USF Tracker - September 30, 2020

Thomas W. Cohen, Henry T. Kelly, Chip Yorkgitis, Michael R. Dover, Winafred R. Brantl

September 30, 2020

Recent News

General

- On September 14, 2020, the FCC's Office of Managing Director (OMD) issued a Public Notice (DA 20-1075) announcing that the proposed universal service contribution factor for the fourth quarter of 2020 will be **27.1 percent**. This is the highest USF contribution rate ever and the second consecutive quarter that the rate exceeded 25%.

- On September 4, 2020, the FCC's Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) released, via Public Notice (DA 20-1037), results from the Supply Chain Security Information Collection, which was conducted in response to the FCC's 2019 *Supply Chain Order*. The FCC directed WCB and OEA to conduct information collection to identify carriers with Huawei and ZTE equipment and services in their networks. The Public Notice reports that 51 USF filers identified at least some covered equipment in their networks and estimated that over $1.8 billion would be required to replace the equipment.

- On September 3, 2020, the WCB released a Public Notice (DA 20-1019) with additional information concerning the Connected Care Pilot Program and guidance to assist prospective applicants in preparing to apply for the Pilot Program. The Connected Care Program will make available up to $100 million dollars, over a three year period, to defray the costs of broadband connectivity and other connected care information services for eligible health care providers (HCP). The FCC has not yet set a deadline for Connected Care Program applications but issued the recent Public Notice to enable HCPs to begin preparing to apply once the application filing deadline is established.

- On August 13, the FCC's WCB issued a Public Notice (DA 20-880) seeking nominations for six board member positions on the Universal Service Administrative Company board of directors. Nominations are due by **October 13**.

- On July 31, the FCC released an Order (FCC 20-104) denying two petitions from inmate calling services providers to waive universal service contribution obligations. Last year, Network Communications International Corporation (NCIC) petitioned the FCC to forbear from contributing to the USF a portion of their end-user revenues with respect to services it provides in jails and prison and, more recently, Securus Technologies, LLC sought a waiver from contributions obligations for all inmate calling services providers during the COVID-19 pandemic. The Commission concluded that an exemption would be contrary to the broad funding base for the USF, would not be competitively neutral and otherwise would not serve the public interest.

- On August 31, the WCB issued its monthly Public Notice (DA 20-964) entitled Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company. As its title suggests, the document announces summary dispositions of pending appeals, requests for review, requests for waiver, and petitions for reconsideration stemming from the actions of the Universal Service Administrative Company (USAC). This Public Notice features actions related to Contribution Methodology, and the E-Rate and Rural Health Care programs.

Lifeline

- On August 31, the WCB issued a Public Notice (DA 20-995) seeking comment on a petition filed by the National Lifeline Association, requesting waiver of the scheduled December 1, 2020 increase in the Lifeline mobile broadband minimum service standard (MSS) and decrease in the Lifeline support amount for voice service. Comments were due September 14 and reply comments were due September 2**1**.

- On August 17, the WCB released an Order (DA 20-891) extending prior waivers of certain Lifeline program rules for subscribers residing in rural areas on Tribal lands through November 30, 2020, in light of the ongoing pandemic. The waivers apply to rules governing recertification, reverification, general de-enrollment, subscriber usage, income documentation, and documentation requirements.

- On July 31, the WCB issued a Public Notice (DA 20-820) announcing the updated minimum service standards for speed and data capacity for Lifeline-supported service. Beginning December 1, 2020, the Lifeline minimum service standard for fixed broadband speed will be 25 Mbps downstream and 3 Mbps upstream. A Petition for Waiver of these standards is pending before the Commission.

High Cost/Connect America Fund (CAF)

- On September 14, 2020, the WCB issued a Public Notice (DA 20-1076) seeking comment on a petition filed by Hawaiian Telecom requesting waiver of sections 54.310 and 54.316 of the FCC's rules. The waiver would enable Hawaiian Telecom to demonstrate compliance with its Connect America Fund Phase II buildout obligations for the year ending December 31, 2019, and subsequent years, for 523 locations destroyed or isolated by Kilauea Volcano eruptions.

- On September 8, 2020, USAC released version 3.0 of the CAF Map, an interactive online map that shows the impact of the Connect America Fund (CAF) program on broadband expansion across rural America. The CAF Map is a key source of information about CAF-supported broadband deployment for consumers, policymakers, researchers and others.

- On August 27, the WCB released an Order (DA 20-973) awarding Slic Network Solutions $2.4 million in CAF Phase II support. The award is part of the $3.6 million that was previously awarded to Mohawk Networks LLC (Mohawk) in conjunction with Phase 3 of New York State's New NY Broadband Program. Mohawk eventually withdrew its application because it “could not complete its Phase 3 project due to unforeseen problems.”

- On August 26, the WCB released an Order (DA 20-959) denying three petitions for waiver of the study area boundary freeze in North Dakota. The WCB denied Reservation Telephone Cooperative and Qwest Corporation d/b/a CenturyLink QC’s joint request to expand RTC’s Alexander exchange and two petitions from West River Telecommunications Cooperative’s to expand its Elgin and St. Anthony’s exchanges.

- On August 24, the WCB released an Order (DA 20-929) denying a request by Blackburn Technologies II, LLC (Blackburn) to waive the requirement that only facilities-based providers offering voice and broadband service to end users are eligible for support from stage 2 of the Uniendo a Puerto Rico Fund and Connect USVI Fund. The Order notes that Blackburn “wishes to use Stage 2 support to further expand its wholesale network, rather than to serve Puerto Rican consumers that need broadband connections.”

- On August 14, the WCB issued a Public Notice (DA 20-884) providing an updated report showing the legacy support amounts associated with competitive eligible telecommunications carriers offering service to fixed locations. AT&T Corp. was inadvertently omitted from the previous version of the report.

- On August 6, the WCB issued a Public Notice (DA 20-844) announcing that the application window for the Stage 2 competitive process of the Uniendo a Puerto Rico Fund and the Connect USVI Fund opened on August 6 and closed on September 3. In the PR-USVI Stage 2 Order, the FCC allocated budgets of $504.7 million in Stage 2 fixed support to the Commonwealth of Puerto Rico and $186.5 million in Stage 2 fixed support to the U.S. Virgin Islands over a 10-year period.

- Also on August 6, the WCB released an Order (DA 20-838) addressing issues raised on reconsideration by parties related to Stage 2 and a Public Notice (DA 20-839) with an updated list of the eligible minimum geographic areas and associated annual reserve prices, and location counts.

- On August 5, the WCB released an Order (DA 20-837) denying two petitions requesting waiver of the March 1, 2019 deadline to upload and certify geocoded location information data with USAC through the High Cost Universal Broadband portal.

Schools and Libraries (E-Rate)

- On September 16, 2020, the WCB directed the Universal Service Administrative Company (USAC) to open a second funding year 2020 filing window, allowing E-Rate program participants to request additional funding to purchase more bandwidth needed to meet the unanticipated and increased demand for e-learning during the pandemic. E-Rate program participants will be permitted to request additional funding for this limited purpose without having to undergo a new competitive bidding process. This window opened on September 21, 2020 with the publication of the Notice in the Federal Register and will close on **October 16, 2020**.

- On September 3, 2020, the WCB extended waivers of the Rural Health Care (RHC) and E-Rate program gift rules through December 31, 2020. The FCC previously waived gift rules applicable to both programs to assist rural health care providers and schools and libraries affected by the pandemic by allowing them to accept free upgrades to connections, equipment, and other services. The WCB also waived the previously extended RHC deadline for responding to information requests from USAC through December 31, 2020. These waivers were set to expire on September 30, 2020.

- On August 17, the WCB released an Order (FCC 20-113) granting Sioux Falls School District's (Sioux Falls) E-Rate Application for Review. Sioux Falls made an error on its funding year 2016 application by entering the wrong dollar amount in a field that it misinterpreted. The WCB noted that Sioux Falls made a correctable clerical error that USAC had several opportunities to fix before Sioux Falls resorted to filing its late-filed appeal with the FCC.

- On August 6, the WCB released an Order (DA 20-845) waiving the Form 471 deadline for those E-rate applicants that were affected by the pandemic and submitted their applications within 60 days of the close of the filing window.

Rural Health Care

- On September 16, 2020, the WCB's Telecommunications Access Policy Division (TAPD) released an Order (DA 20-1092) waiving the RHC Program's Healthcare Connect Fund invoice filing deadline in to provide relief to applicants and service providers who received funding year 2019 funding commitment letters (FCLs) after or within 180 days of the invoice filing deadline. The Order directs USAC to set a new invoice filing deadline of the later of 180 days from the release date of this Order or 180 days from the issuance of an FCL.

- On September 15, 2020, the TAPD released an Order (DA 20-1085) denying a request filed by Windstream Communications, LLC (Windstream) and a joint request filed by ABS Telecom LLC and Gary Speck (collectively, ABS), seeking review of decisions made by USAC under the RHC program. The TAPD also denied a request filed by Center-West Austin Street, Trinity Valley Community College, and The University of Texas Health Science Center at Tyler (on behalf of the East Texas Interactive Healthcare Network-Andrews Center (collectively, UTHSCT) seeking a waiver related to the same USAC decisions. In its decisions, USAC denied UTHSCT's requests due to the business relationship between UTHSCT's consultant (i.e., ABS) and selected service provider (i.e., Windstream) which they say created a conflict of interest and an unfair competitive bidding process.

- On September 3, 2020, the WCB extended waivers of the Rural Health Care (RHC) and E-Rate program gift rules through December 31, 2020. The FCC previously waived gift rules applicable to both programs to assist rural health care providers and schools and libraries affected by the pandemic by allowing them to accept free upgrades to connections, equipment, and other services. The WCB also waived the previously extended RHC deadline for responding to information requests from USAC through December 31, 2020. These waivers were set to expire on September 30, 2020.

USF Appeals Tracker

Kelley Drye's Communications group prepares a comprehensive summary of pending appeals and guidance requests before the FCC relating to USF contributions issues. Due to the number of appeals and the FCC's routine disposition of them, appeals relating to the imposition of late filing fees and petitions seeking waivers of the quarterly Form 499 revision deadlines are not included in this summary.

This list covers appeals filed on or after January 1, 2016. Pending appeals filed before January 2016 are not included.

Number of Appeals Pending	**New Appeals Filed**	**Contribution Questions Pending**
14	*None*	• Private line services (10%) rule • Systems integrator exemption • Use of safe harbors/traffic studies

- Jurisdiction (international calls)
- Wholesale/resale classification
- Private carriage
- LIRE exemption

Dispositions and Other News

FCC Circulates XO Communications Services, Inc. and TDS Metrocom, LLC Appeals

On July 24, 2020, the Federal Communications Commission circulated two appeals before the full Commission: XO Communications Services, Inc.’s Request for Review (filed May 1, 2017) and TDS Metrocom, LLC’s Application for Review (filed May 1, 2017). The items remain on the list as of this update and no further action has been taken. Both deal with jurisdictional classifications (private line) and full descriptions of each petition can be found below.

Pending Appeals

1. Comspan Communications, Inc. **Primary Issues: Form 499-A deadline**

- Petition for Waiver (filed April 6, 2020).
- Comspan Communications, Inc. (Comspan) requests that the Federal Communications Commission waive its one-year revision deadline for FCC Form 499-A so that the company may resubmit its 2016 and 2017 Form 499-As. According to Comspan, the former President and Chief Operating Officer of the company filed fraudulent forms for those years and intentionally concealed those acts from Comspan management. The petition states that Comspan, upon learning of the fraud, moved quickly to speak with the relevant officials and later disputed the collection notices from the Department of the Treasury. The Commission has recalled those notices and Comspan says that the petition for waiver is their only available remedy.

***2. XO Communication Services, LLC*. Primary Issues: Jurisdictional classifications (private line)**

- Request for a Review of Decision of the Universal Service Administrator (filed October 16, 2019).
- XO Communication Services (XOCS) requests that the Federal Communications Commission reverse the August 15, 2019 decision of the Universal Service Administrative Company (USAC) finding that both XOCS' 2008 Form 499-A and its subsequent documentation are insufficient in proving that the subject private lines did not carry more than 10 percent interstate traffic and are thus subject to interstate revenue classification. XOCS disputes USAC's interpretation of the Wireline Competition Bureau's 2017 *Private Line Order* and reaffirms its opposition to the Bureau's order itself. In particular, XOCS contests USAC's "negative inference" that a supposed lack of evidence proving XOCS' private lines did not serve more than 10 percent interstate traffic is proof that "all of the subject revenue was interstate in nature." Additionally, XOCS

requests that, where USAC's findings are in line with the Ten Percent Rule, the Commission grant XOCS a waiver "because of the widespread confusion regarding the private line rule that preceded the [Wireline Competition] Bureau's order."

- XOCS' May 1, 2017 application for review that challenges the Wireline Competition Bureau's 2017 *Private Line Order*, which is covered below, remains pending. The USAC inquiry had proceeded despite the application for review.

3. *BA Telecom, LLC*. Primary issues: Limited International Revenue Exemption

- Request for Review of a Decision of the Universal Service Administrator (filed September 27, 2019).
- BA Telecom, LLC (BA) requests that the Wireline Competition Bureau (Bureau) review USAC's denial of their invoice appeal. BA disputes USAC's finding that, because the company's revised 2017 and 2018 Form 499-A reports identify the same holding company as UVNV, Inc., a wireless reseller, the two companies' interstate and international end-user telecommunications revenues must be combined, resulting in BA losing its LIRE qualification. BA argues that USAC's decision is at odds with the FCC's intent in Section 54.706(c), the Fifth Circuit Court of Appeals 1999 ruling in *Texas Office of Public Utility Counsel v. FCC*, the "basic principles of statutory construction,", and BA's due process rights.

4. *Tata Communications, Inc.* Primary issues: Limited International Revenue Exemption

- Petition for Waiver (filed March 29, 2019).
- In its petition, Tata asks to continue contributing to USF solely on the basis of its interstate end-user telecom revenues, thereby excluding international revenues from assessment. Tata's contributions are already based on interstate revenues alone, pursuant to the Limited Interstate Revenue Exemption (LIRE), but it seeks to extend this exemption through a waiver of Commission rules. Tata believes that recent changes to its jurisdictional mix will change in a way that would preclude Tata from the LIRE. Under the LIRE rules, if less than 12% of a carrier's combined interstate and international revenues is derived from interstate traffic, that carrier is exempt from contributing based on international revenues.
- If the company were forced to contribute on the basis of all revenues, claims Tata, it would amount to a "draconian penalty" that exceeds Tata's total interstate telecom revenues. According to Tata, the FCC should waive the rules and extend its exemption because such a dramatic increase in contributions would violate Section 254(d) of the Communications Act and have deleterious effects on the public interest, including undermining competition in the interstate telecommunications marketplace. The Commission has previously encouraged carriers faced with this massive contribution spike to file petitions for waiver—Tata is now taking the Commission up on its offer.

5. *Gtek Computers and Wireless, LLC*. Primary issues: Systems integrator exemption.

- Request for Review and Contingent Request for Waiver (filed Sept. 16, 2016).
- Renewed Request for Review and Contingent Request for Waiver (filed Feb. 22, 2019).

- Gtek seeks to review USAC's denial of its appeal to cancel the sanctions, interest, and penalties imposed for its failure to file a Form 499-A for 2010-2015. Gtek argues that the levying of sanctions was improper and erroneous because Gtek is a systems integrator that derives less than five percent of its revenue from the resale of telecommunications. Thus, Gtek asserts, it is qualified for the systems integrator exemption and is not required to file a Form 499-A. Alternatively, Gtek requests a waiver in light of its reliance on the Form 499-A instructions, the FCC's longstanding systems integrator exemption policy, and the fact that the sanctions would surpass the revenue Gtek derived from providing interconnected VoIP service.
- In 2019, Gtek renewed its request for cancellation of sanctions. Gtek argues that it is a systems integrator that receives less than five percent of its revenue from reselling telecommunications, and is therefore exempt from filing Forms 499-A according to the form instructions. Gtek contends USAC is trying to limit the systems integrator exemption to a subclass that offers 'legacy'-type telecommunications—a definition that Gtek contends is unsupported by any prior Commission statements or by the language in Form 499. Gtek thus asks the Commission to rule on its 2016 appeal, reverse the USAC denial, and cancel the sanctions.

6. Sprint Spectrum, L.P. **Primary issues: Jurisdictional classifications (prepaid cards), use of safe harbors.**

- Request for Review of a Decision of the Universal Service Administrator (filed December 14, 2018).
- In its request, Sprint asks that the Wireline Competition Bureau reverse USAC's conclusion that Sprint's reported allocations for bundles of telecom and non telecom services were unreasonable, and to reverse USAC's decision to reject Sprint's traffic studies. In connection with its prepaid card services, Sprint reported USF revenues as a bundled offering, using an allocation method it considered reasonable. USAC had begun an audit in September 2016 of Sprint's 2016 Form 499-A filing. In the audit, USAC concluded that Sprint did not adequately support its allocation method and instead applied the USF safe harbor of treating 100 percent of the bundled revenues as telecommunications. Additionally, USAC rejected Sprint's traffic studies to determine the jurisdiction of its prepaid services. Sprint appealed.
- In the request for review, Sprint poses two questions: first, whether USAC erred when, in assessing the allocation of revenue for one prepaid bundled offering, it applied the 100 percent telecommunications safe harbor method due to an alleged failure to retain documentation of the allocation used; and second, whether USAC erred when it retroactively created and enforced new rules regarding the sufficiency of jurisdictional documentation, of which Sprint had no notice. Sprint contends that its allocation method was reasonable, that USAC did not have a valid basis to reject the method, and that USAC applied the safe harbor method allegedly as a penalty for the failure to retain documentation of the allocation. Sprint further contends that USAC acted unlawfully in retroactively concluding that Sprint's traffic studies (which were filed regularly) were insufficient to justify the carrier's reported revenue.

***7. SLIC Network Solutions, Inc*. Primary issues: Form 499-A deadline**

- Request for Review and Consolidated Action (filed April 6, 2018).
- SLIC requests that the FCC review and reverse the decision by USAC to reject SLIC's Forms 499-

A submitted for 2014, 2015, and 2016, and that the Commission vacate the requirement that any revised Form 499-A that would yield decreased contributions be submitted by March 31 of year after the original filing due date (i.e., the one-year downward revision deadline). As a result of an error, SLIC's non-assessable revenues were incorrectly reported to USAC as assessable revenues for the years 2008 through 2016. When SLIC tried to submit revised Forms 499-A and recover its overpayments, USAC rejected the filings as untimely, citing the *One-Year Deadline Order*. Because that order is still subject to petition for reconsideration and applications for review, SLIC has submitted this request for review.

8. *Altice USA, Inc.* Primary issues: Jurisdictional classifications (private line)

- Request for Review of Decision of the Universal Service Administrator (filed February 2, 2018).
- Altice seeks reversal of USAC's reclassification of revenues from certain geographically intrastate private line services as interstate in an audit of Lightpath NJ, an Altice subsidiary. In the January 2017 audit, USAC interpreted the FCC's "Ten Percent Rule" to establish that geographically intrastate private lines are presumptively interstate, and to require carriers and their customers to furnish evidence establishing the appropriate jurisdictional allocation for private line revenue. Altice contends that this application of the Rule was incorrect and violated the prohibition against USAC's resolving ambiguities in the Commission's rules. USAC denied Altice's appeal of the audit, and, in doing so, retroactively relied on the Wireline Competition Bureau's *Private Line Order*, which offered a substantively new interpretation of the Rule for determining the jurisdictional nature of revenues associated with private line service, and created new burdens of proof and evidentiary standards for carriers. Thus, Altice requests that the Commission direct USAC to 1) reverse its audit finding and 2) not retroactively apply the *Private Line Order*.

9. *XO Communications Services, LLC*. Primary issues: Jurisdictional classifications (private line)

- Application for Review of Decision of the Wireline Competition Bureau (filed May 1, 2017).
- XO Communications Services (XOCS) asks that the Commission review the Wireline Competition Bureau's order denying several requests for review, including one by XOCS. In an audit, USAC rejected XOCS's intrastate classification of physical intrastate circuits because XOCS could not produce evidence that the traffic was <u>not</u> interstate. USAC operated on the presumption that an intrastate circuit was nonetheless interstate unless XOCS could prove that the circuit's traffic was no more than 10% interstate. In response, XOCS filed a request for review, which the Bureau denied in the 2017 *Private Line Order*. XOCS seeks review of the Bureau's decision because, XOCS argues, it is in conflict with case precedent and Commission policy. XOCS contends that the Bureau misapplied the Commission decisions establishing the Ten Percent Rule and also that the Bureau, in effect, created new standards that could not be applied retroactively.
- On July 24, 2020, the Federal Communications Commission circulated an order addressing this appeal for the Commission's consideration.

10. *TDS Metrocom, LLC*. Primary issues: Jurisdictional classifications (private line)

- Application for Review or Clarification, or in the Alternative, Request for Waiver (filed May 1, 2017).
- TDS filed an application for review of the Wireline Competition Bureau's 2017 *Private Line Order* regarding application of the Ten Percent Rule for allocating jurisdictionally mixed intrastate private lines. In its application, TDS contests USAC audit findings related to the amount of interstate traffic carried by private lines. In 2012 USAC notified TDS of its intention to conduct an audit of the company's Form 2011 Form 499-A filing. In response, TDS provided a list of private lines documenting the end points, showing that all but one had intrastate end points. TDS also furnished end user certifications collected during and after the audit period from certain 2010 private line customers. However, because TDS did not demonstrate that 10% or less of the traffic carried over its remaining end user private lines was interstate, USAC required TDS to make USF contributions on all remaining revenue reported in line 406 of Form 499-A. TDS filed a request for review of the audit report, requesting that the Commission reverse USAC's finding, which the Wireline Competition Bureau denied four years later. The Bureau instead remanded the audit to USAC to consider additional documentation. TDS Metrocom thus filed an application for review of the Bureau's order, arguing that it violates FCC precedent, is based on mistakes in fact, and violates the APA.
- On July 24, 2020, the Federal Communications Commission circulated an order addressing this appeal for the Commission's consideration.

11. *Eureka Broadband Corporation*. Primary issues: Reseller revenues

- Application for Review (filed Feb. 10, 2017).
- Eureka submits its application for review of the Commission's decision to remand to USAC Eureka's 2007 petition for reconsideration. In 2003, Eureka responded to a USAC investigation concerning missing contributions owed by Eureka, for which Eureka had been billed for USF contributions by its underlying carrier, MCI, and which MCI was supposed to remit to USAC. During its 2003 investigation, Eureka contends, USAC did not try to confirm if MCI had remitted these charges to the Fund. Instead, in 2004, USAC chose to assess upon Eureka those same charges. Thus, in 2007, Eureka filed a petition for review, which the Wireline Competition Bureau denied. Eureka shortly thereafter filed its petition for reconsideration.
- In response, after nine years, the Bureau remanded the issue to USAC for further consideration. Therefore, in this application, Eureka contends that the Bureau violated the APA and the Commission's Rules by refusing to promptly act on Eureka's earlier petitions; rendering an arbitrary and capricious decision in conflict with the directive that USF contributions are due only once with respect to any revenue stream; announcing a drastic policy change in its memorandum opinion and order, and applying that policy retroactively against Eureka; and reaching an erroneous finding as to whether the Fund had already been fully compensated USF contributions on the revenue in question.

13. *Locus Telecommunications, LLC*. Primary issues: Private carrier revenues

- Petition for Declaratory Rulings Relative to the Treatment of Private Carriage Revenues (filed Nov. 22, 2016).

- Locus seeks declaratory rulings to clarify carriers' rights relative to the treatment of private carriage revenues under federal law. Specifically, Locus requests rulings that revenues derived from private carriage offerings are exempted from non-USF Title II fees and North American Numbering Plan administration fees; that USAC's policy of sharing Form 499-A revenue data with Title II Program administrators is unlawful; and that carriers must be afforded the opportunity for redress—both retroactively and prospectively—for these Title II fees calculated on private carriage revenues.

***12. Locus Telecommunications, LLC*. Primary issues: Private carrier revenues**

- Request for Review of Decisions of the Title II Program Administrators (filed Nov. 2, 2016).
- Locus seeks review of the decisions of Rolka Loube (TRS Fund Administrator) and Neustar (administrator of the LNP funding mechanism) for assessing revenues from both common carriage offerings and private carriage offerings. Locus argues that the Form 499-A is deficient for failing to provide carriers a means to segregate private carriage revenues from common carriage revenues. Locus therefore asks that the Commission instruct the Title II Program Administrators to recognize its private carrier status and to reissue invoices as requested; direct USAC to withhold private carriage revenues from data shared with the Program Administrators; order USAC to discontinue its policy of relying on the "primary" service identified in Line 805 of Form 499-A; and provide relief as appropriate.

***14. 2009 USAC Guidance request.* Primary issues: Prepaid calling cards, Frame relay/ATM, VPN and Dedicated IP services**

- Letter from Richard A. Beldon, USAC, to Julie Veach, Wireline Competition Bureau, FCC, August 19, 2009 (received August 24, 2009).
- On August 19, 2009, USAC submitted a list of outstanding policy guidance requests which it had presented to the FCC. Of the 6 individual items on that list, 3 were requests for guidance on USF contribution matters. Specifically, these concerned reporting on prepaid card revenue; the classification of Asynchronous Transfer Mode (ATM) and Frame Relay revenue; and the classification of VPN and Dedicated Internet Protocol revenue.
- USAC requests clarification regarding the revenues to be reported by prepaid calling card providers. Prepaid cards present an issue for accurate assessment of revenue because they may be sold through a third-party distributor, sold without a face value, or sold at a discount. Further, the date on which a prepaid calling card is sold to the end-user may be ambiguous (because of sales through distributors or wholesalers), so it is unclear when a carrier should report the associated revenue. Because of the uncertainty surrounding these cards, USAC asked the FCC to identify the amount of revenue that should be reported and the date when such revenues should be counted.
- USAC also seeks advice relating to revenue from Asynchronous Transfer Mode (ATM) and Frame Relay products. In its audits of Forms 499-A, USAC found several instances where this ATM revenue was classified as "non-telecommunications" because carriers considered it derived from an information service. USAC seeks greater clarity regaring the proper classification of ATM and Frame Relay revenue.

- Finally, USAC seeks guidance on the revenue received from VPN and Dedicated Internet Protocol services. This revenue was related to data transport using IP, which, according to USAC, is similar to Private Line/Frame Relay. That revenue is supposed to be reported as telecommunications-derived, but carriers had classified IP revenues as “non-telecommunications.” USAC has requested guidance on this issue.