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FEB 10 2012

PUBLIC SERVICE COMMISSION OF WISCONSIN

Administration of the Universal Service Fund 5-GF-104

FINAL DETERMINATION REGARDING THE ASSESSMENT OF MIXED VOICE AND NON-VOICE SERVICES FOR THE UNIVERSAL SERVICE FUND

This is a Final Determination regarding the assessability of revenues from mixed voice and non-voice offerings for the Wisconsin Universal Service Fund (USF), an issue occasioned by the enactment of 2011 Wis. Act 22 (Act 22), effective June 9, 2011.

Introduction

Wis. Stat. § 196.218 requires that the costs of the USF be apportioned among telecommunications providers based on an assessable revenue base. The passage of Act 22 changed the assessable revenue base; the comprehensive definition of "telecommunications service" that made revenues from data and information services subject to assessment is now limited to "voice communications." Consequently, revenues from data and information (non-voice) services are no longer assessable for the USF.[1]

For those non-voice services that are offered á la carte, the revenues are for the most part readily identifiable, and can be excluded from the assessable revenue base. For services that contain a mix of voice and non-voice services, however, it is more difficult to determine the portion that should be assessable for USF purposes. In its Final Determinations and Order

[1] Act 22 made the following changes to the definition of "telecommunications service" in Wis. Stat. § 196.01(9m): "means the offering for sale the conveyance of voice~~, data or other information at any frequency over any part of the electromagnetic spectrum~~ communication, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication ~~and including the regulated sale of customer premises equipment~~, regardless of technology or mode used to make such offering . . . ."

Regarding Universal Service Fund Assessment Methodology, Docket 5-GF-104, p. 23 (Oct. 19, 2011),[2] the Commission directed a survey "to determine the existence, identification and [extent] of mixed voice and non-voice offerings" and authorized the Administrator of the Telecommunications Division to "determine an appropriate method for including or excluding revenues therefrom in the USF assessable base."

Opinion

Factors to consider in deciding the treatment of mixed voice and non-voice offerings include the difficulty or ease in administration, the accuracy in identifying assessable voice revenues, and relative fairness of each option among competitors. Arguably, the most accurate and equitable approach would be to allocate the revenue from each mixed service based on relative customer use of the voice and non-voice features. This approach appears to be extremely difficult if not impossible to administer, however. For many mixed services, providers have no reason to determine whether, or practicable means to measure how much, a service is used for voice or non-voice purposes.

The Telecommunications Division has gathered further information on this issue by means of provider data requests, a collaborative meeting, independent research, and comments. Based upon this information, the Commission makes two determinations:

1. The Commission adopts a methodology for determining the portion of mixed voice and non-voice services that is assessable for USF purposes.
2. The Commission classifies various existing specific types of industry service revenues

[2] That order also resolved many USF assessment issues, including the adoption of a "retail telecommunications revenues" assessment methodology for the USF starting in October 2011.

as voice, non-voice, or mixed.

Methodology for mixed voice and non-voice services. Based on due consideration of all data gathered, the Commission adopts a hierarchy of allocation methods for a provider to use, in the sequence stated, to determine the assessability of mixed voice and non-voice services as follows:

1. If the service is predominantly (more than 80 percent of communication traffic volume) or solely used for voice, or predominantly or solely used for non-voice, the revenues should be assigned 100 percent to voice or non-voice, as appropriate.

Several services fit into this category. For example, Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, estimates that its Centrex offering is used approximately 99 percent for voice communication and only 1 percent for data. Therefore, under this hierarchy all Centrex revenues would be assigned as voice.[3] Likewise, revenue from high capacity circuits (T-1, DS-1, DS-3, etc.) primarily used to provision retail intrastate telecommunications voice service (e.g. Digital Trunk Service using a DS-1 to provision service to a private branch exchange (PBX)) shall be assigned as voice revenue fully assessable for USF. Conversely, no portion of revenue from high capacity circuits primarily used to provision wholesale, interstate, or point-to-point transport of data (e.g. Dedicated Digital Service (DS-1, DS-3, etc.)) shall be USF assessable. If the service is not predominantly or solely used for voice or predominantly or solely used for non-voice, the provider shall use the following allocation methods, as applicable:

2. If the service is basically a "package" or "bundle" of voice and non-voice services, and there is a separate price for each stated on a customer's bill, the revenues from the service shall be allocated based on those separately stated prices.

[3] In Attachment A, revenues from Centrex are thus noted as assessable for the USF. This assignment has also been made for other services based on inputs received throughout this review.

If neither of the first two allocation methods applies, the provider shall use the following allocation method, if applicable:

3. If the service is basically a "package" or "bundle" of voice and non-voice services that are each also offered separately, the revenues from the service shall be allocated so that the entire discount inherent in the package or bundle is allocated entirely to non-voice services. In other words, the USF assessable portion of the revenue is equal to the stand-alone price of the voice service.

This allocation method is consistent with the Federal Communications Commission's (FCC's) method for determining the assessability of packages that include telecommunications services and customer premises equipment (CPE)/enhanced services.[4]

If none of the first three methods applies to the service in question, the provider can either:

4.a. Use a safe harbor allocation percentage of 50 percent of service revenues subject to USF assessment; or
4.b. Use any other reasonable allocation method other than 1, 2, 3, or 4.a., subject to conditions noted below.

The Commission believes that the majority of providers' revenues will fall under the first three methods, and that this fourth method will apply to a relatively small amount of revenues. Providers have the option of performing a traffic study, survey of customers, or other methods to determine an allocation different than 50 percent. Any provider choosing to use method 4.b. must be prepared to support its selected method and should be aware that there is a risk that such other allocation method may ultimately not be considered reasonable, and will be evaluated by the Commission on a case-by-case basis in any objection, review or enforcement context. Should an objection, review or enforcement proceeding be initiated, the carrier may be obligated to provide evidence that the amount of reported telecommunication revenues that it reported reflects

[4] See Report and Order, *In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace*, 16 F.C.C.R. 7418, 7447-48, ¶¶ 50-53 (rel. Mar. 30, 2001).

compliance with the carrier's obligation to contribute to the USF based on retail intrastate voice telecommunications revenues.

Classification of services as voice, non-voice, or mixed. The Commission adopts the list of services determined to be predominantly or solely voice or non-voice, or mixed, as set forth in Attachment A. This is based on an analysis of provider data requests, a collaborative meeting, independent research, and comments received. This list may be updated by Commission staff as needed from time to time in order to address services not included on the list.

This determination is made pursuant to above-described delegation authority and the Commission's jurisdiction and authority in Wis. Stat. §§ 196.02(1), 196.218, 196.40, 196.44, other pertinent provisions of Wis. Stat. chs. 196 and 227, and applicable provisions of Wis. Admin. Code ch. PSC 160.

Determinations Respecting USF Assessment Methodology

1. The methods described above shall be used by telecommunications providers to determine the amount of mixed voice and non-voice offerings assessable for Wisconsin USF purposes, commencing with responses to questionnaires regarding calendar 2011 assessable revenues, to be used for assessments beginning October 2012.

2. The Commission adopts the list of services determined to be predominantly or solely voice or non-voice, or mixed, as set forth in Attachment A.

3. This Final Determination is effective one day after its date of mailing.

Dated at Madison, Wisconsin, 10 February 2012

For the Commission:

Mary A. Evans

for Brian J. Rybarik, Administrator
Telecommunications Division

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PUBLIC SERVICE COMMISSION OF WISCONSIN
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NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.[5] The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

[5] *See State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Assessability of Voice, non-Voice, and Mixed Services

Revenue Type	Assessable for USF?[1]	Assessable for Remainder, Relay, and Trade Practices (TTP)?[2]
900 number services, regardless of the technology over which the service is delivered.	No	Yes
Application downloads	No	No
Billing and collection	No	Yes
Cable television service (per Wis. Stat. § 196.01(9m))	No	No
Caller ID	Yes	Yes
Call forwarding	Yes	Yes
Call waiting	Yes	Yes
Centrex	Yes	Yes
Channel services:		
• Types 2001 through 2006 and 2010	Yes	Yes
• Types 2007 and 2008	Yes	Yes
• Types 3002 & 3003	No	Yes
• Other types	Partial[4]	Yes
Conference bridging	Yes	Yes
Customer premises equipment, handset, and other equipment (sale, lease, or maintenance)	No	No
Customer premises wiring, including inside wire maintenance	No	No
Dark fiber service	No	Yes
Detailed billing services	No	Yes
Digital link / digital channel	No	Yes
Digital Subscriber Line (DSL)-based and other broadband Internet access service revenues[3]	No	No
Directory advertising	No	Yes
Directory assistance	No	Yes
Directory listing options (e.g., Non-published / Non-listed / Additional)	No	Yes
Downloaded music and media	No	No
Digital Transport Service – Enhanced (DTS-E) - Modules 1 and 2	Yes	Yes

Revenue Type	Assessable for USF?[1]	Assessable for Remainder, Relay, and Trade Practices (TTP)?[2]
Early termination or disconnection fees: • related to retail voice services • related to wholesale,[5] data or information services	 Yes No	 Yes Yes
Eligible Telecommunications Carrier (ETC) cost recovery (receipts from all Federal USF funds)	No	Yes
Ethernet	No	Yes
Federal subscriber line charge	No	Yes
Finance charges	No	Yes
Fixed and nomadic interconnected Voice over Internet Protocol (VoIP) service	Yes	Assessable for Relay and TTP assessments, but not Remainder assessment
Foreign exchange	Yes	Yes
Frame relay	No	Yes
High capacity circuits (T-1, DS-1, DS-3, etc.) primarily used to provision: • retail intrastate telecommunications voice service (e.g., Digital Trunk Service using a DS-1 to provision service to a PBX) • wholesale,[5] interstate, or data service (e.g., Dedicated Digital Service (DS-1, DS-3, etc.) used for point to point transport of data)	 Yes No	 Yes Yes
Inbound interstate and international 800 and collect calls billed to customers in Wisconsin	No	Yes
Installation, service order, activation, and service connection charges related to: • Retail voice service • Wholesale,[5] data, or information service	 Yes No	 Yes Yes
Insurance	No	No
Integrated Services Digital Network (ISDN) - Primary Rate Interface (PRI) and Basic Rate Interface (BRI)	Partial[4]	Yes
Late payment fee	No	Yes
Lifeline and Link-Up revenues for reimbursements received from the state USF	No	Yes
Long distance revenue	Yes	Yes

Revenue Type	Assessable for USF?[1]	Assessable for Remainder, Relay, and Trade Practices (TTP)?[2]
Mobile web	No	No
Non-sufficient funds (NSF) charge	No	Yes
Other mixed voice/data/information service offerings	Partial[4]	Yes
Paging fees	No	Yes
Payphone revenue	Yes	Yes
Phone card (prepaid and debit) sales:		
• where the prepaid phone card company provides the underlying phone number associated with the phone card	Yes	Yes
• where the company not providing the underlying phone number also provides telecommunications service at retail (e.g., a telecommunications reseller)	Yes	Yes
• not otherwise noted above[5]	Yes	No
Picture messaging	No	Yes
Private branch exchange (PBX)	Yes	Yes
Reseller revenue (revenues from sales to non-affiliated companies that resell service)	No	Yes
Retail voice service sales to affiliated companies	Yes	Yes
Revenue from Internet Service Providers (ISPs) associated with transport of the signal from end users to ISPs via switched or unswitched Internet access[6]	No	Yes
Ring tones	No	No
Roadside assistance	No	No
Roaming:		
• Outroamer revenue (i.e., wholesale "roaming" wireless revenues derived from customers of another carrier roaming on the reporting company's network)[5]	No	Yes
• Voice service roaming charged to end users	Yes	Yes
Switched access charge revenue	No	Yes
Switched data service	No	Yes
Special access (a/k/a private line or dedicated access) charge revenue	No	Yes
Surcharges to recover costs of state and federal USF assessments	No	Yes
Teleconferencing revenues	Yes	Yes

Revenue Type	Assessable for USF?[1]	Assessable for Remainder, Relay, and Trade Practices (TTP)?[2]
Text messaging	No	Yes
Voice mail service	No	Yes
Unbundled network elements (UNEs), reciprocal compensation and other interconnection revenues	No	Yes
Video distance learning revenues	Partial[4]	Yes
Voice service sales to: • Retail customers • Wholesale customers, including wholesale voice sales to affiliated legal entities[5]	 Yes No	 Yes Yes

[1] Revenues from data and information services are exempt from USF assessment. The interstate and international portions of telecommunications revenues are also exempt from USF assessment. All revenues listed in this footnote are assessable for Remainder, Telecommunications Relay, and Telecommunications Trade Practices assessments.

[2] Assessable revenue for these assessments is based on intrastate, interstate, and international gross operating revenues with a nexus to Wisconsin operations. Wireless revenues are subject to the Telecommunications Trade Practices assessment, but not Remainder or Telecommunications Relay assessments.

[3] These are federally regulated information (i.e., Internet Access) services.

[4] These services contain a mixture of voice and non-voice. For these services, providers should allocate revenues between USF assessable (voice) and non-assessable (non-voice) in the following manner:

1. If the service is predominantly (more than 80 percent of communication traffic volume) or solely used for voice, or predominantly or solely used for non-voice, the revenues should be assigned 100 percent to voice or non-voice, as appropriate.
2. If the service is basically a "package" or "bundle" of voice and non-voice services, and there is a separate price for each stated on customer bills, the revenues from the service shall be allocated based on those separately stated prices.
3. If the service is basically a "package" or "bundle" of voice and non-voice services that are each also offered separately, the revenues from the service shall be allocated so that the entire discount inherent in the package or bundle is allocated entirely to non-voice services. In other words, the USF assessable portion of the revenue is equal to the stand-alone price of the voice service.
4. If none of the first three methods applies, the provider can either:
   a. Use a safe harbor allocation percentage of 50 percent of service revenues subject to USF assessment.
   b. Use any other reasonable allocation method other than 1, 2, 3, or 4.a., subject to the following conditions. Any provider choosing to use method 4.b. should be aware that such other allocation method may not be considered reasonable, and will be evaluated by the Commission on a case-by-case basis in any objection, review or enforcement context. Should an objection, review or enforcement proceeding be initiated, a carrier may be obligated to provide evidence that the amount of reported telecommunication revenues that it reported reflects compliance with the carrier's obligation to contribute to the USF based on retail intrastate voice telecommunications revenue.

[5] Assessable retail revenue shall be imputed in instances where a certificated (federal or state, wireline or wireless) provider obtains 90 percent or more of its gross intrastate Wisconsin operating telecommunications revenues in a calendar year from sales to non-telecommunications provider merchants through which resale to ultimate end-users is intended. In such instances, the USF assessment liability of such a provider shall be based on calculating a statewide average ratio of retail to gross intrastate telecommunications revenues across all providers, and then applying that percent to the "wholesale-only" telecommunications service provider's gross intrastate operating revenues.

[6] Includes revenue from dial-up Internet access service and revenues associated with the line between the switch and the modem bank.