

# **Universal Service Contributions:**

**Avoiding Costly USF Errors, Understanding  
Proposed Changes to the FCC Form 499  
Instructions and Preparing for USAC Inquiries**

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December 11, 2012

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# Outline

- **Wholesaler Reseller Clarification Order**
- **Proposed Changes to Form 499-A Instructions**
- **USAC Inquiries and Audits**
- **Q&A**

# 2012 Wholesaler-Reseller Clarification Order

- November 2012 *Clarification Order* settled numerous carrier petitions and clarified several questions related to wholesaler/reseller contribution requirements for USF.
- For the purpose of contributions, a reseller is 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.”

## 2012 Wholesaler-Reseller Clarification Order (continued)

- Commission confirmed that it had not adopted any additional requirements for wholesalers to verify USF contributions have been made by resellers.
  - However, wholesalers are reminded that they must satisfy *both* prongs of the reseller definition to have a “reasonable expectation” that the revenue was wholesale.
  - Otherwise, wholesaler must include those revenues as part of their USF contribution base.

## 2012 Wholesaler-Reseller Clarification Order (continued)

- Commission also “clarified” that its original intent was to require resellers to contribute on each specific service offering that incorporates a wholesale input.
  - For example, carriers who purchase a “DS1 line” in order to provide only broadband Internet service do not meet the reseller definition.
  - But, a carrier who purchases a “DS1 line” and incorporates it into a telephone service (and contributes on revenue from that service), will be a reseller even if broadband Internet is provided over the same line.

# 2012 Wholesaler-Reseller Clarification Order (continued)

- Through December 31, 2013, contributors (wholesalers and resellers) may meet the reasonable expectation standard using the “entity” certification language currently in the 499-A instructions.
- Clarified that wholesalers may not rely upon retroactive certifications to demonstrate they had a reasonable expectation at the time they filed; however such certifications may be used to demonstrate the reseller did actually contribute.

# 2012 Wholesaler-Reseller Clarification Order (continued)

- Wholesale provider may demonstrate reasonable expectation if:
  - it follows all of the requirements from the 499-A Instructions (safe harbor); or
  - USAC finds that the provider has met the standard using “other reliable proof,” including reseller certificates with alternative language.
    - Provider burden to meet clear and convincing evidence standard.
    - USAC will conduct a case by case analysis of compliance with this requirement.

# 2013 Form 499-A Instructions

- Proposed new instructions released November 23. Comments will be due 30 days after publication in Federal Register
- Change in reseller certification language and process
- More specific language about reporting of specific products
- Change to reporting of interstate portion of local service
- Change to Mergers and Acquisition language



# Change in Reseller Certification

- Certification is more detailed to capture the language from the Clarification Order.
- Wholesalers will have the option of requiring their reseller to certify the percentage of revenues that are incorporated into products on which they contribute.
- Instructions make clear that the language in the instructions must be used in order to rely on the certification.

# Change in Reseller Certification Process

- Certification that complies with the instructions deemed reasonable expectation under Clarification Order.
- If a wholesaler does not have a certificate it must find other way to establish reasonable expectation that the “reseller” definition can be met.
- Unclear how, or even if, such a reasonable expectation could be created without a certificate.
- Current 499 Filer database not likely to be useful going forward.

# Specific Instructions on Certain Products

- The instructions have made more explicit the treatment of certain products, partly to address the Clarification Order and partly to address some ongoing uncertainty.
- Added instruction stating that common carrier special access sold to retail broadband Internet access provider should be reported as end user revenue.

# Specific Instructions on Certain Products (con't.)

- Per-minute switched access, reciprocal compensation, payphone compensation, USF support, roaming fees are always wholesale and there is no requirement to retain certifications for this kind of revenue.
- Specifically noted that “charges related to originating or terminating VoIP PSTN traffic” are included within line 304, which reports revenues for originating and terminating calls.

# Interstate Portion of Local Service

- The instructions have required carriers without a SLC to allocate a portion of local revenue to interstate jurisdiction.
- This issue has come up in multiple audits and been a problem for multiple CLECs, and there was minimal guidance on what was the appropriate amount to allocate.

# Interstate Portion of Local Service (con't.)

- New Instructions delete that requirements and specifically say that non-incumbent LECs who recover the interstate portion of local service through a separate non-traffic sensitive charge must treat that revenue as interstate.
- CLECs without such a charge will not have to allocate a portion of local service to interstate revenue.

# Mergers and Acquisitions

- Current instructions state that anytime a carrier buys the assets of another contributor the buyer ***must*** include the revenue for the prior year - including the period before the transaction - on the buyer's Form 499-A.
- The reality has been that if the seller files a final 499-A post transaction USAC accepts that filing and accepts the Buyer reporting only post-transaction revenue of the purchased assets.

# Mergers and Acquisitions (con't.)

- The new instructions state that the successor has the responsibility to ensure that all revenues are reported but acknowledges that this might be through a combination of forms from both parties.
- This change is consistent with our long-standing approach to dealing with USF in transactions, to ensure that the transaction documents include specific representations on how the seller will meet these obligations.



# Miscellaneous Changes

- Added definition of affiliate.
- Added ARCs to list of revenue reported in line 405.
- Clarified customer billing address may be used to allocate revenues to regions for LNP contributions.
- Increased contribution factor used to determine *de minimis* status from 16.7% to 19.3%.

# Preparing for USAC Inquiries and Audits

- Record keeping
- Stakeholders
- Procedures
- Classification of new services, review of existing
- Billing USF fees
- Regular updates
- Internal audits

# USAC Inquiries

- “Automated” emails
  - Year-over-year decrease (or increase) in revenues on specific line
- Tailored emails
  - Private line jurisdictional methodology
- Letters
  - Information on products included in line 418
- Responses
  - Request extension if necessary
  - Require regulatory review

# USAC Audits

- Audit request package
- Contributor response
- Entrance conference
- USAC site visit
- Report testing
- Exit conference
- Draft audit findings
- Company response
- USAC management response

# USAC Audits (cont'd)

- USAC Board approval
- FCC appeal
- Refile 499
- Invoicing

# Questions?

Please submit questions using the Q&A tool on your screen.

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