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## SUMMARY

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the rules of the Federal Communications Commission, Compass Global, Inc., hereby respectfully requests that, inasmuch as novel questions of fact, law and/or policy are raised herein, the full Commission review *de novo* Compass Global's appeals, addressed in the Administrator's Decision on Contributor Appeal dated June 2, 2008 ("Administrator's Decision"). Specifically, Compass Global requests that the Commission reverse that portion of the Administrator's Decision which refuses to accept and process the Company's revised 2006 Form 499-A. The Administrator's Decision rejecting the revised 2006 Form 499-A cannot be reconciled with the facts, which clearly indicate the Company submitted its filing within 12 months from the date which FCC Enforcement Bureau personnel established as the filing due date which would be applicable to Compass Global. Thus, not even a 12-month revision window on downward reductions stands as an impediment to acceptance and processing of this form by USAC; indeed, USAC is obligated to accept and process the Company's revision filing.

Furthermore, as demonstrated in Section III hereof, USAC's refusal to accept and process revised 2006 Form 499-A flies in the face of the underlying rationale for establishment of the 12-month revision window in the first place, even if that filing window had been legitimately erected by USAC. Ultimately, however, USAC is precluded from imposing the 12-month revision window against Compass Global. Indeed, that limitations period represents an *ultra vires* exercise of authority on the part of USAC and as such, is of no force and effect against Compass Global or any other entity.

That portion of the Administrator's Decision which addresses USAC's treatment of the Company's 2005 Form 499-A is particularly troubling because it reveals a course of conduct by USAC wholly inconsistent with general principles of good faith and fair dealing. These actions

include: (i) the altering by USAC of a 499 filing officially made by Compass Global without the Company's knowledge or consent; (ii) the issuance by USAC of misleading written statements to Compass Global; and (iii) the withholding from Compass Global of critical information both before and after Compass Global was forced to file the appeal underlying this Request for Review. The Administrator's Decision expands the scope of USAC's improprieties, misrepresenting the filing date of Compass Global's revised 2005 Form 499-A to manufacture a filing date which would have fallen outside the 12-month window from the Forms' original filing dates (notwithstanding the issuance by USAC of "file stamp" copies of the documents which evidence receipt of the revised forms by USAC on a different date – a date within the 12-month window). The Administrator's Decision also reveals USAC's posting to the USAC website of a Form 499-A filing altered by USAC without the Company's knowledge or consent, and the subsequent billing of USF assessments to the Company predicated thereupon.

Accordingly, in addition to seeking immediate relief in the form of acceptance by USAC of the Company's revised 2006 Form 499-A, recalculation of contribution assessments, and refund or credit of amounts already paid by Compass Global in excess of amounts rightfully owed, Compass Global also respectfully requests the initiation of an inquiry into USAC's conduct during the course of this matter to determine the full extent of USAC's deviation from the legitimate scope of its authority. Finally, Compass Global respectfully requests that the Commission hold in abeyance all purported collection actions and/or attempts to transfer debt for collection pending full and final resolution of both this matter and the matters addressed in File No. EB-06-IH-3060.

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

In the Matter of

Request for Review of Decision of the  
Universal Service Administrator by  
Compass Global, Inc.

CC Docket No. 96-45  
WC Docket No. 06-122

Compass Global, Inc.  
Request for Review of Decision  
Of the Universal Service Administrator  
And  
Request for Initiation of an Investigation  
Into the Policies and Procedures of the  
Universal Service Administrative Company  
In This Matter

TO THE COMMISSION:

I. INTRODUCTION

Compass Global, Inc. ("Compass Global" or the "Company"), respectfully requests that for the reasons set forth below, the Federal Communications Commission ("Commission") overturn that portion of the Administrator's Decision on Contributor Appeal, dated June 2, 2008 ("Administrator's Decision"), refusing to accept and process the Company's revised 2006 Form 499-A.<sup>1</sup> Compass Global also respectfully requests, inasmuch as the instant matter is inextricably linked to issues presently under consideration by the Commission in a related matter, File No. EB-06-IH-3060, that the Commission hold in abeyance all purported collection actions and/or attempts to transfer debt for collection pending full and final resolution of both this matter and the issues addressed in that proceeding. Finally, since the facts of this case include the admitted altering by

<sup>1</sup> Compass Global respectfully submits that the instant request for review raises novel questions of fact, law and/or policy and thus, pursuant to FCC Rule Section 54.722, this request must be considered by the full Commission. 47 C.F.R. § 54.722(a).

USAC of a 499 filing officially made by Compass Global, the issuance by USAC of misleading written representations to Compass Global, and the withholding from Compass Global of critical information to Compass Global (both before and after the lodging of the appeal underlying this Request for Review), culminating in the issuance of an Administrator's Decision on June 2, 2008, which is itself replete with factual misstatements materially prejudicing Compass Global's rights in this matter, Compass Global also herein respectfully requests the initiation of an investigation into the conduct of USAC in this matter.

### **I. Background/Relevant Events**

In order for the Commission to fully appreciate the egregious nature of USAC's conduct in this matter, it is necessary to have a broad understanding of the events which have preceded, and ultimately led to the issuance of, the Administrator's Decision. Those events commenced in June, 2006, when Compass Global was apparently included in a widespread Section 64.1195 Compliance Survey undertaken by the Investigations & Hearings Division ("IHD") of the FCC's Enforcement Bureau. At that time, Compass Global received form letter correspondence from IHD advising the Company that:

"if your company is planning to provide or is providing any of these [enumerated] telecommunications services to end-users for a fee, you must register with the Universal Service Fund Administrator if you have not already done so."<sup>2</sup>

Since Compass Global did not provide any of the telecommunications services referenced in the letters nor did it provide any services, at all, to "end-users" and thus, is not an entity subject to the FCC's rules regarding revenue reporting and federal support contribution obligations, the

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<sup>2</sup> Exhibit 1 hereto, June 9, 2006, letter from Hugh L. Boyle, Chief Auditor, Investigations & Hearings Division, Enforcement Bureau, "Re: Section 64.1195 Compliance Survey, Reference Number: UC 4-11", pp. 2-3.

Company did not understand why it had received this correspondence.<sup>3</sup> To resolve this mystery, Compass Global contacted IHD, and over the ensuing months was fully responsive to IHD Staff requests for information. Nothing in this discussion process, however, convinced Compass Global that the nature of its service offering brought it within the universe of entities which should have registered with USAC and reported revenues via FCC Form 499.<sup>4</sup>

IHD Staff, however, adopted a contrary position and became increasingly entrenched in that position, making clear that unless the Company filed FCC Forms 499-A and began contributing to the funding of federal support mechanisms, a formal investigation would be initiated against it. Therefore, notwithstanding its position that it was not legally required to file Forms 499, the Company obtained a waiver of the original filing dates for the forms (which would otherwise have been April 1, 2005 and April 1, 2006, respectively). This waiver was granted by Mr. Nand Gupta, the FCC's IHD contact person identified as the appropriate individual to address the Compass Global matter; the waiver effectively extended Compass Global's filing dates for the two forms up to and including September 5, 2006. Compass Global filed original 2005 Form 499-A and original 2006 Form 499-A by that filing deadline.<sup>5</sup> Without this FCC staff waiver, issued in the form of a directive, Compass Global's original 2005 Form 499-A would have been incapable of revision, for it was filed more than 12-months after the "due date" *ab initio*. If it is accepted that Compass Global was entitled to revise its 2005 Form 499-A, then it must also be accepted that a revision to its 2006 Form 499-A within 12-months of the "filing date" should be acceptable. After all, neither of these

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<sup>3</sup> See, e.g., In the Matter of Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, WC Docket No. 06-122, June 30, 2008.

<sup>4</sup> Indeed, this remains Compass Global's position today; the issue is presently under consideration by the Commission in File No. EB-06-IH-3060, Compass Global Notice of Apparent Liability for Forfeiture.

<sup>5</sup> See Compass Global Response to Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3060, pp. 6-8 (June 9, 2008) attached hereto as Exhibit 2. Because of the voluminous nature of the attachments to the Compass Global Response, only the text is included as Exhibit 2. To the extent any party requests full exhibits, however, Compass Global will make such materials available.

Forms 499-A would have been filed, *but for* the directives of FCC's IHD staff; hence, the directives of staff must be considered by USAC in its application of the 12-month revision policy.

The Company began receiving invoices from the various other Fund Administrators the following month, October, 2006, and received its first USAC invoice in January, 2007.<sup>6</sup> Compass Global's January USAC invoice billed the Company contemporaneously and prospectively, based upon its 2006 499-Q data; it also billed amounts retroactively, totaling \$29,613.97 on the January, 2007 bill alone.<sup>7</sup>

On January 26, 2007, at the request of USAC personnel, Dean Cary, President of Compass Global, forwarded to USAC additional hard copies of the original 2005 and 2006 Forms 499-A which had been filed the previous September.<sup>8</sup> At the time of USAC's request for additional hard copies of these documents, Compass Global was not advised that the 2005 Form 499-A purportedly had not been received by USAC.

In June, 2007, notwithstanding that Compass Global had complied with IHD's demand that it file Forms 499-A, IHD nonetheless instituted a formal investigation against Compass Global. As a result, the Company retained telecommunications legal counsel and only at that point in time became aware that the revenue data submitted in the Company's original 2005 and 2006 Forms 499-

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<sup>6</sup> In November, 2006, Compass Global submitted Forms 499-Q for 2006; thus, the Company was current in its filing obligations prior to the due date for February 1, 2007 Form 499-Q, and has remained in compliance since that time.

<sup>7</sup> In fact, each of Compass Global's first three USAC invoices (those dated January 22, 2007, February 22, 2007, and March 22, 2007, respectively) included aggregate "adjustments" totaling \$29,613.97. Compass Global paid each of these invoices in full, thereby making "499-A adjustment" payments in the amount of \$88,841.91. The Company assumed that since it was recouping such large sums in such an abbreviated period of time, USAC was attempting to expeditiously bring Compass Global up-to-date for all previous calendar year revenues, both those for CY 2004 and CY 2005. And indeed, commencing with its April, 2007, USAC invoice, Compass Global was billed only prospectively, indicating to the Company that all backward-looking assessments had been satisfied.

<sup>8</sup> Attached hereto as Exhibit 3 is a copy of the overnight courier label, Mr. Cary's transmittal note to USAC transmitting additional copies of both Forms 499-A.

A had been inaccurately reported.<sup>9</sup> Thus, at that time, the Company learned that it had overpaid, and was presently overpaying, federal support assessments not only to USAC but to each of the federal support funds.

It was necessary, therefore, to submit revised Forms 499-A to USAC, which the Company did on September 4, 2007. Compass Global's revised 2005 Form 499-A and revised 2006 Form 499-A were forwarded to USAC by overnight courier on that date and USAC returned "file-stamp" copies evidencing receipt of both the revised 2005 filing and the revised 2006 filing the following day, September 5, 2007.<sup>10</sup>

One week later, on September 11, 2007, USAC issued a letter to Compass Global in which it unequivocally rejected the revised 2005 Form 499-A. USAC specifically informed Compass Global that it had

"completed a review of the revised FCC Form 499-A that you submitted for the purpose of revising revenue reported . . . for the period 2004. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission."<sup>11</sup>

At this point in time, in addition to Compass Global's original September 5, 2006, filing, USAC had received two other copies of the original 2005 Form 499-A, one from Mr. Cary in January, and another as an exhibit to the Company's September, 2007, "revision" filing.

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<sup>9</sup> Both the 2005 and 2006 initial 499-As erroneously identified the Company as a "prepaid calling card" provider and included revenue that was incorrectly reported based on regulatory classifications that are inaccurate, as a matter of law. USAC, NECA and other FCC Program administrators generated invoices which substantially overstated Compass Global's contribution obligations based on the incorrectly reported revenue figures. Therefore, a significant portion of the charges invoiced by each of the FCC Programs' administrators is incorrect and not lawfully owed by Compass Global. Absent acceptance and processing of the Company's revised 2006 Form 499-A, the Company will be left totally without a remedy for recouping regulatory assessments which it has already paid in error.

<sup>10</sup> Copies of Compass Global's revised 2005 Form 499-A "File-Stamp" and its revised 2006 Form 499-A "File-Stamp" are attached hereto as Exhibits 4 and 5, respectively.

<sup>11</sup> Exhibit 6 hereto, USAC September 11, 2007, rejection letter re. 2005 form 499-A, p. 1. Thus, even as it unequivocally rejected the "revised" 2005 Form 499-A, USAC at no time advised Compass Global of its position, enunciated for the first time nearly a year later, that it had not received the Company's original filing in September, 2006. *To the contrary, the quoted language specifically references an "original submission" and refuses to permit revision of the revenue data already provided therein.*

On the same date, by separate letter, USAC advised Compass Global that it was also unequivocally rejecting the Company's revised 2006 Form 499-A, for similar reasons.<sup>12</sup>

Each of the above rejection letters also directed Compass Global that, to the extent the Company wished to appeal USAC's decision, it might do so within the next 60 days. On November 7, 2007, Compass Global appealed both USAC's rejection of the Company's revised 2005 Form 499-A and its rejection of the Company's revised 2006 Form 499-A.<sup>13</sup> In that combined appeal of both rejection decisions, Compass Global specifically noted for USAC the Company's calculation that if USAC persisted in relying upon data reported in the Company's original 2005 Form 499-A -- rather than accepting and processing the revised version of the form -- the Company's liability for federal USF assessments based upon its CY 2004 revenues would exceed amounts rightfully owed by more than \$36,000.<sup>14</sup>

USAC made no effort to inform Compass Global of its claim that it had not received the original 2005 Form 499-A.<sup>15</sup> In fact, for a period of more than six months following Compass Global's appeal of the 2005 and 2006 rejections, USAC remained absolutely silent.

Also on November 7, 2007, Compass Global transmitted copies of its USAC Letter of Appeal to the Chief of the FCC's Revenue and Receivables Operations Group and Neustar, Inc., the NECA TRS Collections Department and the Chief Billing and Collection Agent for Welch & Company LLP along with a request that the entities

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<sup>12</sup> USAC's September 11, 2007, letter rejection Compass Global's revised 2006 Form 499-A is attached hereto as Exhibit 7.

<sup>13</sup> Compass Global's November 7, 2007, USAC Appeal is attached hereto as Exhibit 8.

<sup>14</sup> *Id.*, p. 7. Compass Global also advised USAC, at p. 8, that failure to accept and process revised 2006 Form 499-A would subject the Company to a similar overpayment for that reporting period, the amount of the 2006 overpayment being \$118,756.00.

<sup>15</sup> As noted previously, this position was announced by USAC for the first time in the Administrator's Decision dated June 2, 2008.

“update your records accordingly and cease all collection or referrals with respect to invoices issued to Compass, to the extent necessary, to account for the appeals status of the Revised 499-As.”<sup>16</sup>

The Company’s request, however, was not honored.<sup>17</sup>

In January, 2008, while Compass Global’s appeal was still pending, the FCC informed the Company that NECA had referred to the FCC for collection an “outstanding Debt and [] accrued interest, administrative costs, and penalties.”<sup>18</sup>

On February 8, 2008, Compass Global appealed this notice of debt transfer, explaining as it did so that, among other things, the amount identified for collection was inaccurate not only because it “fail[ed] to take into consideration a \$104,534.37 credit adjustment resulting from USAC’s processing of a Revised 2007 FCC Form 499-A,” but also because that amount also “fails to take into consideration the ‘Appealed’ status of USAC denials of Revised 2006 and 2005 Form 499-As”.<sup>19</sup>

At this point, three months had elapsed since the filing of Compass Global’s USAC appeal; USAC remained silent.

On February 28, 2008, the FCC issued a second notice of debt transfer, seeking collection of a separate “outstanding Debt and [] accrued interest, administrative costs, and penalties.”<sup>20</sup>

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<sup>16</sup> Exhibit 9 hereto, p. 2.

<sup>17</sup> Throughout the period of time it has been invoiced federal support mechanism contributions, Compass Global has consistently satisfied those obligations; indeed, as reflected in Compass Global’s Response to NAL (Exhibit 2, pp. 21-23), at numerous times in its payment history, the Company has carried significant credit balances in its contribution accounts. It is only with respect to the large lump-sum invoiced amounts associated with federal TRS that the Company has been required, consistent with sound business practices, to refrain from paying in full or agreeing to a payment plan that mandates a 10% down payment at a significantly inflated rate of interest; prior to resolution of its pending USAC appeals these invoiced amounts were indisputably inaccurate, have been based upon inappropriately inflated contribution base figures which USAC has revised to revise. Given the Administrator’s Decision’s continued refusal to provide Compass Global with relief, these inaccuracies persist even today.

<sup>18</sup> FCC Letter dated January 9, 2008, included as an attachment to Exhibit 10, Compass Global’s First TRS Appeal, (February 8, 2008), attachment p. 1.

<sup>19</sup> Exhibit 10, Compass Global First TRS Appeal, , p. 1.

<sup>20</sup> FCC Letter dated February 28, 2008, included as an attachment to Exhibit 11, Compass Global’s Second TRS Appeal, (March 28, 2008), attachment p. 1.

On March 28, 2008, Compass Global contested this subsequent notice of debt transfer in its second TRS Appeal.<sup>21</sup> The TRS amounts invoiced to Compass Global had been rendered inaccurate at least to some degree by USAC's reporting to NECA of inaccurate contribution base revenues. Thus, USAC's refusal to correct the Company's revenue data effectively precluded an accurate quantification of the amount due NECA, *if any*, by Compass Global. Because the various appeals were thus inextricably intertwined, Compass Global served this second TRS appeal not only upon the FCC and NECA but upon USAC as well.<sup>22</sup>

Still USAC remained silent.

On April 9, 2008, the FCC released a Notice of Apparent Liability ("NAL") for Forfeiture in File No. EB-06-IH-3060.<sup>23</sup> Compass Global notes that a number of factual inaccuracies appear in the NAL, where the FCC apparently relies upon certain loose assertions by USAC similar to the misstatements which pepper the Administrator's Decision. For this reason and others, the issues addressed in the NAL, and the amounts of potential liability identified by the FCC therein, are also inextricably intertwined with issues presented in Compass Global's USAC appeal underlying this Request for Review. At the time of the issuance of the NAL, USAC had not addressed Compass Global's appeal. Almost two months after release of the NAL, USAC as it had consistently done, still remained silent.

Compass Global timely filed a response to the NAL, addressing therein the far-reaching implications flowing from USAC's refusal to process the Company's revised Form 499-As for 2005 and 2006, and USAC's protracted delay in providing any response to Compass Global.<sup>24</sup>

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<sup>21</sup> Exhibit 11, Compass Global Second TRS Appeal.

<sup>22</sup> *Id.*, p. 1.

<sup>23</sup> Exhibit 12, attached hereto.

<sup>24</sup> Exhibit 2, attached hereto; Compass Global had been granted an extension of its response date up to an including June 9, 2008, and filed its response to the NAL on that date.

On June 2, 2008, the Administrator's Decision finally issued.<sup>25</sup> By that time, nearly nine months had passed from the date upon which Compass Global's revised 2005 and 2006 Forms 499-A had been submitted. Close to 20 months had passed from the date upon which the Company's original 2005 and 2006 Forms 499-A had been submitted. And USAC was about to be revealed, in Compass Global's response to the NAL, as an entity which has been almost wholly unresponsive to the Company's repeated and persistent requests for information; an entity inconsistent and contradictory in its accounting of Compass Global's USF payments; and an entity in no particular hurry to resolve the Company's pending appeals issues.<sup>26</sup>

It was at this late date that USAC claimed *for the very first time* that it had not received Compass Global's original 2005 Form 499-A.<sup>27</sup> The Administrator's Decision also misstates the date upon which the Company's revised 2005 and 2005 Form 499-As were submitted, placing that filing date at September 7, 2007, despite issuance by USAC of "file-stamps" indicating receipt on September 5, 2007.<sup>28</sup>

The Administrator's Decision also informs Compass Global that, contrary to USAC's unequivocal rejection of both the original 2005 and 2006 Forms 499-A on September 11, 2007, USAC had actually, without knowledge to Compass Global, unilaterally converted the Company's revised 2005 Form 499-A filing into a *de facto* original filing, thereafter processing the form and billing Compass Global USF assessments based upon revenue figures provided therein.<sup>29</sup>

What the Administrator's Decision does not say, but what the document which USAC posted to its website as Compass Global's "499A – April 2005 Filing" reveals is this: USAC has not

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<sup>25</sup> Exhibit 13, attached hereto.

<sup>26</sup> The benefits of this delay, of course, accrue to the benefit of USAC, which has retained Compass Global's federal USF overpayments throughout.

<sup>27</sup> *Id.*, p. 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

merely posted the Company's revised 2005 499-A filing to its website; it has actually *altered the document from its submitted form*, without the knowledge or consent of Compass Global. Specifically, line 612 of the Form has been altered to reflect the nature of the filing as "Original April 1 filing for the year".<sup>30</sup> As Exhibit 5 demonstrates, when filed by Compass Global, line 612 reflected, "Revised filing with updated revenue data."<sup>31</sup>

It is against the above backdrop that USAC's actions must be judged.

## **II. Infirmities in the Administrator's Decision with Regard to Compass Global's 2005 Form 499-A Necessitate the Initiation of a Commission Inquiry into the Practices and Procedures of USAC**

The Administrator's Decision sets forth a number of disingenuous and contrived statements. One of the most shocking is the Administrator's attempted disavowal of receipt of the Company's original 2005 Form 499-A, a filing which the Company had served upon USAC more than 20 months earlier. Indeed, this attempted disavowal is in direct conflict with USAC's own written statements to the Company admitting its earlier possession of original 2005 Form 499-A.<sup>32</sup>

Compass Global finds implausible the Administrator's 11<sup>th</sup> hour assertion that it did not timely receive the Company's original 2005 Form 499-A for another reason as well. In connection with his establishment of Compass Global's modified due date for the original 2005 and 2006 499-A filings, Mr. Gupta had closely followed the Company's efforts to complete and file both the 2005 and 2006 Forms 499-A and had also followed up with the Company routinely for updates on its progress and the likely date upon which the forms would actually be filed with USAC. Following

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<sup>30</sup> Exhibit 14 hereto, "499A - April 2005 Filing", printed from USAC's website: <http://www.usac.org/fund-administration/forms>.

<sup>31</sup> Exhibit 5, attachment 1, p. 7.

<sup>32</sup> See, e.g., USAC September 11, 2007, rejection letter "Re. 2005 FCC Form 499-A Revision Rejection", p. 1 ("The Universal Service Administrative Company (USAC) has completed a review of the revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by 826215 Compass Global, Inc. for the period 2004. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.")

Compass Global's submission of both forms on September 5, 2006, Mr. Gupta never again contacted the Company with respect to *either* form. Thus, it is particularly difficult for Compass Global to believe that the original 2005 499-A was not also received by USAC along with the 2006 form on September 5, 2006.<sup>33</sup>

Compass Global finds particularly disingenuous, however, the Administrator's creative, yet wholly unpersuasive, attempt to characterize its unequivocal rejection of the Company's *revision* filing as actually a rejection of an original filing which USAC simultaneously asserts was never effectively served upon it:

"[t]he 2005 Form 499-A rejection letter did not correctly state why the 2005 Form 499-A Compass Global designated as 'original' was rejected because the letter did not distinguish between the two different 2005 Forms 499-A submitted by Compass Global on September 7, 2007."<sup>34</sup>

USAC's September 11, 2007, rejection letter does not distinguish two different versions of 2005 Form 499-A because it *nowhere mentions two different versions submitted by Compass Global on September 7, 2007*. Rather, the rejection letter deals only with the "revised" filing and, in language directly quoted in footnote 31 above, specifically indicates USAC's rejection *of the revision*.<sup>34</sup> Nowhere in the

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<sup>33</sup> It is much more likely, in Compass Global's opinion that the original 2005 Form was received by USAC but for some reason never processed – perhaps for a reason as simple as the USAC staff member which opened the package did not closely peruse the forms but merely assumed the Company had submitted multiple copies of a single Form 499-A; and thus, only the 499-A for 2006 was originally entered into USAC's database. Whatever the reason, however, failure of USAC to process Compass Global's original 2005 Form 499-A has resulted in significant financial injury to the Company, requiring it to expend funds unnecessarily to defend itself against an unwarranted NAL and two separate notices of intent to transfer debt for collection before any amount owed by the Company could be accurately ascertained; the Company has also been subjected to the risk of damage to its reputation as a result of the very public nature of these proceedings. None of this injury has been cured by USAC's unilateral conversion and processing of Compass Global's revised 2005 499-A as a *de facto* original filing. And, of course, USAC's willingness to "convert" a filer's submission, without any attempt to communicate this fact to the filer, raises much graver concerns regarding the integrity of the universal service policies and procedures as a whole.

<sup>34</sup> The Administrator's Decision correctly notes that in order to clearly illustrate the differences between the original 2005 Form 499-A and the revised form, Compass Global provided USAC with a courtesy copy of the original form as an attachment to the Company's revised filing. The Administrator's Decision makes no bones, however, about the fact that the revised document was clearly marked as "revision"; there is thus no doubt which document was rejected by USAC on September 11, 2007.

entire USAC's September 11<sup>th</sup> rejection letter is there any indication that USAC intended to accept the revision, mark it as an original and bill Compass Global assessments for CY 2004 on subsequent USAC invoices. Indeed, given the outrageousness of such conduct, USAC could not have suggested publicly that it was embarking upon this course of action without subjecting its conduct to immediate scrutiny.

Compass Global was shocked to hear from USAC for the first time upon receipt of the Administrator's Decision dated June 2, 2008, that USAC was disavowing receipt of the Company's original 2005 Form 499-A. Following receipt of the Administrator's Decision, Compass Global undertook yet another extensive review of invoices issued to it by USAC.

Based upon information available to it, Compass Global cannot definitively contradict the Administrator's conclusion that Compass Global apparently has been billed USF assessments based upon its 2004 revenues as set forth in the Company's *revised* 2005 Form 499-A. The Company's further review of USAC invoices confirms that line item assessments referencing 2005 did appear on Compass Global's USAC invoices during October, November and December 2007; those assessments have been paid by the Company in full.<sup>35</sup> While the information provided in the Administrator's Decision finally sheds light on these previously unexplained assessments, it is simply not correct that, because USAC has (belatedly) billed Compass Global USF assessments based upon

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<sup>35</sup> During the period October through December, 2007, Compass Global did make inquiries to USAC concerning the origin and basis for these line items, which the Company thought were attempting to impose upon it *additional* USF assessments related to its 2004 revenues. The Company, however, received no explanation. Even though it believed it had already paid (indeed, overpaid), federal USF assessments based upon the Company's CY 2004 revenues, out of an abundance of caution, Compass Global paid these additional charges in full as well. Indeed, since Compass Global has made repeated requests for information and explanations not only to USAC but other fund administrators as well, the Company finds particularly insulting Administrator's Decision footnote 4, in which "USAC encourages Compass Global to contact USAC's Customer Service Bureau . . . with any questions concerning calculation of its universal service obligation."

these revised figures, the Company has not been harmed by USAC's dereliction of duty. Quite the opposite is true, since absent USAC's dereliction in duty, Compass Global would not have become the target of an unwarranted NAL proceeding. Neither would the Company have been forced to twice appeal NECA notices of intent to transfer for collection debts which had not been definitively quantified.

Following issuance of the Administrator's Decision, Compass Global has also carefully reviewed all electronic information resident on the USAC website regarding filings purported to have been made by the Company. Because documents are posted on USAC's website in reverse chronological order, the document entitled "499A - April 2005 Filing" appears at the bottom of the list, in the location where the earliest-filed document would ordinarily be found. Thus, a cursory review of USAC's website led Compass Global to the conclusion that this document, identified as the Company's 2005 Form 499-A - and *not* identified in any way as a revised filing - was indeed what it purported to be: an original 499-A filing, the earliest such filing made by the Company. No document is posted to USAC's website identified as a "revised" 2005 499-A, bolstering, rather than *contradicting*, USAC's claim that it had unequivocally rejected the Company's revision filing on September 11, 2007.

Compass Global proceeded to open and print the document identified by USAC as "499A - April 2005 Filing" in order to compare it to both the original version filed by the Company and the revised version filed by the Company as well. The document had nothing in common with Compass Global's original filing. Neither was the document an identical version of the Company's revised 2005 Form 499-A submitted - and rejected by USAC - in September, 2007. Rather, the document posted by USAC is a mere version of -- not an identical copy of -- the Company's revised 2005 Form 499-A filed in September, 2007.

The USAC-posted version of Compass Global's 2005 Form 499-A differed from the "as-filed" version in the Company's possession in the following respects. In addition to Mr. Cary's signature, certain other information had been completed in handwritten form on the Company's "as-filed" form (specifically, the Company's 499 Filer ID on lines 101, 201, 219, 301 and 401, and the Company's FCC Registration Number on line 107). USAC website document "499A - April 2005 Filing", however, presents this handwritten information in electronically completed format. Compass Global understands that at one time it was the policy of USAC to re-input to the USAC database information from filers' initial "registration" filings (which filers were, and still are, required to submit to USAC in hard copy). To the extent USAC felt it necessary to accurately re-input such information as the Company's FCC Filer ID and Registration Number from the Company's revised 2005 Form 499-A, Compass Global would not have found this action objectionable. That USAC has done so, however, confirms that Compass Global's submission has been manipulated in some fashion by USAC.

USAC's manipulation of Compass Global's officially filed document, however, did not stop with USAC simply filling in the Company's Filer ID and FCC Registration Numbers. The most significant alteration of the document reflected on USAC's website is the modification by USAC of Compass Global's indication (at line 612 of the "as-filed" version) that the document is a "Revised filing with updated revenue data". The online version posted by USAC affirmatively changes line 612 to reflect the nature of the filing as an "Original April 1 filing for the year." This represents a substantive, rather than a purely ministerial, change to a document, made without the filer's knowledge or consent. To put it mildly, this is wholly inappropriate behavior for an entity acting under color of law through authority granted by an agency of the federal government.

**III. Infirmities in the Administrator's Decision with Regard to Compass Global's 2006 Form 499-A Necessitate Commission Reversal of that Portion of the Administrator's Decision Refusing to Accept and Process the Company's Revised 2005 Form 499-A**

Pursuant to FCC Rule Section 54.723(b), the Commission's review of this matter is *de novo*.<sup>36</sup>

Accordingly, Compass Global takes this opportunity to present to an impartial decision maker both the legal and the equitable arguments for acceptance of the Company's revised 2006 Form 499-A.

As noted above, the Administrator's Decision errs by refusing to direct the acceptance of Compass Global's revised 2006 Form 499-A, because (notwithstanding the Administrator's Decision's misstatement of the filing date) the revision was in fact submitted to USAC within twelve months following its original submission on a filing date specifically established by Commission Staff.<sup>37</sup> While this alone would be sufficient basis for acceptance of the revision, waiver of the 12-month limit on downward revisions (as calculated from the general April 1, 2006, filing date applicable to other, non-similarly situated filers) is also justified because of the unique factual and legal circumstances present here.

Compass Global filed its original 2006 Form 499-A solely at the urging of the FCC's IHD, despite management's belief, still held today and as argued in Compass Global's NAL Response in File No. EB-06-IH-3060, that the Company was neither required to register as an ITSP nor file *any* Form 499s. It is incomprehensible that Compass might at first be directed by the IHD to file its Form 499-As in the context of an open "audit" or "survey of compliance" (and subsequent formal investigation) and then be refused an opportunity to revisit and redress those filings based on strict application of a procedural regulation associated with a regulatory filing obligation which may or may have any application to the Company in the first place.

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<sup>36</sup> 47 C.F.R. § 54.723(b).

<sup>37</sup> A "file-stamp" copy of Compass Global's revised 2006 Form 499-A filing is attached hereto as Exhibit 5.

Waiver of the 12-month limitations period, assuming that period were to be calculated commencing on April 1, 2006, is also appropriate in this circumstance because the underlying policy behind the limitations period would be in no way undermined by USAC's processing Compass Global's 2006 revision. The FCC's underlying policy is to provide filers with the incentive to correct errors within 12 months – that is to say, 12 months from the point in time where financial data has been reviewed and reported on Form 499-A. Compass Global's actions have been fully in accord with this policy.

September 5, 2006 was the point in time where Compass Global accomplished this review and reporting function; indeed, it was the date upon which the Company was directed to accomplish this review and reporting function by Mr. Nand Gupta, the FCC's IHD contact person for the matter. And the Company's submission of revisions to that data was also accomplished within the 12-month period which the Commission has deemed reasonable for this exercise. Insistence upon commencing the 12-month revision window on April 1, 2006, a date which at that time (and even now, in Compass Global's view) was of no regulatory relevance to Compass, would work a discrimination against Compass Global vis-à-vis all other filers.

Indeed, strict application of the 12-month limit under the circumstances presented here is inconsistent with the very reasoning and basis underlying the limitations period.<sup>38</sup> In the Form 499-A Revision Order, the FCC stated that the underlying purpose of the 12-month limitations period is to promote “administrative efficiency and certainty for the contribution systems for universal service” and to “ensure the stability and sufficiency of the federal universal service fund.” Under normal circumstances, it might indeed make sense to impose a 12-month limit on downward revenue revisions; the timing of a filer's reported revenue might impact the amount of contributions

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<sup>38</sup> *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review*, CC Docket No. 96-45, Order, 20 FCC Rcd 1012 (WCB 2004) (“*Form 499-A Revision Order*”).

collected and disbursed for a given funding period. However, in the *Form 499-A Revision Order*, the FCC has also found that “twelve months is ample time for a diligent filer to determine what revenues it earned the prior year.”<sup>39</sup> It went on to state that “[s]etting a twelve-month deadline for filing revisions to the 499-A [ ] gives contributors adequate time to discover errors, while providing incentive to submit accurate revenue information in a timely manner.”<sup>40</sup> Given this backdrop, Compass submits that in approving the 12-month limit, the FCC did not intend to foreclose any and all opportunities to correct reports, particularly when, as here, the initial 499-A being revised was filed well after the applicable annual 499 revision deadline.<sup>41</sup>

Ultimately, however, USAC may not rely upon the 12-month revision window to support its improper refusal to accept and process Compass Global’s revised 2006 Form 499-A. As demonstrated herein, that filing limitations period has been improperly adopted by USAC outside the scope of its legitimate authority and thus is of no legal effect against Compass Global *or any other party*. Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), provides generally for the equitable and nondiscriminatory contribution by telecommunications carriers to mechanisms established by the FCC and the Federal-State Joint Board to preserve and advance universal service.<sup>42</sup> Although its existence was not mandated by the Act, USAC was established at the direction of the FCC as an independent not-for-profit entity with the sole function of administering the USF and other universal service support programs.<sup>43</sup>

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<sup>39</sup> *Form 499-A Revision Order* at 1017.

<sup>40</sup> *Id.*

<sup>41</sup> See Universal Service Administrative Company, Board of Directors Meeting, July 27, 1999 Minutes. [www.universalservice.org/board/minutes/board/072799.asp](http://www.universalservice.org/board/minutes/board/072799.asp).

<sup>42</sup> 47 U.S.C. § 254.

<sup>43</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, Report and Order, 13 FCC Rcd at 25064, 25065-66 at ¶¶ 12, 14 (1998) (“1998 Joint Board Order”).

USAC does not possess any independent authority to create decisional or interpretative rules governing the USF programs. The FCC and the Federal-State Joint Board retain full authority and control over the USF programs, and USAC at all times remains subject to FCC oversight.<sup>44</sup> The limited responsibilities delegated to USAC are clear in the rules and regulations setting forth the scope of USAC's charter. Specifically, Sections 54.702(a) and (b) of the FCC's rules clearly state that USAC is responsible for administering the USF programs, including billing, collection and disbursement of USF funds.<sup>45</sup> In addressing early concerns over the role of USAC, the FCC has emphasized that USAC's functions are to be "exclusively administrative,"<sup>46</sup> noting that Section 54.702(c) expressly limits USAC's power by stating that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the FCC's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the FCC."<sup>47</sup>

Despite the fact that USAC is clearly prohibited from establishing policy or addressing uncertainties in the administration of the USF on its own, it has clearly done so in this case. In denying acceptance of Compass Global's revised 2006 499-A filing, USAC has relied on its "previously adopted policy," approved by the USAC Board of Directors during a USAC Board of Directors meeting on July 27, 1999, limiting the period for carrier-initiated adjustments to USF submissions.<sup>48</sup> According to an Action Item entitled, "Recommended Deadline for True-Up of Form 457," USAC's staff recommended the following to the Board:

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<sup>44</sup> See *In the Matter of Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9192 at ¶¶ 813-815 (1997) ("1997 Joint Board Order"); *1998 Joint Board Order* at 25065 at ¶ 14; see also 47 U.S.C. § 254, *et seq.*

<sup>45</sup> 47 U.S.C. §§ 54.702(a)-(b).

<sup>46</sup> *1998 Joint Board Order* at ¶ 15 (*responding to comments of BellSouth, Sprint and US WEST*).

<sup>47</sup> 47 U.S.C. §§ 54.702(c).

<sup>48</sup> USAC's September 11, 2007 rejection letter re. Compass Global's revised 2006 Form 499-A filing is attached hereto as Exhibit 8.

"[b]eginning with the September 1, 1999, data submission; carrier initiated requests for changes in reported revenues be limited to 12 months . . . . Changes to prior submissions as a result of an audit of a carrier's revenue reported on the Form 457 would not be impacted by the proposed limitation."<sup>49</sup>

USAC's staff offered the following rationale to support adoption of the recommendation:

"Historically, USAC has accepted any changes in revenue information reported by telecommunications service providers, regardless of when the changes were reported. It is becoming increasingly burdensome administratively to continue accepting revisions to reported revenue information indefinitely . . . . Each time a change is reported that affects end-user billed revenue, it necessitates revising the service provider's billed amounts for the period impacted by the change."<sup>50</sup>

The adoption of such a policy is completely unauthorized and inappropriate. First, if USAC's 12-month limit for acceptance of corrected USF filings is deemed to be justified and appropriate – which it is not – such a limit was not properly adopted by USAC as an administrative policy. Rather, if such a rule should be properly adopted, it would require the FCC to follow its normal notice and comment rulemaking procedures. A 12-month limit is more than a mere administrative or organizational measure. It is a decisional rule with potentially material adverse impacts on contributors as well as on the USF as a whole, as amply demonstrated by the adverse consequences which the policy will visit upon Compass Global here absent reversal of the Administrator's Decision's refusal to process the Company's revised 2006 Form 499-A.

#### IV. CONCLUSION

USAC is tasked with efficiently and impartially collecting information, for its own use in invoicing contributors for USF assessments, and thereafter distributing to other fund administrators accurate information to facilitate the timely and accurate funding of those universal service support mechanisms as well. With respect to Compass Global, USAC has failed in these essential functions,

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<sup>49</sup> The specific resolution stated, "RESOLVED, That the USAC Board of Directors directs staff to no longer accept carrier initiated requests for changes in revenues reported on prior FCC Form 457 beyond 12 months from the initial submission of the Form in question."

<sup>50</sup> See *Action Item # aBOD05*.

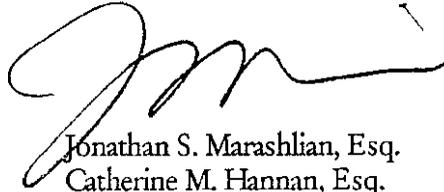
to the detriment of Compass Global, not USAC. On a broader scale, however, USAC's dereliction of duty damages not only Compass Global but the underlying federal support mechanisms as a whole, which have been rendered significantly less accurate and predictable as a result of USAC's arbitrary and capricious implementation of its policies and procedures.

And, Compass Global notes, nothing can justify the substantive alteration of filed documents by USAC without a filer's knowledge or permission. Industry participants have long criticized USAC as unapproachable and unresponsive, and as intractable from any position once taken. The course of events in this matter, however, where officially filed documents have been altered, information withheld and last-minute explanations devised by USAC, extend far beyond the frustrating, yet routine "red-tape" which characterizes filer's interactions with USAC. Compass Global respectfully submits that these issues mandate a close review of USAC's conduct in this matter.

For the reasons set forth above, Compass Global respectfully requests that the Federal Communications Commission ("Commission") overturn that portion of the Administrator's Decision on Contributor Appeal dated June 2, 2008 ("Administrator's Decision") refusing to accept and process the Company's revised 2006 Form 499-A; hold in abeyance all purported collection

actions pending full and final resolution of both this matter and the File No. EB-06-IH-3060; and initiate an investigation into the conduct of USAC over the course of the instant matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JSM', written over the typed name of Jonathan S. Marashlian.

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