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UPDATE ON THE FCC'S UNIVERSAL SERVICE FUND CONTRIBUTION OBLIGATIONS

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Agenda

- Is the Universal Service Fund (USF) Fee Constitutional?
- USF Contribution Challenges
- Private Line and Broadband Reporting
- Internal Processes and Documentation
- Reporting to the Universal Service Administrative Company (USAC)

Is the USF Fee Constitutional?

- Consumers' Research, a non-profit advocacy group, filed multiple lawsuits against the USF contribution assessment. Consumers' Research claimed:
 - Congress' delegation of authority to the FCC for the assessment of the fee was unconstitutional, and
 - FCC's use of USAC to calculate and administer the fee was unconstitutional
- Lawsuits were filed in the Fifth, Sixth and Eleventh Circuits
 - Oral arguments were held in the Fifth Circuit in December 2022 and are scheduled in the Sixth Circuit in March 2023
- Given the current status of the cases, if there is a circuit split and if the Supreme Court accepts the case, we expect it would not be heard by the Court for another 18 to 24 months

Delegation to the FCC and USAC

- FCC requested dismissal of the lawsuits for failure to file a timely appeal
- Delegation to the FCC will be reviewed under the “intelligible principle” doctrine
 - The FCC argues that section 254 provides a more than sufficient intelligible principle
 - The Supreme Court has only struck down laws on nondelegation grounds twice – both in 1935
- FCC delegated the calculation and collection of the fee to the Universal Service Administrative Company (USAC), a private non-profit corporation
 - FCC rules make clear that USAC as the administrator cannot make policy
 - The FCC also determined the revenue reporting rules and formula for USF contributions, retaining discretion to alter the result of the formula in any particular quarter

USF Contribution Challenges

- Contribution methodology requirements are cobbled together based on a variety of FCC orders over 25 years
- “Rules” are based in large part on application rather than specific regulations:
 - Worksheet instructions
 - USAC audits
 - Appeal decisions
- We will review:
 - Private Line and Broadband Reporting
 - Internal Processes and Documentation
 - Reporting to USAC

Private Line and Broadband Reporting

- Is it broadband internet access service or is it data transport?
 - Broadband internet access is exempt from USF contributions
 - The provision of broadband transmission on a private carriage basis to providers of broadband internet access services is exempt
 - Data transmission may be assessable
 - Services like wide area networks and private lines that provide interstate transmission services are assessable
 - FCC not has not provided clear guidance on SD-WAN
- Jurisdiction: If 10% or less of the traffic is interstate, the circuit is not assessable for USF but should be reported
 - Circuit with end points in the same state can still be interstate and subject to USF
 - Have clear procedures and documentation to classify jurisdiction based on traffic usage
 - Best practice is to obtain customer certifications on jurisdiction

Private Line and Broadband Reporting (cont.)

- MPLS and VPN
 - MPLS is a software used to route traffic using the shortest path based on “labels” and generally used on private wide area networks
 - MPLS is listed as a type of telecom in the Form 499 Instructions
 - FCC will classify as telecom or information service based on service characteristics
- VPN’s classification is unknown and is an open item at the FCC
 - Companies may choose how they want to treat the revenue

Internal Processes and Documentation

- Correct identification of products
 - For non-telecom products, maintain detailed descriptions and network engineering information when possible
 - A regulatory professional should review and provide additional justification for any “murky” products
 - Map products to accounting
 - Maintain a billing/GL to Form 499 mapping document

Internal Processes and Documentation (cont.)

- Document revenue reporting methodology (including queries used to pull revenue reports), jurisdictional estimates and allocations of bundled revenue
- Establish processes and retention for annual reseller exemption and jurisdictional certificates
 - For reseller certificates, check FCC Filer ID lookup and keep a record
- Establish internal checks and balances
- Do not forget to update with deployment of new services and systems
- Contributor is still responsible for accurate reporting even if the Form 499 filing is outsourced

Reporting to USAC

- Report all the revenue!
 - The Form 499 should align with supporting documentation from billing and tax reports
- Correct USF and tax treatment on customer invoices
 - Annually review invoices charges listed as “FCC” or “Federal” and ensure its reported as interstate or correct description on invoice
 - Don’t over collect USF fees – compare USF collections with amount reported
- ILECs: Be sure to report a portion of local revenue as interstate
 - USAC will be closely checking reporting on the 2024 Form 499 filing

Reporting to USAC (cont.)

- Interaction between USAC and TRS
 - Any Form 499 revisions submitted to USAC are transmitted to TRS and other fund administrators
 - No established appeal process or procedures to fix TRS errors
- Reporting of USF disbursements
 - Monies received from non-discounted portion of USF program must be reported
 - Don't forget to report ACP, ECF and other appropriated funding
- Reminder: Keep your USAC contact information up to date
 - USAC and FCC can issue late fees and penalties for non-responsiveness

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Biography



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Tamar Finn has 25 years of experience representing clients on telecommunications issues before the Federal Communications Commission (FCC), state public utility commissions, courts and Congress. She also advises carriers, private equity firms and venture capital funds with respect to investments in the telecommunications, media, and technology (TMT) sectors.

Tamar advises clients on all aspects of universal service, including contributions to the USF and distributions from federal USF and other broadband funding programs, including E-rate. She assists clients with developing basic regulatory compliance programs, prosecuting appeals before both USAC and the FCC, advocating policy changes, and defending companies under audits and investigations for possible violations of laws and regulations.

Biography



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Kimberly Morning advises clients on the Universal Service Fund (USF), including the E-Rate, Rural Health Care, High Cost and Lifeline programs as well as USF contributions.

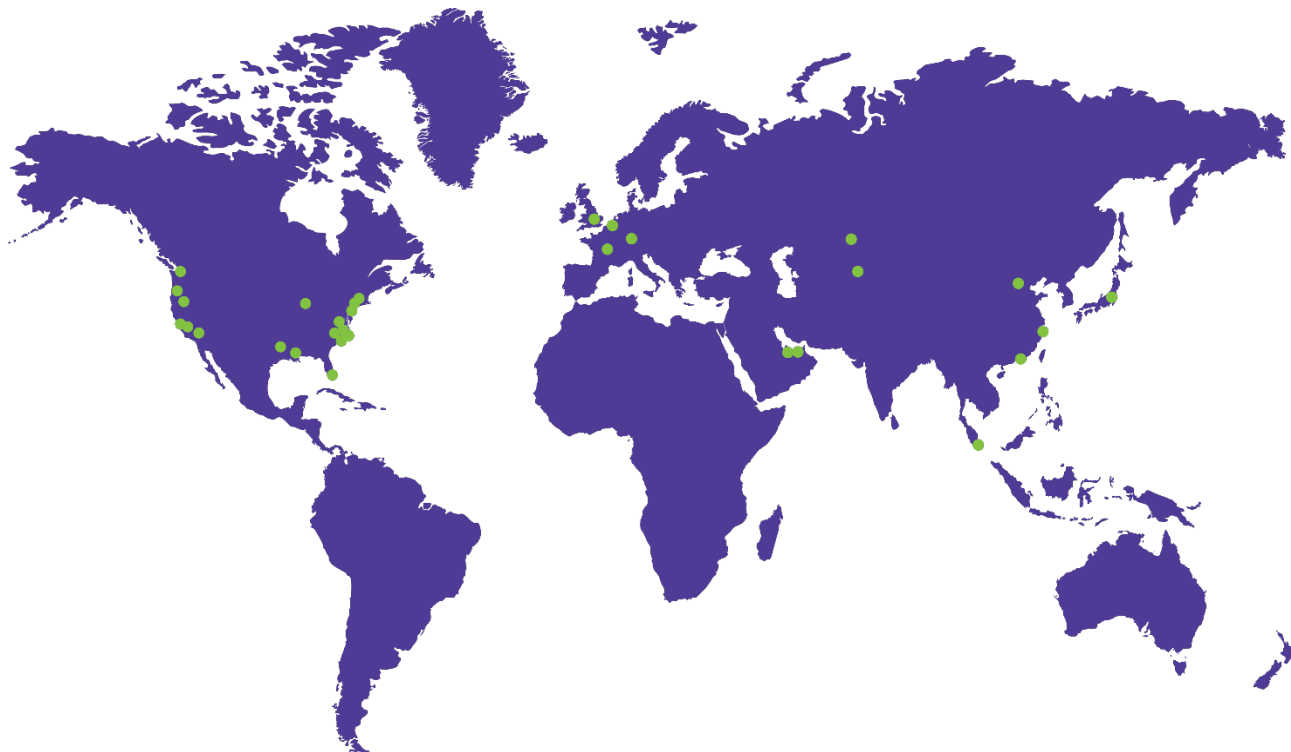
She assists clients with avoiding USF compliance issues, advocates for policy changes and improvements before the Universal Service Administrative Company (USAC) and the Federal Communications Commission (FCC), and defends companies against audits and investigations. Prior to joining Morgan Lewis, Kim was the acting vice president and general counsel of USAC.

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