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## Telecommunications Update

by Glenn S. Richards and Emily J.H. Daniels

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### *Upcoming Deadlines*

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#### **FCC Form 499-Q is Due by May 1, 2009**

All providers of interstate telecommunications within the United States, with limited exceptions, must file a FCC Form 499-Q Telecommunications Reporting Worksheet by May 1, 2009 containing revenue information for January 1 through March 31 and projections for July 1 through September 30. The completed FCC Form 499-Q should be mailed to:

Form 499 Data Collection Agent  
Attn: USAC Customer Service  
2000 L St NW  
Suite 200  
Washington, DC 20036

Providers who have obtained a USAC Filer ID number may file the form electronically at: <https://forms.universalservice.org/usaclogin/login.asp>. A late fee may be imposed for failing to file or filing the worksheet after the due date.

The 499-Q form and instructions can be found on USAC's website at: <http://www.universalservice.org/fund-administration/forms/>. The Universal Service Fund ("USF") contribution factor for the second quarter 2009 is 11.3%.

On March 27, 2009, Masergy Communications, Inc. ("Masergy") filed a petition requesting that the FCC clarify the USF requirements for Multi-Protocol Label Switching ("MPLS"). The term "MPLS" was added to the FCC's Form 499-A instructions for 2009, indicating that MPLS is subject to USF contribution. Masergy argued that only transmission line features offered as part of an MPLS service, rather than traffic information management services and other information services, are subject to USF contribution. The petition has yet to be placed on public notice by the FCC.

#### **Geographic Rate Averaging Certification is Due by May 1, 2009**

Each non-dominant provider of detariffed interstate interexchange service must certify that it provides service in compliance with its geographic rate average and rate integration obligations pursuant to Section 254(g) of the Communications Act. Annual certifications must be filed by May 1, 2009. The certification statement should be signed by an officer of the company under oath and should be sent to the Office of the Secretary as follows:

Office of the Secretary  
Attn: Chief, Pricing Policy Division  
Room 5-A121  
445 12th Street S.W.  
Washington, DC 20554

This obligation has not yet been extended to interconnected VoIP providers.

### **International Traffic Reports Due by July 31, 2009**

International traffic reports must be filed by common carriers that provided service between the U.S. and foreign points in 2008 no later than July 31, 2009. This requirement includes "pure resale" calls that are handled by an underlying carrier. A manual describing the filing requirements is available at the following link: <http://www.fcc.gov/wcb/iatd/intl.html>. Note that the instructions have been modified by a series of public notices also included via this link.

## **ENFORCEMENT MATTER**

### **Telecommunications Carrier Found Apparently Liable for More than \$330,000 for Failure to Register and Obtain 214 Approval and Failure to Comply with USF Requirements**

A telecommunications carrier was recently found apparently liable for violation of the FCC's rules pertaining to registration, payment of required fees, and other related requirements. Following a complaint, the FCC found that the carrier, a prepaid telephone card provider, had failed to register by not filing a 499-A with the Commission before providing telecommunications services and failed to obtain an international 214 authorization before providing international service. The FCC further determined that the carrier neither timely FCC Form 499-Q filings nor USF payments were made. In addition, the carrier had failed to submit regulatory fee payments to the FCC or to remit payments to the Telecommunications Relay Service Fund, the North American Numbering Plan Administration, or the Local Number Portability Administration. The carrier also failed to respond to a Letter of Inquiry from the Commission. Based on these violations, the FCC issued a Notice of Apparent Liability for Forfeiture of \$330,000.

## **IN THE COURTS**

### **Eighth U.S. Circuit Court of Appeals Affirms Dismissal of Class-Action Complaint Filed Against Time Warner Cable for Overcharging Customers**

A Minnesota resident recently filed a putative class action lawsuit against Time Warner Cable, Inc. ("Time Warner"), alleging that Time Warner overcharged its customers for cable television services. The District Court dismissed the complaint, and the Eighth U.S. Circuit Court of Appeals recently affirmed the District Court's dismissal, finding that the claims were barred by the filed rate doctrine.

The claim alleged that customers had been double billed for network upgrades. The first upgrade fee was imposed when Time Warner added a surcharge to customer bills pursuant to a "social contract" that Time Warner had entered into with the FCC in 1995. The social contract allowed Time Warner to charge customers a surcharge of up to \$180 over a five-year period between 1996 and 2000. Time Warner then added a network upgrade fee into its basic cable rate in 2001 by filing the rate with the City of Minneapolis. The Court noted that the Cable Act of 1992 precludes the regulation of cable rates as long as the cable system is subject to effective competition. The Court further noted that the "filed rate doctrine" forbids a regulated entity from charging a rate for its services other than the rate on file with the appropriate regulatory authority. Because the City of Minneapolis did not take action on the new rate when Time Warner filed, the rate became effective, precluding a claim that the rate is inappropriate.

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For further information, please contact:

Glenn S. Richards (bio)  
Washington, DC  
+1.202.663.8215  
[glenn.richards@pillsburylaw.com](mailto:glenn.richards@pillsburylaw.com)

Emily J.H. Daniels (bio)  
Washington, DC  
+1.202.663.9378  
[emily.daniels@pillsburylaw.com](mailto:emily.daniels@pillsburylaw.com)

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