**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

| | | |
|---|---|---|
| **In the matter of** | **)** | |
| | **)** | |
| **Request for Review by US Link, Inc. of** | **)** | |
| **Universal Service Administrator Decision** | **)** | **WC Docket No. 06-122** |
| | **)** | |
| **Request for Review by Deltacom, Inc. of** | **)** | |
| **Universal Service Administrator Decision** | **)** | |

**REPLY COMMENTS OF**
**NTCA – THE RURAL BROADBAND ASSOCIATION**

NTCA – The Rural Broadband Association ("NTCA") submits these reply comments in support of the requests of US Link, Inc. ("US Link") [1] and Deltacom, Inc. (Deltacom)[2] (collectively, the "Companies") for Review of a Universal Service Administrator Decision. NTCA agrees that the Federal Communications Commission ("Commission") should grant the Companies' Requests for Review and reverse the private line revenue audit finding of the Universal Service Administrative Company ("USAC") that is the subject of the requests. The USAC audit improperly reclassified as interstate all intrastate private line revenue for which the Companies did not provide documentation indicating that the traffic traversing those physically intrastate circuits was in fact intrastate. NTCA agrees with the Companies and commenters[3] that the USAC has fundamentally misconstrued the Commission's long-standing and straightforward "10 percent rule." USAC's interpretation of the rule mistakenly assumes that circuits are interstate until proven otherwise and that carriers have an obligation to verify the

[1] *See* Public Notice, *Wireline Competition Bureau Seeks Comment on US Link, Inc's Request for Review of a Decision by the Universal Service Administrative Company,* WC Docket No 06-122, DA 13-2095 (Oct 30, 2013)
[2] *See* Public Notice, *Wireline Competition Bureau Seeks Comment on Deltacom, Inc's Request for Review of a Decision by the Universal Service Administrative Company,* WC Docket No. 06-122, DA 13- 2116 (Nov. 1, 2013).
[3] *See,* Comments of COMPTEL and EarthLink, Inc.

*intrastate* use of private line circuits that are provided wholly within the intrastate jurisdiction as a physical matter.

The 10 percent rule provides that the revenues from mixed use private lines will be treated as 100 percent interstate for contribution purposes *if* the customer certifies that 10 percent or more of the traffic on the lines is interstate. Prior to 1989, revenue from private lines that carried both local and interstate traffic was generally assigned to the interstate jurisdiction. [4] But the classification posed a problem in that it deprived state regulators of the authority over largely intrastate private line systems. Therefore, to accord proper recognition to both the state and federal regulatory interests in mixed use facilities, the Commission adopted a recommendation of the Federal State Joint Board on Universal Service that such physically intrastate special access lines be classified as interstate only when customers submit certifications "that each of their special access lines carries more than a *de minimus* amount of interstate traffic."[5] Only if the customer provides a certification that *more than* 10 percent of the traffic on the line is interstate should the line be classified as interstate. The Commission determined that the verification was necessary "to ensure that the benefits of direct assignment were not lost through burdensome verification requirements."[6] Without certification, the Commission determined that such traffic was, by default, intrastate.

USAC flips this construct on its head, classifying private lines as interstate revenues in the *absence* of a customer certification or traffic study that the traffic on a physically intrastate circuit is intrastate. Not only is is contrary to Commission precedent, as COMPTEL points out, "[i]f USAC's interpretation were correct, there would have been no need for the Commission to

[4] *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* Recommended Decision and Order, 4 FCC Rcd 1352, §1 (1989)
[5] *Id* at¶¶3.6.
[6] *Id* at ¶ 32.

adopt the rule requiring carriers to obtain certifications from their customers that more than 10 percent of their traffic is interstate in order for mixed use private lines to be treated as jurisdictionally interstate."[7]

As the outside administrator of the universal service fund, USAC administers the fund's support mechanisms, billing contributions, collecting contributions and disbursing universal service support funds, subject to Commission oversight. The Commission's Rules make clear that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress" and require USAC to seek guidance from the Commission "[w]here the Act or the Commission's rules are unclear, or do not address a particular situation."[8] What USAC may *not* do, as it has done here, create a *de facto* rule that defaults intrastate private lines to the interstate jurisdiction. If the Commission wishes to adopt such a rule, it may do so through the rulemaking process.

For the foregoing reasons, the Commission should reverse USAC's private line revenue audit finding that US Link's and Deltacom's revenues for physically intrastate private lines should be reclassified as interstate.

[7] Comments of COMPTEL, p. 6.
[8] 47 C.F.R. §54.702.

Respectfully submitted,


By: /s/ Jill Canfield
Jill Canfield
Director – Legal & Industry, Assistant
General Counsel

4121 Wilson Boulevard
10th Floor
Arlington, VA 22203

(703) 351-2000