

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

In the Matter of
Request for Review of a Decision of the Universal
Service Administrator by Sprint Spectrum, L.P.
Communications Services, Inc.
Docket No. 06-122

ORDER

Adopted: December 22, 2020

Released: December 22, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request for review filed by Sprint Spectrum, L.P. (Sprint) seeking review of a contributor audit decision by the Universal Service Administrative Company (USAC).1 USAC determined that Sprint had failed to produce sufficient evidence to support: 1) the methodology used to report the jurisdiction of a portion of its prepaid and postpaid mobile service, and 2) the allocation of assessable telecommunications and non-assessable information service revenues associated with one of its bundled service offerings.2 USAC reclassified certain of Sprint’s reported revenues in accordance with these findings, thereby increasing Sprint’s universal service obligation.

2. For the reasons discussed below, we deny Sprint’s request with respect to USAC’s rejection of the methodology used for reporting a portion of the company’s mobile service. We however remand to USAC for further reconsideration the issue of whether, in light of new evidence presented, Sprint’s allocation among assessable and non-assessable service categories was appropriate for the bundled service offering at issue.

II. BACKGROUND

A. The Act and the Commission’s Rules

3. Section 254(d) of the Communications Act of 1934, as amended, 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.3 Under the Commission’s existing rules and requirements, contributions to the Universal Service Fund (USF or Fund) are assessed based on a contributor’s “projected collected interstate and international end-user telecommunications revenues, net of projected contributions.”4

1 Sprint Spectrum, L.P. Request for Review of a Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed December 14, 2018) (Request for Review).

2 Id.

3 47 U.S.C. § 254(d).

4 47 CFR § 54.706(b).

4. Revenues from information services are not included in the USF contribution base.<sup>5</sup> If a provider offers a service that bundles telecommunications service with an information service, it must apportion the revenues from that offering as either telecommunications or information service revenues in order to ensure that it reasonably is contributing on its interstate and international end-user telecommunications revenues as required by Commission rules.<sup>6</sup> The Commission has explained that providers may do so using one of the three methods set forth in the *CPE Bundling Order*.<sup>7</sup> First, a provider may apportion its revenues based on “unbundled service offering prices, with no discount from the bundled offering being apportioned to telecommunications service.”<sup>8</sup> Second, a provider may treat all bundled revenues as telecommunications revenues.<sup>9</sup> Third, a provider may apportion its bundled revenues using “any reasonable alternative method” as long as the provider does not apply discounts to telecommunications services in a manner that attempts to circumvent its obligation to contribute to the Fund.<sup>10</sup> The first two methods are considered “safe harbors” and are presumed to be reasonable.<sup>11</sup> Carriers utilizing the third method must justify the reasonableness of their methodology in an audit or enforcement proceeding.<sup>12</sup>

5. Providers report their revenues based on the jurisdictional nature of their traffic during the relevant reporting period in order to identify interstate and international revenue on which its contribution obligation is based.<sup>13</sup> To the extent a wireless provider cannot determine its actual interstate revenue, it nonetheless must use some approach to ensure that it reasonably is contributing on its interstate and international end-user telecommunications revenues as required by Commission rules. For one, providers may rely on one of the safe harbors established by the Commission for the purpose of allocating a portion of its revenue to the interstate jurisdiction.<sup>14</sup> If the provider relies on an established safe harbor, the provider’s allocation of interstate/international revenues is presumed reasonable. Wireless and

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<sup>5</sup> See 47 U.S.C. § 153(20) (defining “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications”).

<sup>6</sup> *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*) (citing 47 CFR §§ 54.706, 54.709).

<sup>7</sup> *Id.*

<sup>8</sup> *CPE Bundling Order*, 16 FCC Rcd at 7447, para. 50.

<sup>9</sup> *Id.* at 7447, para. 51.

<sup>10</sup> *Id.* at 7448, para. 53.

<sup>11</sup> *Id.*; see also, e.g., 2020 FCC Form 499-A Instructions at 39 (“Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers that choose to avail themselves of safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages.”)

<sup>12</sup> *CPE Bundling Order*, 16 FCC Rcd at 7448, paras. 52–53; see also *id.* at 7448, para. 53 (citing 47 CFR §§ 54.706, 54.709); 47 CFR § 54.707 (discussing contributor audits).

<sup>13</sup> Telecommunications providers with purely intrastate or international revenues are not required to contribute. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para. 47 (1997) (*First Universal Service First Report and Order*) (*subsequent history omitted*); *Federal-State Joint Board on Universal Service; Access Charge Reform*, 15 FCC Rcd 1679, 1685-86 at para. 15 (1999).

<sup>14</sup> The interstate safe harbor for analog Specialized Mobile Radio (SMR) revenues is 1%, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255, para. 6 (1998); for paging revenues is 12%, *id.*; for wireless revenues is 37.1%, *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd, 7518, 7532, para. 25 (2006) (*Contribution Methodology Reform Order*); and for interconnected VoIP service revenues is 64.9%, *id.* at 7545, para. 53.

interconnected VoIP service providers may also allocate revenues based on a ratio derived from a traffic study.<sup>15</sup> The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms under Commission direction.<sup>16</sup> Contributors are required to maintain records and documentation to justify information reported on the FCC Form 499-A, including the methodology used to allocate interstate revenues, and to make this information available to USAC upon request.<sup>17</sup>

### **B. USAC Audit and Sprint's Request for Review**

6. On March 12, 2018, USAC completed an audit of Sprint's 2016 Form 499-A filing.<sup>18</sup> Among other things, USAC determined that Sprint had incorrectly reported the jurisdiction of its prepaid and postpaid mobile revenue.<sup>19</sup> In addition, USAC found that, out of a sample of fifteen bundled offerings, Sprint failed to provide sufficient evidence to support its revenue allocation between telecommunications and non-telecommunications for one bundled offering.<sup>20</sup> Sprint appealed the audit decision, which USAC denied on October 15, 2018, and Sprint filed the instant request for review with the Commission.<sup>21</sup> Sprint argues that USAC exceeded its authority because it: 1) rejected Sprint's methodology for calculating the allocation of revenues for unknown minutes, and 2) did not accept Sprint's allocation of revenues associated with one of its bundled service offerings.

## **III. DISCUSSION**

### **A. Jurisdictional Allocation of Unknown Minutes of Mobile Service**

7. We first find that USAC acted properly when it excluded "unknown" minutes from the study Sprint used to estimate the percentage of interstate revenue reported on its Form 499-A. USAC determined that removing the unknown minutes, which Sprint claimed without support reflected only non-assessable intrastate minutes, from Sprint's submission was appropriate because the activity of the unknown traffic likely mirrored the jurisdictional nature of Sprint's known traffic.<sup>22</sup> We agree that absent evidence to support the allocation of 100% of the unknown minutes as intrastate, USAC's approach to estimate the jurisdiction of that traffic is reasonable.

8. In the audit, USAC determined that Sprint had incorrectly reported the jurisdiction of prepaid and postpaid mobile revenues on its 2016 Form 499-A.<sup>23</sup> Sprint used a minutes-of-use traffic study that classified all of Sprint's minutes to the intrastate, interstate, or "unknown" jurisdiction categories and, when calculating the percentage of interstate minutes to arrive at its contribution obligation, treated 100% of the unknown minutes as non-assessable intrastate traffic.<sup>24</sup> USAC requested

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<sup>15</sup> See, e.g., 2020 Form 499-A Instructions at 41.

<sup>16</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Universal Service Second Order on Reconsideration*).

<sup>17</sup> 47 CFR § 54.706(e) ("Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules"); *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16386-87, para. 27 (2007); see also, e.g., 2020 FCC Form 499-A Instructions at 14.

<sup>18</sup> Sprint Request for Review at 1.

<sup>19</sup> *Id.* at 7-9.

<sup>20</sup> *Id.* at 1-5.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> USAC Audit at 17.

<sup>23</sup> Request for Review at 8-9 and Attachment A (USAC Audit) at 15-17 (Confidential).

that Sprint provide documentation to justify its methodology and the allocation of 100% of the unknown minutes as intrastate, but Sprint failed to provide any information or documentation.<sup>25</sup> USAC concluded that, in the absence of supporting documentation, treating 100% of the unknown minutes as intrastate was not a good faith allocation and violated the Commission’s contributions reporting requirements.<sup>26</sup> USAC therefore excluded the unknown minutes from the calculation, reasoning that the jurisdictional allocation of the unknown minutes likely mirrored the jurisdiction of Sprint’s known traffic.<sup>27</sup> Accordingly, USAC recalculated the interstate percentage based only on the known intrastate and interstate minutes and applied the new percentage to all of the minutes, including the unknown minutes, which increased Sprint’s contribution obligation.<sup>28</sup>

9. In its Request for Review, Sprint argues that it relied on traffic studies that conformed to the Commission’s requirements and that neither USAC nor the Commission had objected to Sprint’s jurisdictional calculations at the time the traffic studies were filed.<sup>29</sup> Sprint also argues that USAC failed to explain why the traffic studies are insufficient and did not cite to precedent or rules that would support its action.<sup>30</sup> Sprint states that it is willing to make USAC’s recommended changes going forward but argues that, in this case, USAC improperly created and enforced new policy regarding the documentation required for jurisdictional allocation and this “post hoc” policy change exceeded USAC’s authority.<sup>31</sup>

10. Contrary to Sprint’s argument, USAC did not create new policy regarding documentation requirements for jurisdictional calculations.<sup>32</sup> It would not be sensible to interpret the Commission’s universal service contribution rules to allow providers to estimate their assessable revenues on anything less than a good faith basis. The Commission’s long-standing contribution reporting requirements reinforce this by directing contributors to provide a good faith estimate of the jurisdiction of revenues if the allocation cannot be determined directly from their corporate books of account.<sup>33</sup> The Commission specifically cited that precedent when—after establishing “safe harbor” jurisdictional percentages for CMRS and other wireless services—it specified that providers could instead “elect[] to report a percentage of interstate telecommunications revenues that is less than the ‘safe harbor’ percentage,” but must “document the method used to calculate its percentage and make that information available to the Commission or Administrator.”<sup>34</sup> As explained in the instructions to the forms completed by all universal

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Request for Review at 7-8; USAC Audit at 16.

<sup>27</sup> USAC Audit at 9.

<sup>28</sup> Request for Review at 7-8; USAC Audit at 9, 16-19.

<sup>29</sup> Request for Review at 8.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7-9.

<sup>32</sup> Request for Review. at 8-9.

<sup>33</sup> *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12444, 12453, para. 21 (1997) (*Universal Service First Order on Reconsideration*) (concluding that contributors that cannot derive interstate revenues from their books of account, or that cannot derive the line-by-line revenue breakdowns required by FCC Form 499-A from their books of account, may report good faith estimates of these figures); see also, e.g., 2020 FCC Form 499-A Instructions at 38-39; 2016 FCC Form 499-A Instructions at 38.

<sup>34</sup> *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21257, para. 11 & n.22 (1998) (citing *Universal Service First Order on Reconsideration*, 12 FCC Rcd at 12453, para. 21). In light of this preexisting line of precedent, we reject Sprint’s

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service contributors, wireless providers relying on traffic studies to estimate their interstate revenue must “retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available[.]”<sup>35</sup> The record shows that Sprint was unable to provide documentation to support its allocation of 100% of its unknown minutes to the intrastate jurisdiction, an allocation that would have resulted in Sprint paying less in contributions.<sup>36</sup> Nor did Sprint provide other documentation from which USAC could estimate the jurisdictional allocation of those minutes based on the specific nature of the traffic at issue.<sup>37</sup> Sprint’s treatment of unknown minutes skewed the ratio of intrastate to interstate minutes in favor of the intrastate minutes, thereby lowering the percentage of interstate minutes that it used to calculate its contribution obligation. In the absence of supporting documentation, we agree with USAC that Sprint’s designation of 100% of the unknown minutes to the intrastate jurisdiction is not consistent with the requirement to provide a good faith estimate of interstate revenues.<sup>38</sup>

11. We are not persuaded by Sprint’s argument that USAC exceeded its authority in rejecting the jurisdictional calculations simply because those calculations were based on traffic studies that conformed to the requirements set forth in the Form 499-A Instructions and the *Contribution Methodology Reform Order*.<sup>39</sup> Traffic studies are required to reflect a good faith jurisdictional allocation of traffic, and the record does not reveal any basis upon which Sprint, in good faith, could have believed that 100% of the “unknown” minutes appropriately was allocated to the intrastate jurisdiction.<sup>40</sup> Indeed, neither the traffic studies nor any other filing submitted by Sprint to USAC has presented any data or other substantive basis to support Sprint’s assertion that it was reasonable to assume that 100% of the “unknown” minutes should be classified as intrastate, in contrast to the breakdown of the known minutes.

12. Sprint nonetheless raises a procedural argument as to why USAC should have accepted the traffic studies’ unsupported claim that 100% of the “unknown” minutes were intrastate. We find that argument unpersuasive. Specifically, we reject Sprint’s argument that because “USAC received these traffic studies with each of Sprint’s 499-Q filings for the audit period” and neither USAC nor the Commission objected “at the time of filing” they must be treated as sufficient for the period at issue. The failure to immediately reject a traffic study filed with quarterly projections associated with a given contribution year is not an endorsement of the methodology and does not preclude USAC or the Commission from evaluating its reasonableness in an audit covering that contribution year.<sup>41</sup> Although the Commission has required providers relying on traffic studies to submit them to USAC and the Commission “no later than the deadline for submitting the Form 499-Q for the same time period,”<sup>42</sup> we reject Sprint’s proposed reliance on such filings as a defense in the audit here. Indeed, even taking Sprint’s argument on its terms, providers’ expectations regarding a reaction from the Commission or

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claim that it lacked fair notice of the requirements leading USAC to reject its traffic study and USAC was somehow applying a new policy retroactively. *See* Sprint Request for Review at 9.

<sup>35</sup> *See, e.g.*, 2020 FCC Form 499-A Instructions at 41; 2016 FCC Form 499-A Instructions at 38; *see also* 47 CFR § 54.706(e) (specifying document retention requirements for universal service contributors).

<sup>36</sup> USAC Audit at 16-17.

<sup>37</sup> *Id.*

<sup>38</sup> USAC Audit at 16; *See* 2020 FCC Form 499-A Instructions at 38-39.

<sup>39</sup> Request for Review at 8.

<sup>40</sup> *See, e.g.*, 2020 Form 499-A Instructions at 41 (“Wireless telecommunications providers ... may rely on traffic studies if they are unable to determine their actual interstate and international revenues.”).

<sup>41</sup> USAC Audit at 16.

<sup>42</sup> *Universal Service Contribution Methodology et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Red 7518, 7535-36, para. 32 (2006).

USAC in that regard—and any inferences they seek to draw from the lack of an immediate response—must, at a minimum, be placed in context with the operation of the contributions rules more broadly. The Form 499-Q filings are preliminary tools for providing projected quarterly interstate and international telecommunications revenue information for a given universal service contribution year, leading to a Form 499-A filing with actual data for the relevant contribution year used to true-up universal service billings and payments.<sup>43</sup> Even then, contributors have twelve months from the deadline for filing a Form 499-A to make corrections that would result in reduced contributions amounts.<sup>44</sup> Furthermore, Commission rules make clear the ongoing potential for audits, requiring contributors to retain documentation to substantiate their compliance with contributions requirements “for at least five years from the date of the contribution.”<sup>45</sup> Any expectations regarding reactions by USAC and the Commission must be tempered by the understanding that Form 499-Q filings are but part of a broader process for USAC and the Commission to ensure appropriate provider contributions for a given universal service contribution year. Here, furthermore, there was no extended lag in time—the Sprint Form 499-Q submissions at issue were preliminary steps leading to the very Form 499-A that was subject to audit—an audit that was itself announced in close temporal proximity to the filing of the relevant Form 499-A.<sup>46</sup>

13. In sum, we find unreasonable Sprint’s claims to have relied in good faith on the Commission’s and USAC’s silence regarding its traffic study methodology filed with Form 499-Q submissions as a defense in an audit of that same contribution year’s Form 499-A filing under the circumstances here. We thus find that it was reasonable for USAC to question Sprint’s allocation of 100% of the unknown minutes to the intrastate jurisdiction and to request supporting documentation to determine whether Sprint’s methodology produced a good faith estimate of Sprint’s interstate revenue. Had Sprint provided information to support its allocation of 100% of the unknown minutes to the intrastate jurisdiction, it would have been appropriate to accept the jurisdictional allocation based on those studies and the supporting documentation. Absent such information, however, there is no basis in the record to expect the unknown minutes to have a materially different jurisdictional breakdown than the remainder of Sprint’s traffic. We therefore find that it was reasonable for USAC to use an alternative methodology to create a good faith estimate of Sprint’s interstate revenues; and similarly we find that the specific alternative methodology chosen by USAC was appropriate because it reflected the only probative data in the record on which to base a good faith estimate of the unknown minutes (namely, the jurisdictional breakdown of the remainder of Sprint’s traffic, which is not disputed).

14. We find no merit in Sprint’s arguments that USAC failed to explain why Sprint’s traffic studies are insufficient, that USAC’s treatment of the unknown minutes is not based on any Commission rule or precedent, and that USAC acted outside its authority because it held Sprint to requirements that were not in place at the time of the filing.<sup>47</sup> In its decision, USAC cited to the Commission’s directive that filers provide a good faith estimate of their revenues as well as the obligation of filers to provide documentation to support their figures.<sup>48</sup> USAC explained that it is not in good faith to designate unknown minutes as entirely intrastate simply because there is no evidence to classify them as interstate and that absent any information to estimate the jurisdiction of the unknown minutes, a reasonable good faith estimate would exclude the unknown minutes from the calculation entirely.<sup>49</sup> USAC further

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<sup>43</sup> *Federal-State Joint Board on Universal Service et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002).

<sup>44</sup> *Federal-State Joint Board on Universal Service, et al.*, Order, 20 FCC Rcd 1012, 1013, para. 10 (2004).

<sup>45</sup> 47 CFR § 54.706(e).

<sup>46</sup> Sprint Request for Review at 1.

<sup>47</sup> Request for Review at 7-9.

<sup>48</sup> USAC Audit at 16-17.

<sup>49</sup> *Id.* at 17.

explained that excluding the unknown minutes from the methodology assumes that the activity of the unknown traffic likely mirrors Sprint's known interstate and intrastate traffic. We find that USAC's decision to exclude the unknown minutes was reasonable, and that its alternative calculation produced a good faith estimate consistent with the Commission's rules.

**B. Allocation of Services in a Bundled Service Offering**

15. As part of the audit, USAC sampled fifteen bundled services offered during 2015 and requested documentation to support the allocation percentages used for reporting assessable telecommunications revenues and non-assessable information service revenues for those bundles.<sup>50</sup> Sprint provided the requested documentation for fourteen of the fifteen offerings, but was unable to provide supporting documentation for one of the bundled offerings for which Sprint had allocated 70% to voice, 15% to text, and 15% to data.<sup>51</sup> Because Sprint was unable to provide information to support its allocation of revenue for that bundle, USAC allocated 100% of the revenues generated from that bundle as assessable telecommunications using one of the safe harbors permitted by the Commission's bundling rules.<sup>52</sup>

16. In its Request for Review, Sprint concedes that it was unable to provide the documentation requested by USAC but claims that the record as a whole provides "persuasive evidence that its allocation approach was reasonable."<sup>53</sup> We disagree with Sprint that the record submitted in its request for review "as a whole" demonstrates that Sprint's allocation for the bundled offering at issue was reasonable. Recently, however, Sprint submitted new information into the record that provides a description of the service offering at issue.<sup>54</sup> In light of the new evidence, we remand this audit finding to USAC for further consideration. We direct USAC to determine whether this information is sufficient to support Sprint's allocation of 70% of the bundle to voice service or whether it supports a different allocation – one that is less than USAC's original allocation of 100% of the bundle to voice services.

**IV. CONCLUSION**

17. In conclusion, we deny Sprint's request to reverse USAC's audit decision with respect to the jurisdictional allocation of the unknown minutes associated with Sprint's mobile traffic. We remand to USAC for further review the appropriate allocation of services in the bundled service offering at issue, taking into consideration the newly submitted evidence.

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<sup>50</sup> Request for Review at 2.

<sup>51</sup> *Id.* at 2-4.

<sup>52</sup> Request for Review at 4-5.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> Sprint Confidential Supplement dated Apr. 8, 2020 (filed June 10, 2020).

**V. 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, 254, and pursuant to sections 0.91, 0.291, and 54.722 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 54.722, the request for review filed by Sprint Spectrum, L.P. IS DENIED IN PART and REMANDED IN PART for further consideration consistent with this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau