

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

In the Matter of
Universal Service Contribution Methodology
Request for Review of a Decision of the Universal
Service Administrator by CTE Telecom, LLC
WC Docket No. 06-122

ORDER

Adopted: December 7, 2012

Released: December 7, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant CTE Telecom, LLC (CTE)'s petition for review of a Universal Service Administrative Company (USAC) decision requiring CTE to contribute to the universal service fund (USF or the Fund) based on certain 2005 Internet access service revenues.

II. BACKGROUND

A. The Act and the Commission's Rules

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that "[e]very 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."

1 Request for Review by CTE Telecom, LLC of Decision of the Universal Service Administrator, WC Docket Nos. 06-122 and 97-21 (filed Aug. 18, 2008) (CTE Request for Review); Supplement to Request for Review by CTE Telecom, LLC of Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Mar. 17, 2009) (CTE Supplement to Request for Review).

2 47 U.S.C. § 254(d).

3 Id.

4 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9183-84, para. 795 (1997) (Universal Service First Report and Order) (subsequent history omitted). The

3. Although the Commission declined to exempt from contribution “any of the broad classes of telecommunications carriers that provide interstate telecommunications services,” not all carriers that provide interstate telecommunications service contribute to the Fund.⁵ In particular, 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’ carriers do not earn revenues directly from end users.⁶ Instead, the reseller that provides the service to the end user and thereby earns end-user revenues contributes directly to the Fund.⁷

4. The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms under the Commission’s direction.⁸ Pursuant to the Commission’s rules, contributors report their revenues by filing Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q), which are released annually by the Wireline Competition Bureau (Bureau) on delegated authority,⁹ with USAC.¹⁰ USAC reviews these filings and verifies the information provided by the contributors.¹¹ USAC also bills contributors for their universal service contributions.¹²

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Commission also requires certain other providers of interstate telecommunications to contribute to the Fund. *See, e.g., Universal Service Contribution Methodology et al.*, CC Docket Nos. 96-45 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Contribution Methodology Order*) (requiring interconnected voice over Internet protocol providers to contribute to the Fund).

⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9179, para. 787. For example, carriers are not required to contribute to the 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; Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration *et al.*, 15 FCC Rcd 1679, 1685, para. 15 (1999). Certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers are also exempt from the federal USF contribution requirement. 47 C.F.R. § 54.706(d). Unless a carrier meets one of the exemptions or exceptions, however, it must contribute to the Fund.

⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9207, para. 846.

⁷ *Id.*

⁸ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket 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.

⁹ The Wireline Competition Bureau, formerly the Common Carrier Bureau, has delegated authority to revise the FCC Forms 499 and accompanying instructions to ensure “sound and efficient administration of the universal service programs.” *See Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18442, para. 81 (“Because it is difficult to determine in advance precisely the information that will be needed to administer the new universal service programs, the [Common Carrier] Bureau will have delegated authority to waive, reduce, or eliminate contributor reporting requirements that may prove unnecessary. The Bureau also will have delegated authority to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs.”). Consistent with this authority, the Bureau annually revises the Telecommunications Reporting Worksheet Instructions to provide instructions and guidance for complying with existing rules and requirements. 47 C.F.R. § 54.711(c). The FCC Form 499 instructions are modified based on experience in administering the universal service program and explicit rulings by the Commission. *See, e.g., 2006 Contribution Methodology Order*, 21 FCC Rcd at 7533–50.

¹⁰ 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.usac.org/cont/499/filing-schedule.aspx> (last visited Dec. 5, 2012) (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. *Id.*

¹¹ 47 C.F.R. § 54.711(a).

5. In determining what revenues are subject to contribution, the Commission has generally made a distinction between revenues derived from either “telecommunications services”¹³ or certain provisions of “telecommunications,”¹⁴ and revenues derived from “information services”¹⁵ or consumer premises equipment.¹⁶ To calculate universal service contribution obligations, providers must report their revenues to USAC using the FCC Form 499, segregating their non-telecommunications revenues (such as revenues from sales of information services) from their telecommunications revenues. Contributors must also segregate end-user telecommunications revenues from telecommunications revenues derived from sales to other contributors (*i.e.*, carrier’s carrier revenues).¹⁷ To ensure that all subject telecommunications and telecommunications services revenues are captured at some point in the distribution chain, a wholesale provider of telecommunications or telecommunications services must generally treat each customer as an end user, unless the customer incorporates the purchased telecommunications into its own offerings and can reasonably be expected to contribute directly to the Fund based on revenues from those offerings.¹⁸ Providers with direct contribution obligations may pass through their contribution assessments to their customers, and generally do so.¹⁹

6. In 1998, the Commission recognized that a provider can be both an information services provider (ISP) and a provider of telecommunications or telecommunications services with regard to a specific service offering.²⁰ Although revenues from telecommunications offerings are generally subject to universal service assessment, revenues from information services are not.²¹

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¹² 47 C.F.R. § 54.702(b).

¹³ See 47 U.S.C. § 153(53) (defining “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used”); *Universal Service First Report and Order*, 12 FCC Rcd at 9173, para. 777 (requiring those who offer telecommunications service to contribute).

¹⁴ See 47 U.S.C. § 153(50) (defining “telecommunications” 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 as sent and received”); *Universal Service First Report and Order*, 12 FCC Rcd at 9183, para. 795 (requiring those who offer telecommunications on a private-carriage basis for a fee to contribute). See also 47 C.F.R. § 54.706(a)(1) (requiring contributions on interstate private line service).

¹⁵ See 47 U.S.C. § 153(24) (defining “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications”).

¹⁶ *Policy and Rules Concerning the Interstate, Interexchange Marketplace et al.*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446, para. 47 (2001) (*CPE Bundling Order*).

¹⁷ See 47 C.F.R. § 54.711(a); 2012 Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A at 4–5 (2012 *FCC Form 499-A Instructions*).

¹⁸ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507, App. C (setting out the definition of resellers); see also 2012 *FCC Form 499-A Instructions* at 21 (“For purposes of completing Block 3, a “reseller” is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications services into its own telecommunications offerings; and (2) can reasonably be expected to contribute to federal universal support mechanisms based on revenues from such offerings when provided to end users”).

¹⁹ See 47 C.F.R. § 54.712(a) (authorizing contributors to recover federal universal service contribution costs from their customers); 2012 *FCC Form 499-A Instructions* at 19; see also *Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5363, para. 9 n.23 (2012) (noting that providers almost always pass contribution obligations through to their customers) (*Contribution Methodology Reform and Modernization Further Notice*).

²⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11520, para. 39 n.77 (1998) (*Report to Congress*).

²¹ See *CPE Bundling Order*, 16 FCC Rcd at 7446, para. 47.

7. Under the governing framework during the relevant time period, telecommunications carriers were required to contribute on revenues derived from the provision of broadband transmission services to ISPs. Specifically, in the 2002 *Wireline Broadband NPRM*, the Commission stated that:

Under our existing rules and policies, telecommunications carriers providing telecommunications services, *including broadband transmission services*, are subject to contribution requirements. In particular, with respect to wireline telecommunications carriers, such carriers must contribute to the extent they provide broadband transmission services or other telecommunications services on a stand-alone basis to *affiliated* or unaffiliated Internet service providers. . . or to end-users. Accordingly, those carriers must contribute based on the revenues associated with the telecommunications services.²²

8. In the 2005 *Wireline Broadband Internet Access Service Order*, the Commission reaffirmed that wireline providers historically were obligated to make USF contributions on the provision of broadband transmission services.²³ Accordingly, in 2005, if an ISP leased or purchased transmission service, whether from an affiliated entity or a third party, it was an end user of that telecommunications service, and the telecommunications carrier providing the leased telecommunications services was the entity obligated to contribute to the Fund on those revenues.²⁴

B. Request for Review

9. CTE is a communications company providing resold interexchange toll services through its Commonwealth Long Distance business unit as well as Internet access services through its epix Internet Services business unit.²⁵ During the relevant time period, CTE obtained the broadband transmission component of its Internet access service through a line sharing arrangement with its affiliate, Commonwealth Telephone Company, an incumbent local exchange company.²⁶ On March 29, 2007, an

²² *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3051, para. 72 (2002) (*Wireline Broadband NPRM*) (*emphasis added*).

²³ *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 *et al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915, para. 112 (2005) (*Wireline Broadband Internet Access Services Order*). Prior to the 2005 *Wireline Broadband Internet Access Services Order*, in which the Commission classified wireline broadband Internet access service as an information service, facilities-based providers of digital subscriber line (DSL) Internet access service were required to contribute to the Fund based on the transmission component of the DSL service. *Id.* at 14915-16, paras. 112-113.

²⁴ *Report to Congress*, 13 FCC Rcd at 11550, para. 81. The contribution obligation changes set out in the *Wireline Broadband Internet Access Services Order* were effective August 13, 2006, and, as such, they are not applicable to the filing year at issue in the instant request for review. *See Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14916, para. 113. After the effective date of the changes adopted in the 2005 *Wireline Broadband Internet Access Services Order*, facilities-based providers of wireline Internet access service were no longer required to offer the transmission component of the service on a common carrier basis and were no longer required to contribute on that transmission service. To the extent, however, that a telecommunications carrier chooses to offer stand-alone broadband transmission service on a common carrier basis, that service offering continues to be subject to USF contributions requirements. *See id.* at 14916, para. 113 n.357.

²⁵ CTE Request for Review at 2.

²⁶ *Id.* at 4; Letter from Tamar E. Finn, Counsel for CTE Telecom, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Apr. 3, 2009) (CTE Apr. 3, 2009 *Ex Parte* Letter). *See* http://transition.fcc.gov/wcb/armis/carrier_filing_history/COSA_History/cwte.htm (last visited Dec. 5, 2012) (providing corporate information for CTE and its affiliates). Line sharing generally describes the ability of two different service providers to offer two services over the same line, with each provider employing different frequencies to transport voice or data over that line. *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third (continued...)

independent auditor issued a report finding that CTE had improperly reported revenues for digital subscriber line (DSL) services as information services revenues in 2005, based on the auditor's review of CTE's ledger that recorded certain revenues as "DSL" accounts.²⁷ USAC later adopted the audit report findings and directed CTE to re-file its 2006 FCC Form 499-A consistent with those findings.²⁸

10. On August 18, 2008, CTE requested that the Commission review USAC's decision.²⁹ CTE argues that revenues from the service in question were information services revenues from services provided through its epix Internet Services business unit, and that 2005 revenue from these services were exempt from USF contribution requirements.³⁰ CTE further asserts that it does not offer or provide broadband transmission as a stand-alone product or service and that the broadband transmission component of its Internet access service was purchased from an affiliated carrier.³¹ CTE requests that the Commission direct USAC to refund the monies the Company paid into the Fund based on the reclassified revenue in its re-filed 2006 FCC Form 499-A.³²

III. DISCUSSION

11. Based on the record before us, we agree that CTE's provision of retail Internet access service was not subject to universal service contribution requirements.³³ We therefore allow CTE to revise and re-file its 2006 FCC Form 499-A consistent with this order, and we direct USAC to accept such filing and to refund any overpayments.³⁴

12. The Commission has long recognized that revenues from information services are not subject to universal service contribution requirements.³⁵ ISPs that own no telecommunications facilities and lease transmission from telecommunications carriers in order to provide information services to end users do not contribute directly to universal service, but they may be subject to indirect contributions to the extent the underlying telecommunications carrier providing the leased telecommunications services chooses to pass through its contribution costs.³⁶

13. In the instant matter, USAC adopted the finding of the independent auditor that certain revenue on CTE's books of account labeled "DSL" were incorrectly reported as enhanced service (*i.e.*,

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Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*subsequent history omitted*).

²⁷ CTE Request for Review at 2.

²⁸ *See id.* at 3 (citing Independent Auditor's Report of Contributor Revenue Compliance on CTE Telecom, LLC (USAC Audit No. CR2006CP071) (Dec. 31, 2005) (confidential)).

²⁹ *See* CTE Request for Review.

³⁰ *See id.* at 6.

³¹ CTE Apr. 3, 2009 *Ex Parte* Letter at 1.

³² CTE Supplement to Request for Review at 3.

³³ CTE also was a provider of long-distance telecommunications services during the relevant time period. CTE Request for Review at 7. Revenues associated with its long-distance service are not at issue here. As previously noted, a provider may be considered both a telecommunications provider and an information service provider in connection with separate offerings. *See supra* para 6.

³⁴ We note that CTE complied with the Audit Report by re-filing its 2006 FCC Form 499-A and paying the additional universal service contribution assessment. CTE Supplement to Request for Review at 2.

³⁵ *See Report to Congress*, 13 FCC Rcd at 11503, para. 3.

³⁶ *See id.* at 11528, para. 55 and n.133; *Wireline Broadband NPRM*, 17 FCC Rcd at 3052, para. 74; 47 C.F.R. § 54.712(a).

information service) revenues instead of telecommunications revenues.³⁷ CTE explains that, although the general ledger accounts bore a particular label in part because of the DSL transmission input to its broadband Internet access service, the label does not accurately reflect the services from which the revenues in the account were derived.³⁸ CTE further explains that these revenues were derived from CTE's Internet access service that was provided using DSL transmission obtained from an affiliated provider.³⁹

14. For universal service contribution reporting purposes, the revenues should be reported based on the legal classification of the associated service. To the extent the revenues at issue were derived from CTE's provision of Internet access service, the revenues were not subject to universal service contribution requirements. We therefore conclude that the audit report incorrectly sought to reclassify CTE's broadband Internet access service revenue as assessable revenue. Accordingly, we find that USAC erred when it adopted this audit report finding and directed CTE to re-file its 2006 FCC Form 499-A.

15. Having concluded that CTE did not have a obligation to contribute to the Fund based on its provision of broadband Internet access service, we reiterate that during the relevant time period (calendar year 2005), the carrier that provided the underlying broadband transmission component to CTE was obligated to contribute on revenues associated with that broadband transmission service.⁴⁰ Therefore, CTE's affiliate, Commonwealth Telephone Company, that provided the underlying broadband transmission component to CTE was required to contribute to the Fund on the revenues associated with the broadband transmission service provided to CTE.⁴¹

16. We cannot tell from the record whether the underlying carrier did so in the instant matter. We therefore direct USAC to investigate CTE's underlying carrier, Commonwealth Telephone Company, to determine whether all required contributions were paid into the Fund.⁴²

17. We also remind filers that whether the underlying transmission is provided by an affiliated or unaffiliated provider does not change that provider's obligation to contribute to the Fund. As discussed above, Commission precedent requires USF contributions from all telecommunications carriers providing stand-alone broadband transmission services on a common carrier basis to affiliated or unaffiliated Internet service providers.⁴³

³⁷ CTE Request for Review at 2.

³⁸ *Id.* at 3.

³⁹ *Id.*; CTE Apr. 3, 2009 *Ex Parte* Letter at 1. CTE further explains that it does not offer stand-alone DSL transmission service. CTE Request for Review at 3.

⁴⁰ See *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14915-16, para. 113; *Report to Congress*, 13 FCC Rcd at 11528, para. 55 and n.133; *Wireline Broadband NPRM*, 17 FCC Rcd at 3051,3052, paras. 72, 74. See also *Universal Service Contribution Methodology; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, WC Docket No. 06-122, Order, 25 FCC Rcd 4652, 4655, para. 8 (Wireline Comp. Bur. 2010).

⁴¹ We note that if the provider of the broadband transmission component passed through its contribution obligation, the Internet service provider paid indirectly. See *Report to Congress*, 13 FCC Rcd at 11528, para. 55 and n.133; *Wireline Broadband NPRM*, 17 FCC Rcd at 3052, para. 74.

⁴² The Commission recently released the *Wholesaler-Reseller Clarification Order*, WC Docket No. 06-122, Order, FCC 12-134 (rel. Nov. 5, 2012). Whether Commonwealth Telephone Company has an obligation to contribute on the broadband transmission component should be evaluated consistent with the standards articulated in that order.

⁴³ *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14915-16, para. 113.

IV. ORDERING CLAUSES

18. 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 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, that (1) the Request for Review filed by CTE Telecom, LLC IS GRANTED, and (2) the Universal Service Administrative Company SHALL ACCEPT CTE Telecom, LLC's 2006 FCC Form 499-A, revised consistent with the terms of this order, if such revisions are filed within 60 days of this order.

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau