



# Navigating the FCC's Universal Service Program: Compliance Requirements for Service Providers

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# Today's Presentation



1. Introduction to the USP
2. USP Fundamentals, Key Concepts, Exemptions
3. Form 499-A Walkthrough
4. Enforcement
5. Q&A

# Introduction: What is the Federal Universal Service Program?

- ◆ The Universal Service Program provides funding for several large federal support initiatives:
  - ◆ High Cost Fund (RDOF, CAF II, ACAM, etc.)
  - ◆ E-Rate
  - ◆ Rural Health Care
  - ◆ Lifeline
- ◆ The USP collects funds through “contributions” from telecommunications and iVoIP providers
- ◆ FCC -> Universal Service Administrative Company (USAC)

# Introduction: USP is Arguably Broken

- ◆ Established as part of Communications Act of 1934
- ◆ Historically, USP quarterly contribution factor ranged from 5% - 10% of covered provider's gross assessable revenues
- ◆ Recent quarters: ~30% of assessable gross revenues
- ◆ Ongoing policy debate about the future of Universal Service

# Introduction: Why You Should Care



- ◆ USP is complicated, counterintuitive, and expensive
- ◆ FCC and USAC actively enforce: Failure to comply can result in severe consequences
- ◆ Knowledge of exemptions, etc., can provide a competitive edge

# Important Terms

- ◆ “End user”
  - ◆ Non-contributor receiving service
- ◆ “Telecommunications”
  - ◆ Vs. Information Services
- ◆ “Interstate” - Communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.
  - ◆ Vs. Intrastate
- ◆ “Reseller” - Provides telecommunications by reselling the services of other carriers
- ◆ Common Carrier
  - ◆ Vs. Private Carrier

# Core Concepts

- ◆ Forms 499-A and Q
  - ◆ 499-A due April 1
    - Collects revenue information for previous calendar year
    - Detailed revenue categories
  - ◆ 499-Q due quarterly
    - February 1, May 1, August 1, November 1
    - Collects projected revenue information for upcoming quarter and most recent quarter
    - General revenue categories



# Core Concepts

## ◆ Who Pays?

Type of filer	USF	TRS	NANPA	LNPA
Non-interconnected VoIP providers with no other telecommunications revenues		X		
De minimis private service providers				
Private service providers	X			
Telecommunications carriers that provide only intrastate service		X	X	X
Telecommunications carriers that provide only international service		X	X	X
Telecommunications carriers that provide services only to other universal service contributors			X	X
De minimis interstate telecommunications carriers and de minimis interconnected VoIP providers		X	X	X
Most other interstate telecommunications carriers and interconnected VoIP providers	X	X	X	X

# Core Concepts

- ◆ Reseller certifications
  - ◇ Required annually
  - ◇ Signed by customer under penalty of perjury
  - ◇ Must be consistent with FCC's provided language
  - ◇ Double payment risk
    - Basic principle is that USF contributions should be assessed only once in the distribution chain

# Core Concepts

- ◆ FCC's end-to-end rule - Look at location of end points, not location of provider's facilities
- ◆ Internet-bound traffic 100% interstate
  - ◆ Internet "contaminates" point-to-point services, even if same provider not providing Internet service
- ◆ 10% rule = if more than 10% of traffic on a point-to-point service is interstate, then entire circuit is interstate
- ◆ Measure by traffic, not capacity
- ◆ Obtain 10% certification from customer

# Core Concepts

- ◆ VoIP (Traffic Studies vs. Safe Harbor)
  - ◆ 64.9% Interstate Safe Harbor
  - ◆ Elect each quarter
  - ◆ Alternatively may rely on Traffic Studies
    - Statistical sampling to estimate jurisdiction of traffic
    - Maximum 1% margin of error with 95% confidence level
    - Must include an explanation of the methodology employed and accuracy
    - Submit with 499-A filing
- ◆ USF Fee Recovery
  - ◆ May recover USF from customers
  - ◆ If recovery is through line item, fees cannot be marked up

# Key Exemptions

- ◆ De minimis
  - ◆ No contribution required if contribution for year is less than \$10,000
  - ◆ iVoIP and Common Carrier must still file 499-A. Do not need to file 499-Q
  - ◆ Non-Common Carriers need not file 499-A
  - ◆ Evaluate using worksheet in 499-A

How to determine if a filer met the universal service <i>de minimis</i> standard for calendar year 2022		
(1)	Interstate contribution base for filer Enter Line 423(d) from FCC Form 499-A.	\$
(2)	International contribution base for filer Enter Line 423(e) from FCC Form 499-A.	\$
(3)	Interstate contribution base for all affiliates* Enter sum of Line 423(d) from FCC Forms 499-A of all affiliates.	\$
(4)	International contribution base for all affiliates Enter sum of Line 423(e) from FCC Forms 499-A of all affiliates.	\$
(5)	Consolidated interstate contribution base Enter Line (1) + Line (3).	\$
(6)	Consolidated interstate and international contribution base Enter Line (2) + Line (4) + Line (5).	\$
(7)	Consolidated interstate contribution base as a percentage of consolidated interstate and international contribution base Enter Line (5) / Line (6).	%
(8)	LIRE Exemption ** If Line (7) > 12%, enter Line (2). If Line (7) ≤ 12%, enter \$0.	\$
(9)	Contribution base to determine <i>de minimis</i> qualification Enter Line (1) + Line (8).	\$
(10)	2023 Form 499-A <i>de minimis</i> estimation factor	0.256 ***
(11)	Estimated annual contribution Enter Line (9) x Line (10)	\$

# Key Exemptions

- ◆ Intrastate Only
  - ◆ Not subject to Federal USF, check State programs
- ◆ International Only
  - ◆ Not subject to Federal USF
- ◆ Transport service provided to ISP (non common carrier)
  - ◆ Exemption for specific service only
- ◆ Government-only
  - ◆ For entities exclusively serving public safety or government entities and not offering services to others
- ◆ System integrators
  - ◆ Less than 5% of revenue from resale of telecommunications

# Form 499-A Walkthrough

# Enforcement: Deadlines

## ◆ Important Deadlines

- ◆ Form 499-Q: Feb. 1, May 1, Aug. 1, Nov. 1
  - Revisions to Feb 2023 filing due Mar. 20, 2023
- ◆ Form 499-A: April 1
  - Deadline for 2023 due by April 3; revisions due by Mar. 31, 2024



# Enforcement: Calculating Forfeiture

- ◆ Failure to File Form 499-A
  - ◇ Base forfeiture of \$3,000 (potentially up to \$50,000)
- ◆ Failure to Respond
  - ◇ Base forfeiture of \$4,000
- ◆ Criteria
  - ◇ Consider the nature, extent, and gravity to comply with filing requirements
  - ◇ Can assess an upward adjustment for egregious misconduct and intentional violations
  - ◇ Can assess downward adjustment for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay

# Enforcement: Proceedings

- ◆ Globocom (2006)
  - ◆ Failed to contribute to USF and TRS fund and did not file required forms
  - ◆ Base forfeiture of \$20,000 for failing to contribute to USF, \$10,000 for failure to contribute to TRS fund
- ◆ IK Communications (2022)
  - ◆ Failed to file six Forms 499-A between April 2016 and April 2021 and did not respond to LOI
  - ◆ Proposed forfeiture of \$100,000 for apparently, willfully, and repeatedly failing to timely comply with filing requirements and willfully failing to respond to LOI
- ◆ Pacific Data Systems (2023)
  - ◆ Failed to file 13 worksheets between August 2019 and February 2022
  - ◆ \$100,000 proposed forfeiture for failure to file

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