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January 12, 2018

Mark Stephens
Managing Director
Federal Communications Commission
Washington, D.C. 20554

By email

Re: CC Docket No. 96-45
Blanca Telephone Company
Response to the FCC's January 10, 2017 Debt Collection Letter
Notice of Intent to Seek Appellate Review

Dear Mr. Stephens,

I am writing in response to the FCC's January 10, 2018 letter to Blanca Telephone which discusses the FCC's imposition of an offset to begin collecting a purported debt which is the subject of the FCC's non-final debt discussion in the FCC's December 8, 2017 order (FCC 17-162). I was previously instructed to file submissions in CC Docket 96-45, therefore, I have submitted this letter into that docket.

As discussed in more detail below, the debt collection action announced in the FCC's January 10, 2018 letter is defective because: 1) the RLDS (Red Light Display System) shows that Blanca Telephone has no delinquent debt which could be subject to a collection effort; 2) the FCC's rules do not contain any authorization to demand or to call or to collect a current, non-delinquent debt, the FCC can only proceed against delinquent debt; and 3) Blanca Telephone's December 29, 2017 Petition for Reconsideration sought emergency relief under the plain text of § 1.1910(b)(3)(i) which provides protection from debt collection while the existence of the debt is contested, a protection which was confirmed by the FCC's June 22, 2016 letter, however, the January 10 denies continued application of that requested relief and effectively denies the Petition.

According to the attached RLDS status report which I printed this morning, Blanca Telephone currently has a green light status and Blanca has no "delinquent debt" owed to the FCC. In fact, the RLDS status report indicates that Blanca does not owe any debt to the FCC, let alone owe any "delinquent debt." Accordingly, at this time there is no "delinquent debt" for the FCC to offset,

notwithstanding the reference in the January 10 letter to the non-final order FCC 17-162.

On January 9, 2018 the FCC changed Blanca Telephone's RLDS status from red to green after receipt of my January 8, 2018 email regarding Blanca Telephone's RLDS indicator status. As stated in the FCC's own RLDS status report, green RLDS status means that Blanca Telephone has "no delinquent bill" at the FCC and "a green light means that there are no outstanding non-tax debts owed to the Commission." Because Blanca has no delinquent debt owed to the FCC, Blanca Telephone is current regarding any outstanding debt payment obligation the FCC might think that exists and Blanca Telephone is otherwise fully meeting the FCC's debt payment expectations.

The FCC's rules allow the FCC to collect "delinquent debt." 47 C.F.R. § 1.1910(b)(2). The FCC's rules do not contain any "call at will" or "payment upon demand" or any similar provision which authorizes the FCC either 1) to demand immediate payment of a non-existent debt or 2) to demand immediate payment of a debt which is current and in good standing. The clear language of 47 C.F.R. § 1.1910(b)(3)(i) provides that the FCC will not use the §§ 1.1910(b)(2),(3) enforcement actions application deferral or debt collection while the existence of the debt is litigated at the FCC or in a contested judicial proceeding. December 29, 2018 Petition for Reconsideration at 24. The FCC's enforcement action against Blanca Telephone to collect a disputed debt on an FCC account which the FCC's own financial computer shows to be in good standing violates the plain text of the cited rule, denies the relief for which Blanca Telephone applied in its recently filed Petition for Reconsideration, and alters without discussion or reason the financial protection provided to Blanca Telephone in the FCC's June 22, 2016 letter.

There is no reason for the FCC to pursue debt collection action against Blanca at this time unless the FCC's January 10, 2018 letter is read as denying Blanca's December 29, 2017 Petition for Reconsideration, as supplemented on January 8, 2018, and the FCC considers that the debt issue is resolved and that Blanca Telephone has "delinquent debt" notwithstanding the attached **GREEN** RLDS report. The December 10, 2018 letter denies Blanca Telephone's requested financial relief and the FCC is proceeding as if the case is no longer being litigated. Accordingly, the FCC's January 10, 2018 letter constitutes a denial, and an effective denial, of Blanca's December 29, 2017 Petition for Reconsideration, as supplemented. We appreciate the FCC's prompt consideration of the reconsideration matter.

Blanca Telephone intends to seek appellate review of this matter including a request for review of the FCC's improper debt collection activity which was previously brought to the Tenth Circuit's attention in the mandamus proceeding No. 17-1451 (petition denied because more than a showing of agency error is required to obtain extraordinary relief). The FCC informed the Court in No 17-1451 that Blanca could obtain relief by filing for agency review, but the FCC has not provided any relief to Blanca Telephone. Construction of the January 10 letter as a prompt denial of Blanca Telephone's December 29 Petition, as supplemented, allows the FCC's representation to the Court to be construed as being reasonably accurate: if the Petition, as supplemented, were still under FCC review a question would arise on appellate review regarding the FCC's use of its legal processes to collect a non-delinquent debt notwithstanding the FCC's representation to the Tenth Circuit that Blanca Telephone "can forestall the application of the rule simply by requesting further review on the merits by 'timely fil[ing] a challenge through an administrative appeal or a contested judicial proceeding.' 47 C.F.R. § 1.1910(b)(3)(i)."

The FCC's January 10, 2018 letter, without discussion, removes the financial penalties which were previously sought by the FCC. December 29, 2017 Petition for Reconsideration at 7. That removal does not change the fact that the FCC plainly attempted to impose financial penalties upon Blanca thereby rendering the FCC's enforcement action against Blanca penal in nature. Moreover, the penal nature of the FCC's novel rule enforcement and forfeiture ordered against Blanca Telephone is not remedied by removal of some of the penalties.

Regarding settlement discussion: Thank you for your second invitation to discuss a settlement agreement regarding the USF matter, notwithstanding the fact that the FCC's settlement overtures are extremely untimely and substantively different compared to the settlement discussions the FCC had with the five "hall pass" companies which are discussed in Blanca Telephone's January 8, 2018 Supplement. Unlike Blanca Telephone, those companies were not discussing settlement after issuance of a reviewable order, nor after referral to the DoJ for action under the False Claims Act even though, unlike Blanca Telephone, those companies made numerous false statements to the FCC and collected USF money which was not used for the purpose of providing telecommunications services in a rural high cost area. Those companies took USF money, but provided no service to additional subscriber lines, in schemes amounting "waste, fraud, and abuse" of USF funds.

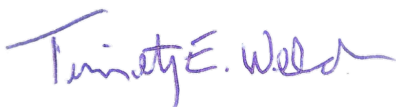
Based upon our prior experience in this case including, *inter alia*, the FCC's breach of a long settled NECA/USAC/FCC/Blanca Telephone accounting matter, the FCC's misuse of that long settled matter to infer and to impose upon Blanca Telephone a greater USF liability and penalty, and the FCC's improper public disclosure of confidential settlement discussion between Blanca Telephone's Colorado counsel and the DoJ for the purpose of imposing USF liability and penalties upon Blanca Telephone, *see* Blanca Telephone's June 24, 2016 Petition for Reconsideration at 9 n. 6, 13 n. 12, 15, and because Blanca Telephone has not received any assurance that a repeat of those experiences will not recur, I am concerned that the FCC might attempt to use Blanca Telephone's informal settlement discussion against it in some future order. Under these circumstances, at this time, I am not comfortable discussing settlement orally. However, I am comfortable responding in writing. I will be responsive to any FCC settlement comment regardless of the format in which the comment is made, but at this point I envision any follow-up by me to be written. Please note that based upon prior experience I do not consider any of the matters discussed in this letter, or to be discussed, to be privileged settlement discussion even if the purpose is settlement.

My understanding is that the last settlement discussion between Blanca Telephone and the DoJ involved the DoJ's take-it-or-leave-it offer that Blanca Telephone pay about \$8 million to settle the matter and the DoJ advised Blanca Telephone's civil counsel that if the matter were not resolved via settlement the FCC would issue a money order of some sort and that the FCC faced a lesser debt collection risk compared to the DoJ. Thereafter, after the passage of about 7-8 months, the DoJ's take-it-or-leave-it settlement proposal was followed by the FCC's June 2, 2016 Informal Debt Adjudication Order which brought about the current legal proceeding and which ultimately led to the FCC's current, inexplicable debt collection effort. Contrary to the DoJ's view, Blanca Telephone's view is that the FCC ultimately faces significant debt collection issues and risks even if in the short run the FCC ignores the financial protection afforded by § 1.1910(b)(3)(i), denies Blanca Telephone's explicit request for relief under that rule, utilizes a non-existent "call at will" debt collection procedure to collect a non-delinquent debt, and ignores the plain fact that Blanca Telephone has no outstanding delinquent debt to collect according to the FCC's own financial records.

With the understanding that the government is no longer operating from a take-it-or-leave-it position, and with the understanding that by referencing the DoJ settlement discussions in the January 10 letter the FCC is indicating that it is authorized to compromise the DoJ's position, Blanca Telephone proposes a settlement framework where:

- 1) Blanca Telephone will pay \$39,226 to the FCC, or USAC, or The Treasury or to any FCC designee (*see* FCC 17-173 to calculate the "payment to claim" ratio in one of the "hall pass" cases), without admitting fault, liability, or wrong doing and without the settlement being construed that way;
- 2) Blanca Telephone will not be required to institute any compliance program regarding the FCC's hitherto long dormant concern about ancient accounting matters;
- 3) USF payments to Blanca Telephone will promptly resume and USAC will promptly remit to Blanca any and all USF payments which were not made after issuance of the December 8, 2017 Order;
- 4) all matters relating to Blanca Telephone's USF claims for its cellular system will be considered fully resolved and settled;
- 5) neither the FCC nor the DoJ will make any effort to make any further USF claim regarding any time period regarding Blanca Telephone's cellular system;
- 6) the FCC will rescind its DoJ referral and the DoJ will not pursue any type of case against Blanca Telephone or its principals and the DoJ will be a signatory to the settlement agreement;
- 7) Blanca Telephone will relinquish its approximately \$1 million claim regarding the FCC's breach of the 2013 NECA/USAC/FCC/Blanca Telephone settlement; and
- 8) the settlement will be reflected in a settlement agreement enforceable by all signatories to the agreement; the settlement will not be in the form of a "consent decree" subject to the FCC's exclusive and continuing oversight; and the FCC will issue an order resolving the case and will make a finding that "given the circumstances of this case, the public interest is served by resolution of this matter by settlement agreement with no finding of fault or wrong doing being made, entered, or implied and with no implementation of any compliance program being required."

Respectfully,



Timothy E. Welch



Red Light Display System (RLDS)

Red Light Display System

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

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1/12/2018 7:00 AM

Current Status of FRN 0003766201

STATUS: Green

You have no delinquent bills which would restrict you from doing business with the FCC.

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 01/12/2018 at 6:35 AM; it is updated once each business day at about 7 a.m., ET.

Customer Service

[Red Light Help](#)

[FCC Debt Collection](#)

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Red Light Display System Help Line: (877) 480-3201, option 6; 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.



Federal Communications Commission
Washington, D.C. 20554

January 10, 2018

By U.S. Postal service
And E-Mail to alanwehe@fone.net
alanwehe@GoJade.Org

Mr. Alan Wehe
General Manager
Blanca Telephone Company
129 Santa Fe Ave.
Alamosa, CO 81101

Re: The Blanca Telephone Company ("Blanca"): Offset Notification

Dear Sir,

As you are aware, on December 8, 2017, the Federal Communications Commission ("Commission") released a Memorandum Opinion and Order, and Order on Reconsideration, relating to Blanca under number FCC 17-162 ("Order").¹ The Order affirmed the conclusion and directive of the Commission's Office of Managing Director that Blanca owes and must repay the Universal Service Fund \$6,748,280 (the "Debt"), the amount of universal service support Blanca received to which it was not entitled. The purpose of this letter is to advise you that, as directed by the Commission in the Order, we will pursue collection of this amount, *inter alia*, by offset/recoupment of amounts otherwise payable to you by the Universal Service Fund.

Accordingly, as from the date of the Order, December 8, 2017, Blanca's monthly support from the Universal Service Fund will be offset/recouped against the Debt, until the Debt is satisfied or until you have made acceptable arrangements for its satisfaction. In this regard, we reiterate our willingness to continue the settlement discussions that were originated with your attorney, Mr. Tegtmeier, and the Department of Justice.

¹ *In the Matter of Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, (rel. December 8, 2017).

If you have any questions, your attorney may contact Neil Dellar on (202) 418-8214.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens
Managing Director

Copies:

Michele Ellison – Deputy GC

Mike Pond -- USAC