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

In the Matter of	)	
	)	
Blanca Telephone Company	)	**CC Docket 96-45**
	)	
Seeking Relief From the June 2, 2016	)	
Letter Issued by the Deputy Managing	)	
Director Which Seeks to Enforce an	)	
Interpretation of the Commission's Rules	)	
Regarding the Use of USF High Cost	)	
Funding for the Purpose of Operating a	)	
Rural Mobile Cellular Telephone System	)	
During the 2005-2010 Time Period	)	

To: The Secretary
For Distribution to the Commissioners

MOTION FOR LEAVE TO SUPPLEMENT DECEMBER 29, 2017 PETITION FOR RECONSIDERATION AND EMERGENCY REQUEST FOR IMMEDIATE § 1.1910(b)(3)(i) RELIEF

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January 8, 2018

The Blanca Telephone Company (Blanca), by its attorney, pursuant to 47 C.F.R. § 1.41, § 1.106(b)(2)(i) (changed circumstances or recent event requires supplement) and § 1.106(f) (authorizing requests to supplement pleadings), hereby motions for leave to supplement its December 29, 2018 Petition for Reconsideration regarding the FCC's December 8, 2017 *Memorandum Opinion and Order*, FCC 17-162 (December 8 Order).[1] In support whereof, the following is respectfully submitted:

On December 29, 2017 the FCC released five USF enforcement cases which are relevant to the instant matter. In FCC 17-173 through FCC 17-177 the FCC resolve USF rule violation proceedings against five companies. However, as Commissioner Clyburn discusses in her several dissents, the FCC is engaging in an enforcement practice which "essentially gives hall passes to large, well-known corporations when wrongdoing is found, while it fines little-known small businesses and individuals substantial sums of money for harms which are often substantially narrower." Blanca is a small company and it hereby applies for an FCC "hall pass" which the FCC provided to the five "hall pass" companies. Enforcing rules with more vigor against small companies compared to large companies based merely upon size is not a rational exercise of administrative discretion and it violates Blanca's constitutional right to equal protection and Blanca's administrative right to similar treatment. *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965) (the FCC acted arbitrarily and capriciously when it treated two similarly-situated licensees differently without an adequate explanation for doing so).

The five "hall pass" companies in FCC 17-173 through FCC 17-177 were subjected to very limited audits covering a month here and there over a one to two year period. The USF money

[1] The orders at issue are the December 8 Order and the staff's June 2, 2016 Debt Adjudication Forfeiture Letter. Petitions for reconsideration are due within 30 days, but instantly that date is extended by rule to January 8, 2018 because the 30th day after December 8, 2017 fell on a weekend. 47 U.S.C. § 405(a); 47 C.F.R. § 1.4(j).

recovered from the five "hall pass" companies in FCC 17-173 through FCC 17-177 was limited to the months covered by the USAC audit period. Blanca, on the other hand, was subjected to an audit process which extended over approximately five years and Blanca reimbursed the USF for the amount USAC determined should be reimbursed over the audit period.[2] Blanca's June 24, 2016 Petition For Reconsideration, at 13 n. 12, 15 & n. 16. Notwithstanding Blanca's complete reimbursement to USAC covering the amounts USAC asserted were due from the audit period, the FCC still seeks USF recovery from Blanca for multiple years, 2005-2010, well outside of the USAC audit period covered by Blanca's 2013 USAC settlement. The FCC must explain why Blanca's USF liability is open-ended for years outside of the USAC audit period while the five "hall pass" companies in FCC 17-173 through FCC 17-177 faced USF exposure limited to discrete months over a relatively short period of time covered by the various USAC audits.

The five "hall pass" companies in FCC 17-173 through FCC 17-177 were presented with notices of apparent liability (NAL) which allowed them to contest the FCC's charges of specific USF rule violations. Blanca was denied its right to respond to a timely issued NAL specifying specific rule violations. Instead, Blanca was presented with a novel *ex parte*, summarily decided, vaguely worded rule part/"framework" violation order coupled with a "**<u>DEMAND FOR PAYMENT OF A DEBT OWED TO THE UNITED STATES AND ORDER OF PAYMENT</u>**" which afforded Blanca with no opportunity to offer a defense before findings were entered,

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[2] The June 2, 2016 Debt Adjudication Forfeiture Letter instructs Blanca to pay USF funds to the US Treasury; the December 8 Order instructs Blanca to pay USF funds to the FCC; FCC 17-173 through FCC 17-177 indicate that USAC recovered the USF money from the five "hall pass" companies. *See Orders*, FCC 17-173 through FCC 17-177 ¶ 2. Blanca raised the issue where recovered USF money is paid into as it implicates 1) whether there is a debt owed to the United States and 2) whether the FCC's enforcement action is penal. December 29, 2017 Petition for Reconsideration at 18-19. The FCC needs explain why recovered USF money is directed to at least three entities and how that unsettled recovery process affects 1) a "debt" purportedly owed to the United States and 2) the penal issues Blanca has raised.

immediate payment demanded, and the matter referred to the DoJ. June 2, 2016 Debt Adjudication Forfeiture Letter (bold, caps, underscore in original); Blanca's June 24, 2016 Petition For Reconsideration, at 16. The FCC needs to explain why Blanca was not afforded the right to receive a NAL and an opportunity to defend itself before findings of fact and conclusions of law were entered against it in contravention of standard operating procedure. June 24, 2016 Petition for Reconsideration at 16. The FCC's improper DoJ referral is discussed below.

The NALs issued in FCC 17-173 through FCC 17-177 charge the five "hall pass" companies with "willfully and repeatedly violating" specific USF rules in schemes which amounted to "waste, fraud, and abuse." The December 8 Order on review notwithstanding, Blanca was not charged with "waste, fraud, and abuse" in any properly noticed NAL; the summarily decided June 2, 2016 Debt Adjudication Forfeiture Letter issued against Blanca makes no such charge. December 29, 2017 Petition for Reconsideration at 20-22. Blanca did not seek compensation for a phantom service to steal USF money, Blanca used its USF money to provide tariffed carrier of last resort service over a cellular BETRS system as authorized by the FCC's rules. December 29, 2017 Petition for Reconsideration at 10-16; June 2, 2016 Debt Adjudication Forfeiture Letter at 2 n. 1. The FCC must explain why under these circumstances Blanca is not entitled to a "hall pass."

The FCC referred Blanca to the DoJ for prosecution under the False Claims Act, a referral which remains pending, even though the FCC has pointed to no false statements made by Blanca in this decade long process and Blanca used its USF money for the USF's intended purpose of providing telecom service to a high cost area. Contrast the five "hall pass" companies in FCC 17-173 through FCC 17-177 which apparently made repeated false statements to the FCC by submitting numerous improperly duplicative USF support requests and took USF without providing a telecommunications service, yet there is no similar referral to the DoJ for those companies. In fact, the five "hall pass" companies were rewarded with "hall passes" while the FCC hooks Blanca for millions and millions of dollars allegedly "owed" from upwards of more than a decade ago.[3]

The FCC needs to explain why Blanca, which made no false statements and which provided common carrier of last resort service using the USF funding it received, was referred to the DoJ while these five other companies, which apparently made a multitude of false statements to the FCC and provided no telecommunications service on duplicated accounts, were not similarly referred. Moreover, unlike the five "hall pass" companies involved in FCC 17-173 through FCC 17-177, the FCC referred Blanca's matter to the DoJ without offering Blanca an opportunity settle the matter via consent decree after issuance of an NAL. The FCC needs to explain why Blanca was not afforded a similar settlement opportunity prior to referral to the DoJ and prior to the FCC's legal determination that Blanca had engaged in vague of rule part violations.

Blanca properly challenges the FCC's referral of Blanca to the DoJ, while not referring the five "hall pass" companies, because DoJ referral does not implicate the FCC's exercise of prosecutorial or administrative discretion since DoJ referral is an agency decision which abdicates the agency's prosecutorial and administrative function. In any event, the referral of FCC enforcement matters to the DoJ is reviewable because such review is neither expressly limited by statute nor a subject area is committed to agency discretion. *Heckler v. Chaney*, 470 U.S. 821, 830 (1985) (a subject is committed to agency discretion when there is "no judicially manageable standard" to apply). The FCC's DoJ referral decisions are cabined by the APA's requirement that

[3] The "debt" Blanca purportedly owes is not a pre-existing one, it was created in the June 2, 2016 Debt Adjudication Forfeiture Letter. June 24, 2016 Petition for Reconsideration at 3, 17-18. Interest and other penalties did not begin to accrue against Blanca until after the issuance of the June 2, 2016 Debt Adjudication Forfeiture Letter. December 29, 2017 Petition for Reconsideration at 19. Compare Attachment 00001 (June 15, 2016 Red Light Status) to 00002 (December 2017 FCC Form 159-B submitted with the December 29, 2017 Petition for Reconsideration). The amounts "owed" shown on these attachments show that financial penalties were applied after June 2, 2016 compared to the $6,748,280 sought in the June 2, 2016 Debt Adjudication Forfeiture Letter. The FCC's own computer records show that Blanca's purported "debt" did not exist in the 2005-2010 time period; if the purported debt did not exist in the 2005-2010 time period, then it has never existed.

the FCC's referral decisions must be reasoned, *Communications and Control, Inc. v. FCC*, 374 F.3d 1329, 1335 (D.C. Cir. 2004) (the FCC must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made"), and the FCC must treat similarly situated parties similarly. *Melody Music*. Moreover, Blanca properly challenges the FCC's referral discretion because the FCC's referral action threatens Blanca with a False Claims Act prosecution and Blanca's challenge presents an Article III case and controversy. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976).

The FCC abused its referral discretion by referring Blanca to the DoJ while declining to refer the five "hall pass" companies to the DoJ. The FCC issued formal NALs against the five "hall pass" companies, the FCC used formal NALs to charge the five "hall pass" companies with "waste, fraud, and abuse," the five "hall pass" companies took USF money without providing a telecommunications service on the duplicated accounts, the FCC found that the five "hall pass" companies had made numerous false statements to the FCC, and the FCC limited the USF liability of the five "hall pass" companies to the USAC audit period. In contrast, the FCC referred Blanca to the DoJ without first issuing a formal charge via NAL, without first finding a rule violation and without alleging "waste, fraud, and abuse," without pointing to a single false statement made by Blanca and even though Blanca provided carrier of last resort service with the USF money it received. The FCC's much harsher treatment of Blanca compared to the five "hall pass" companies under these circumstances, by way of DoJ referral and assessment of an open-ended USF liability, is unreasoned, arbitrary, and capricious.

Blanca objected to the FCC's enforcement against it, in part, because Blanca settled its accounting matter with USAC years ago and the FCC's instant enforcement action breaches that settlement. Blanca's June 24, 2016 Petition For Reconsideration, at 13 n. 12, 15 & n. 16. The fact that the five "hall pass" companies in FCC 17-173 through FCC 17-177 waived the opportunity to present a similar "already settled" argument and other legal and factual arguments is not controlling instantly and Blanca's arguments are not precluded by the FCC's consent decrees in FCC 17-173 through FCC 17-177 because Blanca continues to exhaust its administrative remedies.

Respectfully submitted,
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January 8, 2018

FCC Federal Communications Commission

Red Light Display System

FCC | Fees | Red Light Display System

Logged in as: Blanca Telephone Company (FRN: 0003766201) [Log Out]

Print | Help

Bill Details

6/15/2016 11:54 AM **Current Status of FRN 0003766201**

STATUS: Green

You have no delinquent bills which would restrict you from doing business with the FCC.
You also have 1 open bill which can be paid from this page.

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). A green light means that there are no outstanding delinquent non-tax debts owed to the Commission by any FRN associated with the requestor's TIN. The Red Light Display System was last updated on 06/15/2016 at 6:36 AM; it is updated once each business day at about 7 a.m., ET.

Pay Bills How to read Form 159B

Select to Pay	Bill Number	Original Amount	Amount Paid	Balance Due	Due Date	View/Print
FRN: 0003766201						
	16USFBLANCATEL	$6,748,280.00	$0.00	$6,748,280.00	07-05-2016	Form 159B

CONTINUE

Customer Service			
Red Light Help	FCC Debt Collection	FCC Fees	Web Policies / Privacy Policy

Red Light Display System Help Line: (877) 480-3201, option 4, 4; TTY (202) 414-1255 (Mon.-Fri. 8 a.m.-6:00 p.m. ET)

Red Light Display System has a dedicated staff of customer service representatives standing by to answer your questions or concerns. You can email us at arinquiries@fcc.gov or fax us at (202) 418-7869.

00001

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
BILL FOR COLLECTION

Approved by OMB
3060- 0589

Bill Number	Applicant FRN	Current Bill Date
6USFBLANCATE	0003766201	06/02/2016

FOR INQUIRIES CALL
1-202-418-1995
(Revenue and Receivable Operations Group)

Application Information:

Blanca Telephone Company
1025 Connecticut Ave., N.W.
Suite 1000
WASHINGTON, DC 20036

Payable to:
Federal Communications Commission

Send a copy of this bill to:
Federal Communications Commission
Revenue & Receivables Operations Group
P.O. Box 979088
St. Louis, MO 63197-9000

Total Amount Due		Due Date
$6,903,165.53	**TOTAL AMOUNT DUE MUST BE RECEIVED BY**	07/05/2016
Payer FRN No.	**Please Complete The Payer Information, FCC Registration Number (FRN) is required**	

Payer Name (if paying by credit card enter name as it appears on the card)

Address Line No. 1

Address Line No. 2

City State Zip Code

Daytime Phone Number (include area code)

Reason For Bill:

Call Sign/Other FCC ID	Payment Type Code	Quantity	Fee Due For (PTC)	Total Fee	FCC Code 1	FCC Code 2
	USF	1	0.00000	$6,748,280.00		
	DCIA			$22,119.36		
	PEN			$132,716.17		
	ADM			$50.00		
			TOTAL DUE	$6,903,165.53		

Please choose a method of Payment and complete the section if paying by Credit Card

Payment Method:

CREDIT CARD ☐ CHECK ☐ WIRE ☐ IPAC ☐ MIPR ☐

MASTERCARD ☐ DISCOVER ☐ VISA ☐ AMEX ☐

ACCOUNT NUMBER______________________________ EXPIRATION DATE________________________

I hereby authorize the FCC to charge my Credit Card for the service(s) / authorization(s) herein described.

AUTHORIZED SIGNATURE__________________________________ DATE________________________

FCC FORM 159B JULY 2005

IF PAYING BY CHECK, PLEASE WRITE YOUR BILL NUMBER ON YOUR REMITTANCE AND ATTACH A COPY OF THIS BILL TO YOUR PAYMENT TO ENSURE PROPER CREDIT.