

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

In the Matter of
Universal Service Contribution Methodology
Request for Review by CenturyLink Public
Communications, Inc. of a Decision of the
Universal Service Administrator
WC Docket No. 06-122

ORDER

Adopted: August 12, 2021

Released: August 12, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request for review of a decision of the Universal Service Administrative Company (USAC) filed by CenturyLink Public Communications, Inc. (CenturyLink). The decision under review approved a final audit report prepared by USAC's Internal Audit Division for its audit of the universal service contributions reported by Embarq Payphone Services, Inc., CenturyLink's predecessor, on its 2012 FCC Form 499-A. CenturyLink argues that USAC erred when it failed to offset CenturyLink's contribution obligation by an amount it claims was paid by its contractor, Inmate Calling Solutions, LLC (ICSolutions). CenturyLink contends that ICSolutions is a reseller of telecommunications with the obligation to contribute to the federal universal service fund (USF or Fund) on the debit and prepaid calls it provides to incarcerated people pursuant to a contract with CenturyLink and that evidence demonstrates that ICSolutions contributed on certain services that CenturyLink had erroneously included in its contribution base. We affirm USAC's decision to the extent it finds that CenturyLink is the telecommunications provider for the debit and prepaid services at issue and has the regulatory obligation to contribute to the Fund on revenues from those services.

1 Request for Review by CenturyLink Public Communications, Inc. of Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Mar. 26, 2014) (Request for Review).

2 Final USAC Audit Report for Embarq Payphone Services, Inc. (Filer ID 820698), Jan. 28, 2014 (USAC Audit Report) (Confidential). CenturyLink was formally known as Embarq Payphone Services, Inc., which was the name of the entity at the time of the revenue reporting that was the subject of the audit for which CenturyLink requested Commission review. Embarq Payphone Services, Inc. formally changed its name to CenturyLink Public Communications, Inc. on November 14, 2013. On August 27, 2020, ICSolutions acquired ownership of CenturyLink Public Communications, Inc. See Applications Granted for the Transfer of Control of CenturyLink Public Communications, Inc. to Inmate Calling Solutions, LLC D/B/A ICSolutions, Public Notice, WC Docket No. 20-150, DA 20-866 (rel. Aug. 11, 2020); see also Letter from Howard M. Liberman, Counsel to ICSolutions to Marlene H. Dortch, Secretary, FCC, Notice of Consummation, WC Docket No. 20-150 (filed Aug. 28, 2020).

3 Debit Calling is defined as "a calling arrangement that allows a Consumer to pay for Inmate Calling Services from an existing or established account[.]" 47 CFR § 64.6000

2. We find, however, that based on the particular facts presented in this case, record evidence suggests that the disputed issue may implicate the Commission's policy to avoid double collection of USF payments on the same revenues. We therefore remand to USAC for further reconsideration of whether both CenturyLink and ICSolutions contributed to the Fund based on the same revenues. If USAC determines that CenturyLink has contributed on the same revenues as ICSolutions, we direct USAC to make the appropriate adjustments and credits to correct for the double USF recovery.

II. BACKGROUND

A. The Act and the Commission's Contributions Reporting Requirement

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 Fund.⁵ The Commission has also directed that contributions be made "on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions."⁶ The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms.⁷

B. USAC Audit Findings

4. CenturyLink is a telecommunications services provider that, in addition to other services, provides payphone and inmate calling services at various correctional institutions located throughout the United States.⁸ For inmate calling services, CenturyLink often subcontracts with other entities that also provide products and services to correctional facilities to provide various related systems and support.⁹

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 et al.*, 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). The Act and the Commission's rules do, however, 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. 47 C.F.R. § 54.706(d). Unless a carrier meets one of the exemptions, however, it must contribute to the universal service fund.

⁶ 47 C.F.R. § 54.706(b); see *Universal Service First Report and Order*, 12 FCC Rcd at 9202, para. 836.

⁷ 47 C.F.R. § 54.701; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*; *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18423-24, para. 41 (1997) (*Universal Service Second Order on Reconsideration*).

⁸ Request for Review at 3.

⁹ See, e.g., Inmate Telephone Systems & Support Agreement between CenturyLink and ICS (Service Agreement) (Confidential).

The issue at the center of this audit report dispute involves CenturyLink's contractual relationship with its subcontractor, ICSolutions.¹⁰

5. USAC conducted an audit of CenturyLink's 2012 FCC Form 499-A (Form) for revenue year 2011 and under Finding 1 of the audit report determined that CenturyLink had reported revenues related to its USF pass-through charges on the incorrect line of the Form and had calculated the jurisdiction of its revenue for certain services using an outdated report.¹¹ As a result, USAC determined that CenturyLink had understated its interstate and international revenue [[REDACTED]] and directed CenturyLink to re-file its 2012 Form 499-A to accurately report its revenues.¹² CenturyLink agreed that certain items were reported on the incorrect line and old allocation factors were used, but argued that the increase in the contribution base resulting from CenturyLink's reporting errors should be offset by a revenue amount that CenturyLink claimed it had incorrectly reported in its contribution base for revenues related to prepaid and debit calls that had also been reported by its subcontractor, ICSolutions.¹³ CenturyLink asserted that per the terms of an agreement between it and ICSolutions, ICSolutions was responsible for contributing to the Fund based on the revenues it collected for prepaid and debit calls at the correctional facilities where CenturyLink was the prime contractor.¹⁴

6. USAC declined to address CenturyLink's claim of double payment of USF obligations, stating that it fell outside the scope of the audit.¹⁵ USAC found, however, that to the extent CenturyLink's arguments related to USAC's evaluation of the reclassification of certain revenue, USAC did not agree with CenturyLink's position that the revenue in question should be excluded from its contribution base.¹⁶ USAC determined that ICSolutions operates as the billing and collection agent for certain CenturyLink services provided under the contract it has with CenturyLink and does not itself provide telecommunications service at these locations.¹⁷ USAC determined that CenturyLink, as the entity with the end-user revenues, has the primary obligation to report the revenues and contribute to the Fund based on those revenues, regardless of its agreement with ICSolutions.¹⁸

C. Century Link's Request for Review

7. CenturyLink's request for review challenges USAC's determinations that: 1) CenturyLink's contribution base should not be reduced to account for revenues improperly included in the contribution base; 2) CenturyLink's claim about double payment of USF contributions falls outside the scope of the audit; and 3) CenturyLink, as opposed to ICSolutions, had the obligation to report revenues in its contribution base for all inmate calling services provided at correctional facilities.¹⁹ CenturyLink argues that USAC incorrectly determined that ICSolutions is a billing agent for CenturyLink.²⁰ It also

¹⁰ Request for Review at 3. The precise nature of ICSolution's subcontractor relationship vis-à-vis the incarcerated individual end-users in the facilities where CenturyLink holds the inmate calling services contract with the facility lies at the core of the disputed audit findings.

¹¹ USAC Audit Report at 8-9; Request for Review at 2, 4-5.

¹² USAC Audit Report at 8-9; Request for Review at 5-7.

¹³ Request for Review at 4-6; USAC Audit Report at 8. Among other things, CenturyLink claimed those services were "billed under the [ICSolutions] brand."

¹⁴ USAC Audit Report at 9; *see also* Request for Review at 2.

¹⁵ Request for Review at 2; USAC Audit Report at 9.

¹⁶ USAC Audit Report at 9; *see also* Request for Review at 2.

¹⁷ Request for Review at 2; USAC Audit Report at 9-11.

¹⁸ USAC Audit Report at 9-10; *see also* Request for Review at 2.

¹⁹ Request for Review at 2.

²⁰ *Id.* at 3.

argues that ICSolutions uses underlying telecommunications facilities provided by CenturyLink to provide debit and prepaid telecommunications services under its own brand to the incarcerated individuals in the CenturyLink facilities and their families and is therefore a reseller of telecommunications services with the obligation to contribute to the Fund based on the revenues received for those debit and prepaid calls.²¹ CenturyLink asserts that under the terms of its contract with CenturyLink, ICSolutions was required to collect and remit to USAC the USF contributions for these services,²² and therefore CenturyLink had a reasonable expectation that ICSolutions would contribute, and in fact did contribute, to the Fund.²³

8. CenturyLink also asserts that it has clear and convincing evidence that both CenturyLink and ICSolutions contributed to the Fund on the same revenues and that USAC therefore erred in demanding that CenturyLink re-file its Form 499-A to include, as assessable, revenue on which ICSolutions already paid the USF obligation.²⁴ CenturyLink argues that failure to reverse USAC's decision will result in a double payment to the Fund, which is inconsistent with the Commission's determination in the *Wholesaler-Reseller Clarification Order* that requires USAC to take reasonable steps to evaluate a claim of double-payment.²⁵ CenturyLink requests that the Commission reverse USAC's finding as it relates to the amount USAC determined CenturyLink had understated in its contribution base and direct USAC to properly account for the revenues CenturyLink asserts it had mistakenly reported.²⁶

III. DISCUSSION

9. Contrary to CenturyLink's claim, the record indicates that CenturyLink is the telecommunications services provider for debit, prepaid and collect calling at the facilities where ICSolutions serves as its subcontractor to: 1) develop and manage the systems necessary to support CenturyLink's provision of these inmate calling services; and 2) operate as the billing and collection agent for these services, among other things. Specifically, the recitals of the Inmate Telephone Systems & Support Agreement (Service Agreement) between CenturyLink and ICSolutions, which we find to be the most compelling record evidence related to this appeal, state that CenturyLink [[REDACTED]]²⁷ The Service Agreement further states that ICSolutions is a subcontractor²⁸ responsible for providing [[REDACTED]]

²¹ *Id.* at 10-12 & n.38. CenturyLink asserts that USAC mistakenly viewed the correctional institutions served by CenturyLink as the "end-user customers," when in fact the end-user customer for calls from the correctional facilities are the inmates and their families who place and pay for those calls. *Id.* at 11.

²² *Id.* at 4, 11-12.

²³ *Id.* at 12, n.38. To be clear, there is no dispute that ICSolutions had a contractual obligation with CenturyLink to make USF contributions payments pursuant to its agreement with CenturyLink. *See* Service Agreement at Section 6.2. Rather, the dispute centers upon whether ICSolutions had an independent regulatory obligation under the Commission's rules and section 254(d) of the Act to make USF contribution payments based on CenturyLink's claims that ICSolutions was providing the debit and prepaid telecommunications services to the incarcerated people pursuant to the contract with CenturyLink.

²⁴ Request for Review at 7.

²⁵ *Id.* at 8-9; *Universal Service Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780 (2012) (*Wholesaler-Reseller Clarification Order*).

²⁶ Request for Review at 13.

²⁷ *See* Service Agreement at 1.

²⁸ *See, e.g., id.* at Section 2.5 (referring to ICSolutions as [[REDACTED]]).

According to the Service Agreement, CenturyLink holds the primary contract with the correctional facilities;³⁰ is responsible for [[REDACTED]]²⁹ and sets the parameters of the service,³² including establishing the rates and surcharges for the calls.³³ Neither the Service Agreement nor other record evidence convincingly supports CenturyLink's claim that it is ICSolutions rather than CenturyLink that provides the debit and prepaid telecommunications services subject to USF contribution at the correctional facilities where CenturyLink subcontracts with ICSolutions.

10. CenturyLink challenges USAC's characterization of ICSolutions as "merely a billing and collection agent" because according to CenturyLink, ICSolutions: 1) has the end-user relationship with the inmates and their families who place, and pay ICSolutions for, the debit and prepaid calls, and 2) offers these services under its own brand.³⁴ CenturyLink advances this challenge in spite of the fact that in its responses to USAC during the audit process, CenturyLink itself described ICSolutions as a "billing and collections agent."³⁵ Indeed, this is precisely how CenturyLink described ICSolutions in other public filings made with the Commission during the same timeframe as the USAC audit³⁶ and continued to

²⁹ Service Agreement at Recitals; *see also* Service Agreement at Section 2.2 (stating that ICSolutions may potentially provide [[REDACTED]]).

³⁰ *See, e.g.,* Service Agreement at Section 1.1 defining "prime Contract" [[REDACTED]].

³¹ Service Agreement at Section 2.5.

³² *See, e.g.,* Service Agreement at Section 1.3 (stating that [[REDACTED]]; *id.* at Section 2.1 (stating that [[REDACTED]]; *id.* at Section 2.2 (stating that ICSolutions [[REDACTED]]).

³³ *See* Service Agreement at Section 2.5 (stating that [[REDACTED]]).

³⁴ Request for Review at 11.

³⁵ *See* USAC Audit at 8 (responding that ICSolutions [[REDACTED]]; Email from Donnie Aultman, Supervisor-Regulatory Finance, CenturyLink to Rebecca Srygley, Senior Internal Auditor, USAC, (Oct. 8, 2013), Attachment 4, Questions and Responses at (4) (Aultman E-mail Responses) (Confidential, in part) (describing ICSolutions [[REDACTED]]).

³⁶ *See* Letter from Thomas M. Dethlefs, Associate General Counsel, CenturyLink to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (dated Sept. 16, 2014); CenturyLink Complete Response to Mandatory Data Collection, attached Description and Justification (describing CenturyLink's provision of mandatory "cost information for 2012 and 2013 and projected cost information for 2014 . . . based on historical information from [CenturyLink's] general ledger and call detail records for this time period . . . broken out by call type (collect, prepaid and debit") and ICSolutions' relationship to CenturyLink as follows: "Under a number of its contracts, ancillary fees related to prepaid calls (primarily account funding fees) are assessed on end-users by *CenturyLink billing partners*. Because they are not collected or received by [CenturyLink], these fees are not reported in CenturyLink's cost data submission. However, [CenturyLink] has confirmed with ICSolutions, [CenturyLink's] *primary billing partner*, that all ancillary charges assessed by ICSolutions related to [CenturyLink] contracts have

(continued...)

under its own brand is not dispositive as to whether ICSolutions is a provider of telecommunications services to the facilities where ICSolutions serves as CenturyLink's subcontractor. There is no evidence that ICSolutions holds itself out to those end-users as their calling service provider, nor does it set the rates, or retain the revenue collected from the "customers" for using the service, all indicia of providing telecommunications services.⁴² Instead, it is CenturyLink that purchases the circuits, holds itself out as the inmate calling service provider to the facilities and the incarcerated people in those facilities, i.e., the "inmates at such Facilities to whom such Inmate Calling Services are made available,"⁴³ and the entity that sets the rates,⁴⁴ and keeps the revenue (less any fee owed ICSolutions for the services it provides to CenturyLink).⁴⁵

12. CenturyLink provides declarations purporting to support the claim that ICSolutions is providing the debit and prepaid calling services. We find each of these declarations unhelpful to CenturyLink's assertions. Specifically, we do not find the Dawson Declaration and attached ICSolutions' webpages dispositive evidence that the "services" ICSolutions provides under its contracts with CenturyLink at the correctional facilities where the revenue at issue was collected, are "telecommunications services" for USF contribution purposes.⁴⁶ Mr. Dawson correctly describes generally the functions ICSolutions performs for CenturyLink as its subcontractor, but inartfully applies the phrase "telecommunications services" to those services. Mr. Dawson's inartful phrasing does not turn these services into "telecommunications services" as defined in the Act.⁴⁷ Similarly, the webpages attached to the request for review are not dispositive.⁴⁸ Indeed, those webpages describe *all* the services ICSolutions offers as a retail provider to correctional facilities and the incarcerated people in those facilities when ICSolutions wins contracts to be the inmate calling service provider at non-CenturyLink correctional facilities.⁴⁹ These webpages do not describe the particular services ICSolutions provides to CenturyLink as its subcontractor nor do these webpages indicate what services ICSolutions actually provides at any particular correctional facility, especially the CenturyLink facilities where ICSolutions

⁴² See, e.g., *Universal Service Contribution Methodology, Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14538, at para. 12 (WCB 2010) (defining a prepaid calling card provider as an entity that "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"); *Universal Service Contribution Methodology, Application for Review by American Cyber Corp., Coleman Enterprises, Inc., Inmark, Inc., Lotel, Inc., and Protel Advantage*, WC Docket No. 06-122, Order on Reconsideration 29 FCC Rcd 7538, 7543 at para. 11 (WCB 2014) (*2014 American Cyber Corp. Order*) (finding on review that notwithstanding the petitioners' self-characterization of themselves as resellers, they did not meet the definition of a reseller because, among other things, the underlying carrier reserved the right to establish the price of the service and petitioners did not earn revenues from end users, but instead were paid a commission to market the underlying carrier's service).

⁴³ Service Agreement at Section 1.1 (definition of "Customer").

⁴⁴ *Id.* at Section 2.5 ("[CenturyLink] will be responsible for establishing all rates and surcharges to be charged for Completed Calls[.]").

⁴⁵ See *id.* at Section 3.6 (describing how under the Prepaid/Debit Management arrangement, revenues pass from the facility through CenturyLink to ICSolutions for tracking and management and ICSolution submits a settlement report to CenturyLink and pays settlement commissions to Embarq); Aultman E-mail Response at 4 (stating that ICS remits billed and collected revenue to CenturyLink, *less a contracted management fee*) (emphasis added).

⁴⁶ See 47 § U.S.C. 153 (53) (defining telecommunications service as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used"). To be clear, ICSolutions does provide telecommunications services at certain other correctional facilities where it holds the prime or sole contract with the facility.

⁴⁷ *Id.*; see also Dawson Declaration. See *American Cyber Corp. Order*, 29 FCC Rcd 7538, 7543 at para. 11.

⁴⁸ Request for Review at Attach. 2.1.

⁴⁹ *Id.*

serves as a subcontractor. For example, the webpages describe that ICSolutions offers “Collect Calling” but there is no claim or dispute in the record that ICSolutions provides collect calling service at the CenturyLink facilities.⁵⁰ Likewise, the fact that the webpages list “Debit Telephone Account” under the same heading is not dispositive that it provides this service at the Centurylink facilities. Instead, as described in the CenturyLink and ICSolutions Service Agreement, CenturyLink subcontracts with ICSolutions to provide a prepaid and debit call management service for which it receives compensation through an account settlement process with CenturyLink that it subtracts from the revenue it collects on CenturyLink’s behalf for the debit and prepaid calling services CenturyLink provides and ICSolutions manages.⁵¹ In other words, ICSolutions remits to CenturyLink the revenue it collects from CenturyLink’s customers, less its compensation for services rendered to CenturyLink, not services rendered to CenturyLink’s customers, the incarcerated people at the facilities or their families and friends.

13. The Haynes Declaration is similarly unhelpful to CenturyLink’s appeal. First, it is inconsistent with and contradicts the Dawson Declaration in that Mr. Haynes states that CenturyLink receives all the revenue collected by the facility for debit calls and then passes that revenue on to ICSolutions which subtracts out “the amount due for services it provides” and remits the remainder back to CenturyLink.⁵² The Dawson Declaration says that ICSolutions receives all the revenue from “debit calls placed by inmates” and then subtracts out what it is owed for its services and remits the rest to CenturyLink.⁵³ Regardless of which declarant is explaining it correctly, however, we do not find it credible that ICSolutions would be the telecommunications service provider for the debit and prepaid collect calling at these correctional facilities (as CenturyLink unconvincingly alleges) but that it would remit any portion of the revenue it collected for rendering those services back to CenturyLink. If ICSolutions was the service provider for the debit and prepaid calls, for what was it “remit[ing] the remainder of the revenue back to [CenturyLink]”?⁵⁴ Second, the record contains no evidence other than the statement in the Haynes Declaration “that [CenturyLink] functions in part as a wholesaler to ICSolutions,”⁵⁵ that ICSolutions purchased telecommunications transmission services from CenturyLink or another services provider as an input to its own telecommunications service or otherwise obtained transmission capability to provide inmate calling service itself as either a facilities-based telecommunications provider or a reseller at the CenturyLink facilities.⁵⁶ No wholesale services agreement has been submitted as evidence, nor reseller exemption certificate, nor are there any provisions in the Service Agreement that remotely suggest a wholesale/resale arrangement between CenturyLink and ICSolutions. We therefore reject CenturyLink’s characterization of ICSolutions as a telecommunications

⁵⁰ See Service Agreement Section 6.2 (“‘CenturyLink’ is expected to be responsible for Collect Calls[...]”); see also Declaration of Michael Haynes at para. 2 (stating that ICSolutions does not receive the revenue for traditional collect calls; the call detail records for these calls are sent to CenturyLink’s billing agent, ILD, for billing and collection).

⁵¹ Aultman E-Mail Responses at (4); see also Dawson Declaration at 1 (stating that ICSolutions “subtracts from these gross revenues the amount due to it for services it provides and then remits the remainder back to [CenturyLink]”).

⁵² See Haynes Declaration at para. 2.

⁵³ See Dawson Declaration at para. 3.

⁵⁴ See Haynes Declaration at para. 2.

⁵⁵ *Id.*

⁵⁶ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507, App. A; *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13795, para. 34 (2012); *Universal Service Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, 13795 at para. 34 (2012) (defining a reseller for contributions purposes 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”); see also 2021 FCC Form 499-A Instructions at 35-36.

reseller with an independent regulatory obligation to contribute to the Fund at the facilities where CenturyLink is the prime contractor for inmate calling services.⁵⁷

14. Finally, we reject CenturyLink's argument that ICSolutions' contractual responsibility for contributing to the Fund is a basis for relieving CenturyLink of the obligation to properly report its assessable revenue.⁵⁸ It is well established that the carrier with the primary obligation to contribute to the Fund cannot shift that obligation to a third party.⁵⁹ Thus, notwithstanding the terms of the contract, CenturyLink, as the telecommunications provider of the services provided at the correctional facilities, has the primary obligation to report and contribute on the revenues collected for its services, including the debit and prepaid calling services billed and collected by ICSolutions. In this case, ICSolutions contracted to collect and pay the USF contribution and has not challenged that obligation. But ICSolutions' contractual obligation to CenturyLink does not relieve CenturyLink of its regulatory obligation to contribute to the Fund on the interstate and international revenue it has earned, regardless of who collects that revenue for CenturyLink. As such, we agree with USAC's audit findings that CenturyLink has the regulatory obligation to report the revenue and contribute to the Fund.

15. Although we agree with USAC that CenturyLink has the obligation to contribute to the Fund based on the revenues in question, we remand CenturyLink's petition to USAC for further review of the record to investigate the claim that both CenturyLink and ICSolutions contributed to the Fund based on the same revenues. USAC declined to address CenturyLink's claim of double payment to the Fund during the audit process, stating that it fell outside the scope of the audit.⁶⁰ The Commission's contribution methodology, however, is designed to avoid double counting of revenues for contributions purposes.⁶¹ Concerns of double counting are usually raised in the context of a relationship between wholesale and resale providers – a relationship that USAC correctly determined does not exist in this case. However, we find that further examination of CenturyLink's evidence (including the declarations and other evidence submitted with the request for review) is warranted to determine whether the contributions at issue are consistent with the Commission's policy to avoid double collection of USF payments on the same revenues. Accordingly, we remand CenturyLink's petition to USAC for further

⁵⁷ See Request for Review at 12 n.38 and Attachment 2, Declaration of Michael Haynes at 1 [[REDACTED]] (Confidential).

⁵⁸ Request for Review at 4, 12.

⁵⁹ *Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Petition for Review by American Cyber Corp. et al*, CC Docket Nos. 96-45, 02-6, Order, 22 FCC Rcd 4925, 4930 at paras. 17-18 (WCB 2007) (finding that USAC properly billed petitioner resellers for the USF obligations despite petitioners' claim that a third party assumed the obligation to report and contribute to the fund based on revenues collected pursuant to contracts with the third party). See also, *Conolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 224 (1986) ("If the regulatory statute is otherwise within the powers of Congress . . . its application may not be defeated by private contractual provisions.").

⁶⁰ USAC Audit Report at 9.

⁶¹ See, e.g., *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9207 at paras. 845-846 (1997) ("Basing contributions on end-user revenues, rather than gross revenues, is competitively neutral because it eliminates the problem of counting revenues derived from the same services twice. . . . We seek to avoid a contribution assessment methodology that distorts how carriers choose to structure their businesses or the types of services that they provide. Basing contributions on end-user revenues eliminates the double-counting problem and the market distortions assessments based on gross revenues create because transactions are only counted once at the end-user level."); see also, e.g., *Universal Service Contribution Methodology, Application for Review of Decision of the Wireline Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13,786, para. 11 (2012) ("[O]ur present rules require contribution only once along the distribution chain[.]"); *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, American Telecommunications Systems Inc. et. al*. WC Docket No. 06-122, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 535, 538 at para. 6 (2017) ("The Commission adopted the wholesale exemption in part as a means of addressing concerns that the same revenue should not be assessed twice for USF contributions purposes.").

review to determine whether the evidence establishes that both CenturyLink and ICSolutions contributed to the Fund on the same service revenues. To the extent CenturyLink's claim of double counting can be established, we direct USAC to adjust invoices or accounts as appropriate.

IV. CONCLUSION

16. We affirm USAC's finding that CenturyLink is the telecommunications services provider with the regulatory obligation to contribute to the Fund. We find that the record indicates that ICSolutions is not a reseller of telecommunications services with respect to the revenue at issue in this appeal but rather operates as a billing and collection agent and a provider aspects of Prepaid/Debit Management service. Consistent with the Commission's policy of avoiding double-counting of revenues for contribution purposes, we find that a further review of CenturyLink's petition and evidence is warranted. We therefore remand CenturyLink's petition to USAC for further review. Because ICSolutions is not contesting its obligation to contribute to the Fund, if USAC determines both CenturyLink and ICSolutions contributed to the Fund based on the same revenues, we direct USAC to promptly make the appropriate adjustments and credits to correct for this impermissible double recovery.

V. ORDERING CLAUSES

17. IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154 and 254, and pursuant to sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, that the Request for Review filed by CenturyLink Public Communications, Inc. on March 26, 2014, is hereby DENIED IN PART and REMANDED IN PART to USAC for further consideration consistent with the findings in this Order.

18. IT IS FURTHER ORDERED, pursuant to sections 1.4(b)(2) and 1.103(a) of the Commission's rules, 47 C.F.R. §§ 1.4(b)(2) and 1.103(a), that this Order SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau