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THE COMMLAW GROUP

AT-A-GLANCE | MAY 2018

FEDERAL UNIVERSAL SERVICE FUND (USF) REPORTING

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All interstate telecommunications service providers operating in the United States must register with the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC") and remit contribution to the Federal Universal Service Fund ("FUSF") based on revenue earned from the provision of telecommunications services. Generally, this includes companies providing telecommunications via wireline, interconnected VoIP, wireless, prepaid calling card, and satellite services.

I. What revenue is subject FUSF contribution?

Revenue from interstate and international telecommunications services are subject to FUSF contribution. Interstate revenue is classified as calls between two states (for example, New York and New Jersey). International revenue is classified as calls between the U.S. and a foreign point (for example, calls between the United States and Mexico). Revenue from intrastate calls, e.g. calls within a single state, and calls between two international points is not subject to FUSF contribution.

II. How is FUSF revenue reported?

All carriers must report telecommunications revenue to USAC using FCC Form 499s as follows:

- **FCC Form 499-Q** is used to report quarterly projected revenue. Carriers who do not qualify for the FCC's *de minimis* requirement must complete Form 499-Q on a quarterly basis. This form reports historic revenue for the quarter preceding the filing due date and "projected" (estimated) revenue for upcoming quarter following the 499-Q due date. USAC invoices the Carrier based on projected revenue, measured against the FUSF Factor for the applicable quarter. FCC Form 499-Q is due February 1st, May 1st, August 1st, and November 1st.

- **FCC Form 499-A** is used to report actual revenue for entire year preceding the reporting due date. FCC Form 499-A functions as a "true-up" for all revenue earned during the year. USAC compares actual, historic revenue reported on FCC Form 499-A against projected revenue payments made during the year (i.e. revenue paid based on amounts reported on FCC Form 499-Q). Filers are billed, or credited, based on the difference between projected payments and actual revenue. FCC Form 499-A is due April 1st.

III. What is the *de minimis* exception?

A Carrier is considered *de minimis* when annualized FUSF contribution obligations are less than $10,000.

- **Example:** Based on an estimated FUSF Factor of 15%, a carrier is *de minimis* if annualized contribution-eligible revenue falls below $66,666 ($10,000 ÷ 15%). Please note, the FUSF Factor changes quarterly, so a Carrier's *de minimis* status and specific contribution obligations should be reviewed carefully each quarter.

A filer that affirms *de minimis* status is exempt from directly contributing to the FUSF. *De minimis* filers are not required to file FCC Form 499-Q, and will not be billed for direct contribution. However, *de minimis* filers must remit contribution to underlying service providers. Conversely direct, non-*de minimis* contributors are excused from paying FUSF pass- through charges after filing a "Carrier's Carrier Exemption Certificate" with an underlying telecommunications provider.

IV. What is the LIRE?

The limited international revenue exemption, or LIRE, is an FCC rule under which carriers with predominantly international revenue are exempt from contribution on international revenue. Specifically carriers with interstate revenue less than 12% of combined interstate and international revenue are exempt from remitting FUSF contribution on international revenue.

However, LIRE-eligible filers are not exempt from underlying FUSF pass-through fees. The result is that a *de minimis*, LIRE-eligible carrier may indirectly remit significant FUSF contribution on international revenue to underlying telecommunications providers in the form of pass-through fees.

FCC Form 499 in practice. Carriers should carefully evaluate quarterly and annual FUSF contribution obligations to ensure consistency in reporting on all FCC Form 499s. Due to the forward-looking nature of the FUSF methodology, carriers must anticipate annual contribution obligations, or else run the risk of double contribution and / or penalties for under-contribution. Some common FUSF contribution scenarios follow.

Scenario #1 (Direct Contributor)

1) Carrier projects $25,000 in interstate revenue per quarter on FCC Form 499-Q. Contributor factor equals 15%.
2) Quarterly payments equal $3,750 per quarter (25,000 x 15%). Annualized contribution will equal $15,000. Carrier is considered a direct contributor and remits contribution to USAC.
3) Carrier earns $120,000 in interstate revenue for the entire year. Carrier's actual, historic contribution obligations for the entire year equal $18,000 ($120,000 x 15%).
4) Following submission of FCC Form 499-A, Carrier will be billed the difference between the amounts paid via the 499- Qs and the amount reported on the 499-A: $3,000 ($18,000 - $15,000).

Scenario #2 (Indirect / De Minimis Contributor)

1) Carrier projects $2,000 in interstate revenue per quarter on FCC Form 499-Q. Contributor factor equals 15%.
2) Quarterly payments equal $300 per quarter (2,000 x 15%). Annualized contribution will equal $1,200. Carrier is *de minimis* and does not remit contribution directly to USAC; Carrier pays underlying provider USF fees.
3) At the end of the year, Carrier earns $10,000 in interstate revenue for the entire year. Carrier's actual, historic contribution obligations for the entire year equal $1,500 ($10,000 x 15%).
4) Carrier is *de minimis* for the year. Carrier must still submit FCC Form 499-A, but will not be billed for FUSF contribution by USAC.

Scenario #3 (Indirect / *De Minimis* Contributor)

1) Carrier projects $2,000 in interstate revenue per quarter on FCC Form 499-Q. Contributor factor equals 15%.
2) Quarterly payments equal $300 per quarter (2,000 x 15%). Annualized contribution equals $1,200. Carrier is *de minimis* and does not remit contribution directly to USAC; Carrier pays underlying provider FUSF fees.
3) At the end of the year, carrier earns **$120,000** in interstate revenue for the entire year. Carrier's actual, historic contribution obligations for the entire year equal $18,000 ($120,000 x 15%).
4) Because $18,000 is above the *de minimis* threshold, Carrier is not *de minimis.*
5) Carrier did not remit projected contribution to USAC during the year; therefore, Carrier must pay FUSF directly to USAC on the ***entire*** historic revenue amount: $18,000.
6) Carrier cannot offset this contribution amount against underlying pass-through fees. And, since billing periods have passed, recovery of FUSF from underlying carriers or customers is very difficult.

Scenario #3 (LIRE-eligible / *De Minimis* Contributor)

1) Carrier receives $10,000 in interstate revenue and $200,000 in international revenue. Contributor factor equals 15%.
2) The LIRE percentage equals 5% ($10,000 ÷ ($200,000 + $10,000)). Carrier qualifies for the LIRE and only remits FUSF contribution on interstate revenue: $10,000.
3) Quarterly payments equal $1,500 per quarter ($10,000 x 15%). Annualized contribution will equal $6,000. Carrier is *de minimis* and does not remit contribution directly to USAC.
4) However, since Carrier is *de minimis,* Carrier pays its underlying provider USF fees.
5) The underlying provider, by law, must assess FUSF on *all* telecommunications services revenue irrespective of jurisdiction. Underlying FUSF pass-through fees can be as high as $31,500 ($200,000 + $10,000 x 15%), less any retail mark-ups.