. 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 SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau