

**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 Universal Service Administrator by Network Enhanced Telecom, LLP)	USAC Audit CR2008CP001
)	

ORDER

Adopted: October 19, 2010

Released: October 19, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant in part a request filed by Enhanced Network Telecom, LLP (NetworkIP).¹ NetworkIP seeks review of a 2008 contributor audit decision of the Universal Service Administrative Company (USAC) finding that the majority of NetworkIP's revenue was derived from a prepaid calling card service.² USAC therefore required NetworkIP to reclassify that revenue as "prepaid calling card" revenue on Line 411 of the annual Telecommunications Reporting Worksheet (FCC Form 499-A). USAC also determined that NetworkIP had incorrectly reported revenue from certain customers that did not contribute to the universal service fund and directed NetworkIP to reclassify revenue from those customers as end-user revenue subject to universal service contribution assessment.³

2. As discussed below, we find that NetworkIP's calling card platform service is not a prepaid calling card service as contemplated by our orders, rules, and requirements. We remand to USAC the issue of whether NetworkIP incorrectly classified certain revenues as carrier's carrier revenues. On remand, we direct USAC to re-evaluate its audit conclusions in accordance with our findings below and, if USAC reclassifies any revenues associated with NetworkIP's non-contributing customers, to provide NetworkIP with detailed findings that form the basis for the reclassification. We further direct USAC to reassess NetworkIP's contribution payment obligation in accordance with any new findings and to issue new invoices or refunds as appropriate.

¹ Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP, WC Docket No. 06-122 (filed June 29, 2009) (Portions Confidential) (NetworkIP Request for Review); Letter from L. Charles Keller, Counsel for NetworkIP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-122 (dated Aug. 20, 2009) (NetworkIP Letter). We note that NetworkIP also filed a petition requesting that the Wireline Competition Bureau stay, or hold in abeyance, enforcement of payment obligations arising out of the audit's contested filings. See Network Enhanced Telecom, LLP, Petition for Stay or Abeyance Pending Commission Review (filed June 29, 2009). We deny this petition as moot.

² NetworkIP Request for Review at 4, 7–15; Independent Auditor's Report of Network Enhanced Telecom (USAC Audit No. CR2008CP001) (Confidential) (USAC Audit Report).

³ NetworkIP Request for Review at 4, 15–21; USAC Audit Report.

II. BACKGROUND

A. The Act and the Commission's Rules and Requirements

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.⁴ 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 universal service fund.⁵ The Commission further directed that contributions should be based on contributors' interstate and international end-user telecommunications revenues.⁶

4. The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms.⁷ Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) with USAC.⁸ USAC reviews these filings and verifies the information provided by the contributors.⁹ USAC also bills contributors for their universal service contributions.¹⁰

5. Prepaid Calling Card Services. Prepaid calling cards enable consumers to pay in advance for a specified amount of long distance and international calling without presubscribing to an interexchange carrier.¹¹ A calling card customer typically dials a toll free number to reach the service provider's centralized switching platform and the platform requests the unique personal identification number (PIN) associated with the card for purposes of verification and billing. When prompted by the platform, the customer dials the destination number and the platform routes the call to the intended

⁴ 47 U.S.C. § 254(d).

⁵ 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*, 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).

⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9171, para. 772; 47 C.F.R. § 54.706.

⁷ *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; see 47 C.F.R. § 54.701. (1997) (*Universal Service Second Order on Reconsideration*).

⁸ 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, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited Apr. 16 Sept. 21, 2010) (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. USAC Form 499 Filing Schedule.

⁹ 47 C.F.R. § 54.711(a).

¹⁰ 47 C.F.R. § 54.702(b).

¹¹ See 47 C.F.R. § 64.5000(a).

recipient. The prepaid calling card is then debited based on the price of the completed call.¹² Calling card services have been regulated by the Commission as telecommunications services because they provide transmission of information, without a change in form or content, for a fee directly to the public.¹³ Consistent with this classification, the Commission requires carriers to contribute to the universal service fund on the basis of revenues from prepaid calling cards.¹⁴

6. Contribution Requirements for Wholesale Carriers and Resellers. Although the Commission has 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 directly to the universal service fund.¹⁵ 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 do not earn revenues

¹² *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 02-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827, paras. 3–4 (2005) (*AT&T Prepaid Calling Card Services Declaratory Ruling*); *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7290, para. 2 (2006) (*Prepaid Calling Card Services Order*). Historically, the Form 499-A instructions described prepaid card services as follows:

Prepaid Card – provides pre-paid calling card services by selling pre-paid calling cards to the public or to retailers. Pre-paid card providers typically resell the toll service of other carriers and determine the price of the service by setting the price of the card and controlling the number of minutes that the card can be used for.

2005 FCC Form 499-A Instructions at 14; 2006 FCC Form 499-A Instructions at 13.

Effective October, 31, 2006, the Commission codified the following definitions in its rules: the term “prepaid calling card” means “a card or similar device that allows users to pay in advance for a specified amount of calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service,” and a “prepaid calling card provider” means “any entity that provides telecommunications service to consumers through the use of a prepaid calling card.” 47 C.F.R. § 64.5000. The Commission’s 2007 revisions to the Form 499-A instructions further clarified that a prepaid card provider “provides prepaid calling card services by selling prepaid calling cards to the public, to distributors or to retailers,” and “provide[s] consumers the ability to place long distance calls without presubscribing to an interexchange carrier or using a credit card.” 2007 FCC Form 499-A Instructions at 14. In 2009, the Commission updated the Form 499-A Instructions to further clarify that prepaid card providers “determine the price of the service by setting the price of the card, assigning personal identification numbers (PINs) and controlling the number of minutes that the card can be used for,” and that “[c]ompanies that do not assign PINs but rather sell cards created by others are marketing agents and do not file.” 2009 FCC Form 499-A Instructions at 14.

¹³ *AT&T Prepaid Calling Card Services Declaratory Ruling*, 20 FCC Rcd at 4827, para. 4.

¹⁴ See 47 C.F.R. § 54.706(a).

¹⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9179, para. 787. The Commission’s rules exempt certain carriers from the contribution requirement. For example, carriers are not required to contribute directly to the universal service 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*, CC Docket No. 96-45, Sixteenth Order on Reconsideration, 15 FCC Rcd 1679, 1685, para. 15 (1999). Certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers are also exempt from the contribution requirement. See 47 C.F.R. § 54.706(d). Unless a carrier meets one of the exemptions or exceptions, however, it must contribute to the universal service fund.

directly from end-users.¹⁶ Instead, the reseller that provides the service to the end-user, and thereby earns end-user revenues, will contribute directly to the universal service fund.¹⁷

7. In the *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to compute their federal universal service contributions.¹⁸ In establishing the methodology for computing contributions, the Commission further clarified the distinction between end-user revenues and carrier's carrier revenues for purposes of universal service contributions.¹⁹ To address the "double counting" issue it had identified in the *Universal Service First Report and Order*, but to ensure that all revenues were subject to universal service contribution, the Commission defined a reseller as "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."²⁰

8. The Commission also established that a wholesale carrier should have in place documented procedures to ensure that it reports as reseller revenues only revenues from those entities that reasonably would be expected to contribute to universal service.²¹ The Commission included a list of the minimum information that could be used to establish a reasonable expectation and encouraged wholesale carriers to obtain signed statements from their reseller customers that they will contribute to universal service.²² While the Commission does not dictate what procedures a carrier must implement to meet the "reasonable expectation" standard, the agency has provided guidance in the FCC Form 499-A instructions to assist wholesale carriers regarding how to satisfy the reasonable expectation standard.²³ For example, in 2002, the FCC Form 499-A instructions were updated to: (1) include the reseller's FCC Form 499 filer identification number (Form 499 Filer ID number) as part of the minimum information to be retained; (2) include a link to the Commission's list of current contributors available on the Internet; and (3) clarify that the signed statement should be certified by the reseller.²⁴ In 2004, the FCC Form 499-A instructions explicitly alerted the wholesale carrier that it was responsible for any additional universal service assessments that results if its customers are reclassified as end users.²⁵

B. Petition for Review

9. NetworkIP is a provider of computer software solutions and offers wholesale long distance capacity to prepaid card providers. NetworkIP offers to its customers a web-based software

¹⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9207, para. 846.

¹⁷ *Id.*

¹⁸ *See generally Universal Service Second Order on Reconsideration*, 12 FCC Rcd 18400.

¹⁹ *Id.* at 18497.

²⁰ *Id.* at 18507.

²¹ *Id.* at 18508.

²² *Id.* ("The procedures should include but not be limited to maintaining the following information on resellers: legal name; address; name of a contact person, and phone number of the contact person. If the underlying contributor does not have other reason to know that the entity will, in fact, resell service, then the contributor should obtain a signed statement to that effect.")

²³ The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to "waive, reduce, modify, or eliminate reporting requirements" and "require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms." *See Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18442, para. 81; 47 C.F.R. § 54.711(c). At the time of the delegation, the Wireline Competition Bureau was known as the Common Carrier Bureau.

²⁴ 2002 FCC Form 499-A Instructions at 15.

²⁵ 2004 FCC Form 499-A Instructions at 17.

solution that provides the switching and processing capability needed to manage and provision calling cards (the “platform” service).²⁶ NetworkIP’s customers can provision calling cards by combining the platform service with long distance minutes purchased from NetworkIP or from other wholesale carriers.²⁷ In a 2008 audit of NetworkIP’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), USAC found that NetworkIP’s platform service offering constitutes prepaid card services subject to universal service contribution assessment, and that a significant percentage of NetworkIP’s wholesale customers should be reclassified as end users because NetworkIP’s reseller certifications for these customers were deficient for the audit period.²⁸

10. In its request for review, NetworkIP challenges USAC’s determination that revenues from NetworkIP’s software platform service must be classified as prepaid calling card services.²⁹ NetworkIP states that its platform offering is not a finished retail product and does not have any of the characteristics of prepaid calling card service.³⁰ In particular, NetworkIP asserts that its carrier customers use NetworkIP’s platform to create their own prepaid offerings, create the PINs, and have the relationship with third-party distributors and retailers or end users.³¹

11. NetworkIP also argues that USAC erred in reclassifying its carrier’s carrier revenues as end-user revenues.³² Specifically, NetworkIP contests USAC’s conclusion that its reseller certifications were invalid solely because they did not include Form 499 Filer ID numbers or were more than one year old.³³ NetworkIP argues that the language discussing filer procedures for verifying customers’ reseller status in the Form 499-A instructions (during the relevant audit period) should be interpreted as “permissive” rather than “mandatory.”³⁴ NetworkIP further claims that neither the Commission’s rules nor any Commission order has specified what an underlying carrier must do to demonstrate that it has a reasonable expectation that its customers are resellers that contribute directly to the universal service fund.³⁵ NetworkIP asserts that, for most of its customers, it had acquired signed certifications that obligated those customers to register with the Commission and file the FCC Form 499-A with USAC, and to notify NetworkIP of any change in the customer’s status.³⁶ In addition, NetworkIP points to efforts it

²⁶ NetworkIP Request for Review at 2. According to NetworkIP, the “switching and processing capability” includes the ability to assign PINs to cards and to determine the prices of cards, the numbers of minutes they will provide, the rate at which value will be decremented, and other operational details such as potential limitations on geographic calling scope. NetworkIP states that its platform solution allows prepaid card providers to obtain through a web-based software solution capabilities that were previously available only through the purchase of a switch. *Id.*

²⁷ *Id.* at 2–3. NetworkIP charges carrier customers for usage of the platform—whether they purchase it alone or in conjunction with wholesale long distance capacity—at per-minute rates. *Id.* at 3.

²⁸ USAC Audit Report; *see* NetworkIP Request for Review at 17–18 (challenging USAC’s conclusion that NetworkIP had inadequate certifications for 85% of its wholesale customers).

²⁹ NetworkIP Request for Review at 3, 7–14.

³⁰ *Id.*

³¹ *Id.* at 8.

³² *Id.* at 15.

³³ *Id.* at 15–21.

³⁴ Specifically, the instructions stated that filers “should” collect a variety of information, including customers’ Form 499 Filer IDs. NetworkIP asserts that “the use of the permissive ‘should’ instead of the mandatory ‘must’ or ‘shall’ indicates a suggestion rather than a requirement.” NetworkIP Request for Review at 18.

³⁵ *Id.* at 15–19.

³⁶ *Id.* at 16–19. NetworkIP states that along with these procedures, it made reasonable efforts to ensure, on a going-forward basis, that the certifications remained accurate by imposing, in many cases, an affirmative duty on its customers to notify NetworkIP in the event the information on the form changed. *Id.* at 18; NetworkIP Letter at 2.

made to educate its customers about their universal service contribution obligations.³⁷ NetworkIP argues that its certification procedures were consistent with the FCC Form 499-A instructions in place during the audit period and that its certification procedures were sufficient to establish a reasonable expectation that its customers were contributors to the universal service fund.³⁸

III. DISCUSSION

A. USAC's Reclassification of NetworkIP's Revenue as Prepaid Calling Card Revenue

12. We find that NetworkIP's calling card platform service is not a prepaid calling card service as contemplated by our orders, rules and requirements. A prepaid calling card provider typically resells the toll service of other carriers and determines the price of the service by setting the price of the card and controlling the number of minutes for which the card can be used.³⁹ NetworkIP does not create or sell calling cards to end users, retailers, or its carrier customers; rather it sells minute-based access to a software platform that allows Network IP's *customers* to create and sell prepaid calling card services to end-users.⁴⁰ NetworkIP's customers combine access to the software platform with long distance minutes the customers purchase either from NetworkIP or from other long distance carriers, and NetworkIP's customers—not NetworkIP—establish the PINs, determine the price of the cards, the number of minutes they will provide, the rate at which value will be decremented and other operational details.⁴¹

13. We agree with NetworkIP that its software platform lacks several important characteristics of a prepaid calling card service, and that revenues from this service should not be reported as prepaid calling card revenue on the FCC Form 499-A.⁴² As described above, the Commission has set forth the key characteristics of the service typically offered by prepaid calling card providers, and NetworkIP has convinced us that its platform service is fundamentally different and lacks those defining characteristics.⁴³ We direct USAC to reassess NetworkIP's contribution obligation with respect to

³⁷ NetworkIP Request for Review at 20–21.

³⁸ *Id.* at 21.

³⁹ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507, App. C (defining prepaid calling card providers as entities that sell prepaid calling cards to the public or to retailers and that typically determine the price of the service by setting the price of the card and controlling the number of minutes that the card is used for); 2006 FCC Form 499-A Instructions at 13; *see also Prepaid Calling Card Services Order*, 21 FCC Rcd 7290 at 7290, para. 2 (stating that a prepaid card customer typically dials a number to reach the service provider's centralized switching platform and the platform then requests the unique PIN associated with the card for verification and billing purposes); 47 C.F.R. § 64.5000(b). In 2009, the FCC Form 499-A Instructions were updated to clarify that prepaid card providers “determine the price of the service by setting the price of the card, assigning personal identification numbers (PINs) and controlling the number of minutes that the card can be used for,” and that “[c]ompanies that do not assign PINs but rather sell cards created by others are marketing agents and do not file.” 2009 FCC Form 499-A Instructions at 14.

⁴⁰ NetworkIP Request for Review at 2–4, 7–15. NetworkIP asserts that the only retail prepaid calling card revenues it receives are from promotional cards that are given away for free and later recharged. NetworkIP states that the revenues from these cards amount to less than 1% of its total revenue and are reported as end-user revenue on Line 411 of the FCC Form 499. NetworkIP also states that it does not provide its carrier customers with the ability to place calls. *Id.* at 8; *see also* STi Prepaid Comments at 7 (stating that whether or not a carrier reports service as “prepaid calling card” revenues or “ordinary long distance” revenues on FCC Form 499 depends on whether the carrier holds itself out to the public as providing the long distance services associated with the prepaid platform).

⁴¹ NetworkIP Request for Review at 2.

⁴² *Id.* at 7–15.

⁴³ *See supra* para. 10; *AT&T Declaratory Ruling*, 20 FCC Rcd at 4827, para. 3; *see also* 2007 FCC Form 499-A Instructions at 27 (“Prepaid card includes prepaid service where the customer utilizes the service provider's

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revenue from the calling card platform service and to issue new invoices or refunds as appropriate. To the extent that NetworkIP earns revenue from ordinary toll service or any other assessable service, we direct USAC to determine, in accordance with our findings in Section III.B below, whether NetworkIP has appropriately classified, reported and contributed on such revenue.

B. USAC's Reclassification of NetworkIP's Reseller Revenue

14. We remand to USAC the issue of whether NetworkIP incorrectly classified certain revenue as carrier's carrier revenue and direct USAC to conduct further inquiry consistent with this order, as discussed below. USAC apparently directed NetworkIP to reclassify certain revenue as assessable end-user revenue because: 1) NetworkIP did not have reseller certifications from its non-contributing customers; 2) the reseller certificates that NetworkIP had from some customers were more than a year old; and/or 3) NetworkIP failed to obtain Filer ID numbers for certain customers and USAC was unable to locate a Filer ID or otherwise verify the contribution status for those customers.⁴⁴ We are unable to determine from the record the extent to which of these factors alone or in combination formed the basis for USAC's findings.⁴⁵ We therefore direct USAC to reassess NetworkIP's contribution obligation based on our findings below and to provide NetworkIP with customer-specific information underlying its conclusions.

15. As an initial matter, NetworkIP argues that because the FCC Form 499-A instructions stated that carriers "should" (rather than "must") maintain minimum information on reseller customers (including the customer's 499 Filer ID), maintenance of this information was optional.⁴⁶ We find this argument unpersuasive. The Commission requires (and required during the time relevant to NetworkIP's petition) that wholesalers have a "reasonable expectation" that its reseller customers would contribute to universal service and have in place documented procedures to demonstrate compliance with this requirement.⁴⁷ That requirement supports the Commission's view that it may look to whether NetworkIP obtained and kept information to ensure that it could demonstrate its reasonable expectation that the resellers would contribute. Moreover, the Commission provided explicit guidance to that effect in the Form 499-A instructions.⁴⁸ NetworkIP's compliance with the guidance in the Form 499-A instructions is

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switching platform and a personal identification number (PIN) for purposes of verification and billing, even if the customer does not receive a physical card.").

⁴⁴ NetworkIP Request for Review at 17–19 (citing USAC Audit Report at 18). NetworkIP states that USAC did not explain why if found that approximately 85% of NetworkIP's wholesale customers should be reclassified as end users because of inadequate certifications. NetworkIP explains that based on conversations with the auditors, it believes that USAC rejected its reseller certification that did not include the customers Form 499 Filer ID number or were more than one year old. *Id.* at 17.

⁴⁵ *Id.* at 18–19.

⁴⁶ NetworkIP Request for Review at 16; Reply Comments of Network Enhanced Telecom, LLP, WC Docket No. 06-122, at 5 (filed Sept. 24, 2009).

⁴⁷ See *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18508, App. C; see also *Federal-State Joint Board on Universal Service; Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, USAC Audit Report No. CR2005CP007, 24 FCC Rcd 10824, 10827–29, paras. 10–14 (Wireline Comp. Bur. 2009) (*Global Crossing Order*).

⁴⁸ See 2005 FCC Form 499-A Instructions at 18 ("Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service. Those procedures should include, but not be limited to, maintaining [certain] information on resellers . . . Filers shall provide this information to the Commission or the Administrator upon request. . . . Filers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users."); 2006 FCC Form 499-A Instructions at 18 (same).

relevant to determining whether NetworkIP had a reasonable expectation that its customer would contribute to the universal service fund.

16. We agree with NetworkIP, however, that USAC erred to the extent it concluded that NetworkIP's reseller certificates for the audit years at issue were invalid solely because they were more than a year old.⁴⁹ The filings at issue were made prior to 2007, and at that time, the relevant FCC Form 499 instructions did not expressly require new certifications every year.⁵⁰ We find therefore that in this case, if NetworkIP's reseller certificates were otherwise valid (*i.e.*, they were properly executed prior to or during the audit period, covered the audit period, and had not expired), NetworkIP should not be penalized for failure to renew them annually. We direct USAC to re-evaluate its determination as to the validity of NetworkIP's reseller certificates consistent with this finding.⁵¹

17. The mere existence of a reseller certificate is insufficient, however, to demonstrate that an underlying carrier has met the reasonable expectation standard. Since their inception, the FCC Form 499 filing instructions have emphasized the need for wholesale carriers to document the filing status of their customers by obtaining reseller certifications and retaining certain information on their customers.⁵² The instructions were updated in 2002 to include express language directing underlying carriers to retain the Filer ID numbers of their customers as part of their reseller certification procedures.⁵³ To the extent NetworkIP did not have its customers' Filer ID numbers and did not have other evidence that would allow USAC to locate and verify the customer's filing status, NetworkIP had the burden of providing to USAC independent evidence that demonstrated that it knew or reasonably expected that those customers were resellers of telecommunications and contributing directly to the universal service fund during the audit period.⁵⁴ Absent this independent evidence, a failure to maintain Filer ID numbers would undermine its claim that its reseller certification procedures met the reasonable expectation standard.⁵⁵ Accordingly, USAC properly reclassified any assessable revenues associated with such customers for whom NetworkIP lacked Filer ID numbers as end-user revenue.⁵⁶

18. Finally, NetworkIP argues that its efforts to educate its customers and hold them accountable for their contribution obligations demonstrate that the company reasonably expected that its customers were indeed resellers and directly contributing to the universal service fund.⁵⁷ While these

⁴⁹ NetworkIP Request for Review at 17.

⁵⁰ Compare 2005 FCC Form 499-A Instructions at 18; 2006 FCC Form 499-A Instructions at 18, with 2007 FCC Form 499-A Instructions at 18–19.

⁵¹ To the extent that USAC determines that NetworkIP did not have a reseller certificate or only had an invalid reseller certificate for a given customer, USAC should evaluate whether any other evidence that NetworkIP proffers is sufficient to show that NetworkIP performed appropriate due diligence and met the reasonable expectation standard. See *Global Crossing Order*, 24 FCC Rcd at 10828, para. 12.

⁵² *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18508–09, App. C.

⁵³ 2002 FCC Form 499-A Instructions at 15.

⁵⁴ See *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507–08, App. C; see also *Global Crossing Order*, 24 FCC Rcd at 10826–29; 2005 FCC Form 499-A Instructions at 18; 2006 FCC Form 499-A Instructions at 17.

⁵⁵ See STi Prepaid Comments at 4–5 (stating that it is unclear how a carrier can establish that it had a reasonable expectation that its carrier customers contributed to the universal service fund without checking the Commission's 499 Filer ID database).

⁵⁶ See *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507, App. C; see also *Global Crossing Order*, 24 FCC Rcd at 10827–29, paras.10–14.

⁵⁷ NetworkIP asserts that, in most cases, the certifications imposed on its reseller customers the affirmative obligation to notify NetworkIP of any change in status. Request for Review at 17–18 & Exh. E. NetworkIP also

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efforts may have value, in the absence of reseller certificates, Filer ID numbers, or other independent evidence, they do not absolve NetworkIP of its obligation to perform the requisite due diligence to verify the reseller status of its customers.⁵⁸

19. We direct USAC to conduct a further review of NetworkIP's universal service contribution liability for the audited years at issue, to reassess NetworkIP's contribution obligation consistent with our findings above, and to issue new invoices or refunds as appropriate. We also direct USAC to provide NetworkIP with its detailed findings that form the basis for its conclusions with respect to the reclassification of any revenues associated with NetworkIP's non-contributing customers.

IV. ORDERING CLAUSES

20. 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 pursuant to the authority 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), that the request for review filed by Enhanced Network Telecom, LLP is hereby GRANTED in part and otherwise REMANDED to USAC for further action and consideration in accordance with the terms of this order.

21. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 0.204(b), and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 0.204(b), 54.722(a), that the request for stay or abeyance submitted by Enhanced Network Telecom, LLP, filed June 29, 2009, IS DISMISSED as moot.

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

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states that it made efforts to educate its customers about their obligation to file required revenue reports and contribute to the universal service fund. *Id.* at 20-21.

⁵⁸ *Id.* at 20-21.