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

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Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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Blanca Telephone Company )  
 )  
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 Acting Managing Director

PETITION FOR RECONSIDERATION

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June 24, 2016

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## **Summary**

Commencing sometime in Spring 2008 the FCC began auditing Blanca Telephone Company's (Blanca) receipt of USF high cost funding which was being used, in part to support Blanca's mobile cellular system located in a high cost area in Colorado. Since that time Blanca has been subjected to a number of subpoenas and investigations. However, it was not until June 2, 2016 that the FCC's Managing Director entered findings that Blanca had violated several of the FCC's rule parts, without citing specific rules, during the 2005-2010 time period and ordered a nearly \$7 million forfeiture which the Managing Director then classified as a Federal debt owed by Blanca. Curiously, while the June 2, 2016 action appears to find that Blanca received excessive USF funding over those years, there is no finding that Blanca violated any Part 54 Universal Service rule or Part 54 generally.

The Managing Director is not authorized to issue USF rule violation findings. The Commission is not authorized to issue rule violation findings where it had knowledge of facts for years, but did nothing more than query Blanca relentlessly about its USF accounting practices.

The FCC eventually referred the USF accounting questions to the Department of Justice despite the fact that the FCC had not entered any rule violation findings against Blanca at that time. Blanca was not informed of the timing of that referral. In essence, the FCC referred nothing to the DoJ and the June 2, 2016 action is nothing more than a fig leaf to try to correct the deficient referral to try to improve the DoJ's litigating position. The June 2, 2016 action is an abuse of the administrative process.

The June 2, 2016 action purports to act under authority of the Debt Control Improvement Act of 1996 (DCIA). However, that Act applies on its face to agencies located in one of the three

coordinate branches of government, it does not apply to Independent Federal agencies like the FCC. Even if the Act did apply to the FCC, the Act authorizes the establishment of offsets to pay down pre-existing debt that has been established by order of court or that has been acknowledged by a debtor by partial payment of a forfeiture issued after a notice of apparent liability. The DCIA does not rewrite Section 503 of the Communications Act and it does not authorize the FCC to enter rule violation findings years after the FCC knew about the underlying facts. In fact, the FCC's own regulations at § 1.1905 require compliance with § 503. The June 2, 2016 action does not merely establish an offset, the letter finds several non-specific rule part violations without affording Blanca prior notice or hearing, assesses a multi-million dollar penalty for the rule part violations, claims that the assessed penalty equals a Federal debt owed by Blanca, and then seeks to impose an offset for that newly created “debt”. Absent a finding of rule violation the FCC cannot claim an offset. Moreover, the vague findings of rule part violations are untimely and the June 2 action does not even assert a violation of Part 54. The Managing Director lacks delegated authority to enter such findings.

The Blanca Telephone Company (Blanca), by its attorney, pursuant to 47 C.F.R. § 1.41, § 1.80, § 1.106(b)(1),(2), § 1.106(f) hereby seeks reconsideration of the Deputy Managing Director’s June 2, 2016 letter (June 2 Letter) to reverse the determination that Blanca is subject to a forfeiture penalty of a \$6,748,280 and which seeks to enforce that determination by offset and otherwise.<sup>1</sup> A copy of the June 2 Letter is Attachment 1 hereto (p. 1 of 39). The central question presented in this petition is: Whether the Debt Control Improvement Act of 1996 (DCIA) authorizes the FCC to ignore the forfeiture provisions of the Communications Act found at 47 U.S.C. § 503, notwithstanding the fact that the FCC’s own rule, 47 C.F.R. § 1.1905 explicitly compels compliance with § 503 and with 47 C.F.R. § 1.80, such that the FCC can summarily find non-specific rule section violations without any type of hearing and impose a forfeiture with immediate and ruinous effect years after the FCC had actual knowledge of the underlying facts.

### **I. Irreparable Harm is Imminent and Reconsideration Is Required**

The June 2 Letter states that the debt “payment is due, immediately, in full, and without further demand” and seeks to impose an offset against USF funding that Blanca receives for its provision of wireline telephone service in a high cost area. Accordingly, the situation presents an immediate public interest emergency.

The Commission utilizes a “RED Light” system to prevent regulated entities with

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<sup>1</sup> On June 16, 2016 Blanca filed an Emergency Application for Review regarding the June 2 Letter. The Acting Managing Director’s June 22, 2016 letter to Timothy E. Welch states that the FCC will address Blanca’s emergency request for relief using “normal procedures.” FCC staff’s June 23, 2016 email to Timothy E. Welch clarified that “normal procedures” means Blanca’s “appeal” of a “decision made on delegated authority” pursuant to 47 C.F.R. § 1.115. It appears that the FCC 1) has rejected Blanca’s argument that there is no internal exhaustion requirement and 2) has denied Blanca’s exhaustion of remedies waiver request. Emergency Application at 4. Therefore, Blanca is submitting a timely filed, reformatted pleading to conform to the petition for reconsideration rules. *See* 47 C.F.R. § 1.106(f) (petition is timely filed within 30 days of the June 2 Letter).

outstanding Federal debt, and their affiliates, from conducting business with the FCC. *See* 47 C.F.R. § 1.1910(b)(2), (3); <https://apps.fcc.gov/redlight/login.cfm>. A regulated entity which is barred from conducting substantial business with its regulator is essentially put out of business. The June 2 Letter does not consider the public interest harm which results when the FCC shuts down the carrier of last resort including its provision of 911 service. While Blanca has a GREEN light as of the time this petition is being filed, it appears that the threat of red lighting is imminent and Blanca respectfully requests that the Commission take that into consideration in addressing this matter.<sup>2</sup>

Moreover, the amount levied against Blanca is ruinous to Blanca's provision of wireline telephone service to a rural, high cost area. As discussed below, the Commission and NECA stopped providing USF support for Blanca's mobile cellular system pushing that rural telecommunications system to the brink of collapse. The offset announced in the June 2 Letter would effectively terminate, for a number of years, USF payments which Blanca receives for its provision of wireline telephone service to a rural, high cost area and the offset imposed in the June 2 Letter would similarly lead to substantial harm being inflicted upon Blanca's wireline telecommunications service which includes voice service, Internet service, and 911 service.

Reconsideration is warranted on a number of grounds. The June 2 Letter contemplates the imminent imposition of a grave harm to the public interest; the Managing Director uses the June 2

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<sup>2</sup> Blanca's current status is green. Blanca respectfully advises the Commission that should Blanca's status change to red Blanca will seek judicial relief on an emergency basis pursuant to the All Writs Act of 1798, 28 U.S.C. § 1651, as quickly as is practicable after learning of the red light status change. Because the instant challenge to the existence of the debt is timely filed, this matter cannot cause Blanca's red light status to change to red. *In the Matter of Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, Report and Order*, FCC 04-72, 19 FCC Rcd. 6540, 6542-43 ¶ 6 (FCC 2004); 47 C.F.R. § 1.1910(b)(3)(i).

Letter to assume the authority to adjudicate debt claims on a summary basis and to issue rulings which create a Federal debt; the Managing Director does not have delegated authority to rule on USF matters; the Managing Director does not have statutory authority to rule on DCIA matters; the Managing Director failed to provide the review proceeding required by 31 U.S.C. § 3716(a)(3); the June 2 Letter announces a novel enforcement regime which ignores 47 U.S.C. § 503 which the Deputy Managing Director is neither authorized to announce or to implement and which violates the explicit 47 C.F.R. §1.1905 requirement to comply with the Notice of Apparent Liability requirements of §503 and 47 C.F.R. § 1.80; and the Managing Director does not possess delegated authority to rule upon petitions for reconsideration. *See* 47 C.F.R. §§ 0.11, 0.231 (Functions of the Managing Director and Authority Delegated to the Managing Director); *see also* 47 C.F.R. §§ 0.61(f)(2), 0.241(a), 0.261(b), 0.283(c), 0.291(a), 0.311(a), 0.331(a),(d), 0.361(c), 0.392(a),(e) (delegations to subordinates prohibit them from addressing novel matters). Accordingly, grant of this Petition is warranted.

## **II. Statement of Facts**

### **A. Background**

Blanca is a telecommunications carrier located in Alamosa, CO which was incorporated in 1926. Blanca provides a combination of landline/wireline and/or wireless voice & data services in a service area which covers about 1,000 square miles in South Central Colorado in Conejos, Costilla, and Alamosa Counties. These rural counties have a total a combined land area of 3,237 sq. miles, a combined population of 27,225 (2010 Census), and a population density of 8.4 persons per square mile. Blanca's mobile cellular system at issue in this proceeding provides service to Conejos and Costilla, Counties. These two rural counties have a total a combined land area of 2,514 sq. miles, a combined population of 11,780 (2010 Census), and a population density of 4.7 persons per square



mile. The FCC defines a “rural area” as those counties with a population density of 100 people or fewer per square mile based upon the most recently available Census data. *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 19078 ¶ 11 (FCC 2004).

USF subsidies are available for both wireline and wireless services. As noted in the June 2 Letter, note 2, the Colorado PUC designated Blanca as an Eligible Telecommunications Carrier (ETC) eligible to receive USF funding. The ETC designation requirements to become eligible to receive USF support are found at 47 U.S.C. § 254(e); 47 C.F.R. § 54.201-202.<sup>3</sup> USF funding is available to ETCs which serve “rural, insular, high cost areas.” 47 C.F.R. § 54.101. USF support is available for “telecommunications and information services.” 47 C.F.R. § 54.7(b). 47 C.F.R. § 54.5 defines a “telecommunications channel” as a “telephone line, or, in the case of wireless communications, a transmittal line or **cell site**” (emphasis added) and the definition of “telecommunications carrier” explicitly “includes cellular mobile radio service (CMRS) providers.” 47 C.F.R. § 54.202(a)(3) provides that wireless carriers are able to obtain USF funding if they comply with the requirements of a consumer code. There is no USF funding rule in the C.F.R. which limits USF funding to “fixed” wireless service; the Commission’s rules explicitly state when a USF request should not be made. *See e.g.*, 47 C.F.R. § 54.404(b)(3) (prohibiting multiple lifeline

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<sup>3</sup> The June 2 Letter at 3 faults Blanca for using USF funds to provide mobile cellular service outside of its “LEC [local exchange carrier] study area.” The ETC designation is obtained by wireless carriers which carriers may be associated with, but which are not required to be associated with, an LEC with a “study area.” In other words, receipt of USF high cost funding is not dependent upon the wireless carrier also being an LEC. It is not apparent why the June 2 Letter seeks to constrain Blanca’s receipt of USF high cost funding for its mobile cellular operation based upon the coincidence that Blanca also has an LEC study area which is used to calculate Blanca’s wired system USF high cost funding support. An ETC designated wireless carrier is eligible to receive USF funding “throughout” its service area without regard to what another service area for another service might be. 47 C.F.R. § 54.201(d).

support requests for the same address).

In high cost areas the carrier serving a subscriber is eligible to claim USF high cost support for “voice” services for that subscriber. 47 C.F.R. § 54.101. “Voice services” include “wireless telephone service such as cellular.” *Cf.* 47 C.F.R. § 54.500. Within Blanca’s certificated wireline telephone exchange area Blanca is an Incumbent Local Exchange Carrier (ILEC). 47 C.F.R. § 51.5 (ILEC defined). Beyond Blanca’s certificated telephone exchange area Blanca is a Competitive Eligible Telecommunications Carrier (CETC). 47 C.F.R. § 54.5 (CETC defined). CETC’s are eligible to receive USF funding for subscribers “based on the support the incumbent LEC would receive for each such line.” 47 C.F.R. § 54.307(a)(1). The “service location” for a wireless/mobile subscriber for the purpose of USF funding calculation is the subscriber’s billing address. 47 C.F.R. § 54.307(b). “Eligible telecommunications carriers designated under this subpart shall receive universal service support,” 47 C.F.R. § 54.201(a), “throughout the service area for which designation is received.” 47 C.F.R. § 54.201(d).

### **B. The June 2 Letter**

The June 2 Letter faults Blanca’s receipt of USF high cost support funds for the years from 2005-2010 because Blanca purportedly

improperly included costs and facilities attributable to nonregulated mobile cellular service, as well as wireless loop counts, in its cost studies that served as the basis for filing for USF high-cost funds. . . . Blanca therefore received USF high-cost support to which it was not entitled as a LEC because it submitted claims for support based upon the provision of mobile cellular service both within and outside of its LEC study area.

June 2 Letter at 3.

The June 2 Letter does not state that the distribution of USF high cost monies to Blanca was miscalculated such as through the use of an incorrect recovery rate, or that the service areas at issue

are not high cost, or that Blanca used any USF money for purposes unrelated to the provision of telecommunications services such as for massages, vacations, college tuition, houses or other items unrelated to the provision of telecommunications services in Blanca's high cost area. *See* Attachment 2 at 5 (p. 16 of 39), *Public Notice*, Statement of Ajit Pai, 30 FCC Rcd. 11821, 11825 (FCC 2015) (listing USF fund misuses). The June 2 Letter, at 3 faults Blanca solely on the basis that the USF high cost funds were used for the provision of "*mobile* cellular service both within and outside of its LEC study area."

The June 2 Letter was issued by the subordinate Office of Managing Director and it directly contradicts the Commissioners' recent *Public Notice* "reminder" regarding the intended use of USF high cost funds. USF high cost support funds are intended to be used by carriers in high cost, rural areas to provide

modern communications networks capable of providing voice and broadband services, ***both fixed and mobile***, at rates that are reasonably comparable to those in urban areas. The legacy high-cost and Connect America Fund support programs fulfill these goals by allowing eligible carriers who serve these areas to recover some of their costs from the federal Universal Service Fund. (Emphasis added).

*See* Attachment 2 (p. 12 of 39), FCC *Public Notice* issued October 19, 2015, FCC 15-133, at 1; 30 FCC Rcd. 11821 (FCC 2015); *see also* 47 C.F.R. § 54.101 (in high cost areas the carrier serving a subscriber is eligible to claim USF high cost support for "voice" services for that subscriber); 47 C.F.R. § 54.500 ("voice services" include "wireless telephone service such as cellular"); 47 C.F.R. § 54.5 (beyond Blanca's certificated telephone exchange area Blanca is a "competitive eligible telecommunications carrier" a term which includes "cellular mobile radio service (CMRS) providers" by definition); 47 C.F.R. § 54.307(a)(1) (CTEC's are eligible to receive USF funding for subscribers "based on the support the incumbent LEC would receive for each such line"); 47 C.F.R.

§ 54.307(b) (the “service location” for a wireless/mobile subscriber for the purpose of USF funding calculation is the subscriber’s billing address); 47 C.F.R. § 54.201(a) & 54.201(d) (“eligible telecommunications carriers designated under this subpart shall receive universal service support \*\*\* throughout the service area for which designation is received”). Blanca’s ETC eligibility is unquestioned in the June 2 Letter.

The June 2 Letter at 2 describes a NECA cost allocation manual as the reason Blanca is not eligible to receive USF money for its mobile wireless system. However, the June 2 Letter does not explain how NECA’s cost manual supercedes the longstanding provision of USF high cost funding for mobile telecommunications services discussed in the Commissioner’s October 2015 “reminder” *Public Notice* (Attachment 2 (p. 12 of 39)) and the cited rules. NECA is not the regulator and the Commissioners’ interpretation of the FCC’s USF regulation is entitled to deference unless plainly erroneous or inconsistent with the regulation. *S.A. Storer & Sons Co. v. Sec’y of Labor*, 360 F.3d 1363, 1368 (D.C. Cir. 2004). The June 2 Letter does not explain the divergence with the Commissioners’ plainly and recently stated view. The high cost rural areas served by Blanca’s mobile cellular system are eligible for USF high cost support and the June 2 Letter does not find the pertinent mobile service area ineligible for USF high cost funding.

Through the June 2 Letter a Commission employee improperly attempts to change the USF funding rules to impose a new liability to Blanca’s detriment during the course of a proceeding. *Christopher v. SmithKline Beecham Corp.*, 183 L.Ed. 2d 153, 170-71 (2012) (agency should not create new rules and penalties during the course of an adjudication).<sup>4</sup> The unfairness of this

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<sup>4</sup> It is unclear how one should classify the action taken in the June 2 Letter. The actions taken in the June 2 Letter are not supported by statutory authority and Blanca was not afforded prior notice (continued...)

approach is amplified by the fact that for years Blanca was audited by the FCC and Blanca submitted accounting documentation and otherwise responded to the FCC's various investigations describing the mobile service it provided. Over the course of those many years the FCC did nothing except to ask a seemingly non-stop stream of questions while demanding reams of document production over and over again. *Christopher v. SmithKline Beecham Corp.*, 183 L.Ed. 2d at 171 ("where, as here, an agency's announcement of its interpretation is preceded by a very lengthy period of conspicuous inaction, the potential for unfair surprise is acute").

More than a decade after Blanca submitted its 2005 USF high cost funding request, the Managing Director decided that it was time to issue a form of a rule violation order, but without first affording Blanca prior notice of the charges/claims or a hearing of any type and *after* the FCC had referred the matter to the Department of Justice (DoJ) years earlier.<sup>5</sup> The June 2 Letter does not explain why Blanca is not entitled to prior notice or a hearing nor does the June 2 Letter explain why

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<sup>4</sup>(...continued)

of an apparent violation or an opportunity to present a legal case prior to issuance of the rule violation finding. There are two types of administrative proceedings—rule making and adjudication. Rule adoption requires prior notice and if the June 2 Letter is a rule making, then the rule adopted therein was without prior notice. Adjudication allows the target to present a case in some manner after a notice of specific rule section purportedly violated. The June 2 Letter at 3-7 entered findings of fact, conclusions of law, and demanded payment all without affording Blanca notice or an opportunity to present its case.

<sup>5</sup> Attachment 4 hereto (p. 38 of 39) shows that the DoJ referral occurred before January 30, 2014, likely after expiration of the 47 U.S.C. § 503 one year limitations period which limits the FCC's rule violation finding authority. The referral was defective because there was no timely FCC rule violation finding at the time the referral was made, in other words, the FCC referred nothing to the DoJ. The referral was an unnoticed interlocutory action which was not independently reviewable, 47 C.F.R. § 1.102(b)(1),(2), and it was only through the issuance of the June 2 Letter that it ripened into a matter which could be litigated before the Commission.

it took eleven years (!) from the 2005 USF high cost funding request to issue the June 2 Letter.<sup>6</sup> Blanca respectfully submits that issuance of a summary forfeiture order totaling nearly \$7 million 11 years after the FCC could have first raised the issue in a proper § 503 proceeding constitutes the “unfair surprise” referred to by the Court in *Christopher v. SmithKline Beecham Corp.*, 183 L.Ed. 2d at 171.

### **C. Blanca’s Eight Year Ordeal**

In March 2008, more than eight years ago, the FCC commenced an audit regarding Blanca’s receipt of USF high cost support for its non-regulated wireless mobile operations through a private sector accounting firm. *See* June 2 Letter at 2. Thereafter, sometime prior to November 12, 2009 the FCC’s Office of Inspector General (OIG) began investigating Blanca’s receipt of USF funds for its cellular network. *See e.g.*, Attachment 3 (p. 18 of 39), the OIG’s November 12, 2009 *Subpoena Duces Tecum* directed to Blanca. Ultimately, the FCC issued five subpoenas to Blanca. *See* June 2 Letter at 2.

Subsequently, the FCC referred something to the DoJ for investigation and possible recovery of monies paid to Blanca.<sup>7</sup> *See* Attachment 4 (p. 38 of 39), DoJ’s January 30, 2014 Civil Investigative Demand - Oral Testimony issued pursuant to the DoJ’s reading of the False Claims Act, 31 U.S.C. §§ 3729-3733. As far as Blanca is aware, the DoJ is still threatening filing a suit

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<sup>6</sup> The June 2 Letter at 4 attempts to rebut “arguments” Blanca raised with the DoJ. However, those “arguments” were part of a F.R.E. 408 offer to compromise delivered to the DoJ during settlement discussions. The “arguments” were not made in the context of an administrative hearing before the FCC. The use of protected settlement discussions to penalize Blanca in this matter is improper.

<sup>7</sup> It is not clear what the FCC referred to the DoJ because the FCC had not entered any rule violation findings at that time. It was not until issuance of the June 2 Letter that the FCC attempted to enter rule part violation findings to support its DoJ referral.

under the False Claims Act notwithstanding the FCC's issuance of the June 2 Letter.<sup>8</sup> Until the FCC issued its June 2 Letter such a law suit would not have been supported by any FCC determinations that Blanca had violated any Federal communications laws. It is difficult to imagine how the DoJ could have succeeded in a false claims suit against Blanca where the FCC, the agency with primary jurisdiction regarding whether its rules had been violated, had never found any rule violations. Civil suits which raise primary jurisdiction concerns are subject to dismissal. *Allnet Communication Serv., Inc. v. National Exch. Carrier Ass'n*, 965 F.2d 1118, 1120 (D.C. Cir. 1992) (dismissing civil suit under the doctrine of primary jurisdiction to promote uniform regulatory interpretation, to ensure that the rule interpretation captures the expert agency's view, and to further the agency's mandate).

The June 2 Letter does not explicitly find that Blanca made a single false statement or misrepresentation in more than eight years of investigation covering the eleven years back to 2005. Nevertheless, the DoJ has indicated to Blanca's civil attorneys that it will seek a false claim recovery totaling 3X the amount the DoJ has decided that Blanca purportedly improperly received.<sup>9</sup> The June 2 Letter at 2-3 does discuss, without making a finding of false statement, that Blanca called its

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<sup>8</sup> A representative of the DoJ recently informed Blanca's civil attorney that the FCC was considering issuing an administrative ruling regarding the USF high cost support matter; the June 2 Letter followed. The DoJ representative stated, incorrectly in our view, that the FCC is not as constrained regarding statute of limitations concerns as is the DoJ with regard to its false claims theory. The DoJ and Blanca have executed a series of tolling agreements to toll the statute of limitations applicable to the DoJ's false claim theory to try to preserve the DoJ's ability to bring its case without regard to the time bar.

<sup>9</sup> In fact, the June 2 Letter at 4 plainly states that Blanca's funding reports "exactly" disclosed "costs for a system to provide mobile services [which] are outside the scope of Title II and cannot be reported to the NECA pool or recognized in USF loop cost reporting. . . ." Blanca plainly disclosed how it was using the USF high cost funds.

cellular service “BETRS” and that Blanca’s service could not be BETRS because Blanca’s service was mobile and not fixed.

Prior to 1995 Blanca provided its BETRS service using 150 MHz/450 MHz frequencies and licenses and subscriber stations which used bulky, heavy immobile radios. With the advent of 800 MHZ cellular, Blanca transitioned to new technology in the mid-1990s while Blanca continued to serve the same class of customers who subscribed to its old BETRS service, but with the new cellular technology. Blanca continued use of the BETRS name merely for continuity purposes. At the end of the day the BETRS discussion is a red herring because USF funding is available for mobile cellular services – Blanca’s description of the mobile cellular service is irrelevant and Blanca’s use of the mobile system is irrelevant.<sup>10</sup>

It is noteworthy that Blanca’s USF requests would have been much, much higher if Blanca had not used radio systems to reach various remote Rocky Mountain locations, but had instead installed wire to each remote location. The basic premise of the June 2 Letter ignores the practicalities of what a carrier of last resort is required to do, namely, provide service to anyone who requests. Blanca endeavored to provide carrier of last resort service as economically as possible and the June 2 Letter, in effect, seeks to punish Blanca for conserving USF funds. The June 2 Letter does not explain how conserving USF funds rises to the level of a punishable rule part violation.

Blanca does not have any direct information regarding why the FCC referred the USF matter

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<sup>10</sup> Blanca used its mobile cellular system to provide POTS (plain old telephone service). There was no handoff (neighboring carriers managed by Verizon would not allow it); minutes of air time use was not billed; Blanca charged the same tariff rate for mobile and landline phones; Blanca’s cellular subscribers could pick a long distance carrier of their choice. However, the Commission allows USF recovery for mobile cellular systems even if the Commission completely discounts Blanca’s claim that its cellular system was used to provide POTS.



to the DoJ, only to issue, many years after first commencing a review of Blanca's USF high cost funding, its own rule violation findings and penalties.<sup>11</sup> However, a reasonable conclusion is that the FCC and DoJ needed 1) a workaround because the DoJ's prospective false claims suit could not point to any FCC rule violations and 2) to skirt various procedural protections to which Blanca is entitled in making those rule violation findings. Accordingly, the June 2 Letter is nothing more than the adoption of convenient litigating position to support the DoJ's litigation effort. *Christopher v. SmithKline Beecham Corp.*, 183 L.Ed. 2d 153, 170 (2012) (discounting agency position appearing to be "nothing more than a convenient litigating position").

#### **D. USF Support for Blanca's Mobile Cellular System Ends**

As a result of the FCC's multi-year investigation Blanca has not received any USF high cost support for its mobile cellular operations since 2010. June 2 Letter at 3. As a consequence of this funding denial Blanca's mobile cellular system has fallen into disrepair and it has become technologically obsolete.

It might seem curious, at first blush, that Blanca would just give up receipt of USF high cost support without challenging NECA's USF high cost filing directions. However, the fact is that even with the USF money, which money Blanca plowed back into cellular system improvements, the operation was a marginal profit making operation. Blanca determined that it was not worth a protracted, expensive legal fight and the effort to try to secure continued USF high cost funding

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<sup>11</sup> The DoJ's investigation and the FCC's investigation involve the same USF payments distributed to Blanca. The DoJ and the FCC are attempting to get two bites at the apple. The tag team approach seems to be an extraordinary abuse of power. In any event, the FCC finally determined that it wanted to proceed against Blanca using its own judicial or legislative or executive powers and the DoJ's potential false claims suit is now barred by the doctrine of claim preclusion. *SBC Communications, Inc. v. FCC*, 407 F.3d 1223, 1230 (D.C. Cir. 2005) (the purpose of claim preclusion is to prevent litigation of matters that should have been raised in an earlier suit).

merely to provide a barely break even telecommunications service.

If subordinate Commission divisions and NECA want to work together to implement a policy geared toward turning off rural cellular systems, Blanca is not obligated to fight against that policy. Nor does Blanca have an obligation to try to redirect FCC telecommunications policy toward what some might consider a more desirable direction. Blanca is a small company which lacks the resources to be a leading champion of what the FCC should or should not be doing as a matter of national telecommunications policy.<sup>12</sup>

In July 2015 the Public Service Access Point (PSAP) administrator in Blanca's area requested that Blanca provide E911 Phase 2 handset location services in connection with its mobile cellular service.<sup>13</sup> Blanca estimated that it would cost approximately \$1 million to implement the requested E911 Phase 2 service. As a result of the PSAP's request, and the PSAP's contact with the FCC's Public Safety and Homeland Security Bureau (PSHSB), the PSHSB contacted Blanca to ascertain Blanca's E911 Phase 2 implementation schedule. Because of the high costs involved, and because the FCC had denied USF funding for Blanca's mobile cellular system, and because Blanca's

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<sup>12</sup> The June 2 Letter at 7 attempts to turn Blanca's acquiescence in an accounting/bookkeeping matter into an admission of wrong doing by stating that "based on a review of Blanca's books and records obtained during the OIG investigation and Blanca's own revision of its cost study and other filings for the post 2011 period, we have determined Blanca owes the Fund an additional \$6,748,280 (the 'Debt')." The effort to create an admission is plainly a stretch. The quoted passage demonstrates that Blanca was cooperative and the June 2 Letter, boiled down to its essence, is an effort to go back in time to redo USF accounting books regarding USF payments the issuance of which Blanca exercised no control. NECA was quite capable of questioning and denying Blanca's funding requests had it merely chosen to do so. Instead, we have a years long travail.

<sup>13</sup> Blanca's mobile cellular system provides Phase 1 E911 service which provides subscriber contact information and cell site location information to the PSAP. Phase 2 E911 service provides handset location/coordinate information to the PSAP.  
<https://www.fcc.gov/general/enhanced-9-1-1-wireless-services>

cellular system loses money on a monthly basis, Blanca determined that it would turn off its cellular system and submit its cellular licenses for cancellation.<sup>14</sup> Interestingly, the PSHSB's initial reaction was to suggest that Blanca could not turn off its mobile cellular system because Blanca's wireless system provided a critical life and safety service function(!). However, even though one FCC division might reasonably consider Blanca's wireless service to be critical, other FCC divisions denied USF funding for that critical service, and Blanca's cellular system has withered on the vine as a direct result of USF funding denial.<sup>15</sup>

### **III. Argument**

#### **A. The June 2 Letter Fails to Afford Procedural Protections**

##### **1. The June 2 Letter Is an End Run Around §503**

47 U.S.C. § 503(b)(2)(B), implemented at 47 C.F.R. § 1.80, is the statutory procedure whereby the FCC determines whether its rules have been violated and whether forfeitures should be entered against carriers. 47 C.F.R. § 1.1905 explicitly provides that forfeiture orders entered against carriers, subsequently to be classified as Federal debt, must comply with the requirements of § 503 and § 1.80. Moreover, 47 C.F.R. § 1.1901(e) requires that the assessed forfeiture either be partially paid or be the subject of a valid court order before the FCC can proceed to collect the debt via offset. Neither of these conditions exist. The FCC is required to follow its own procedural rules

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<sup>14</sup> Working with the knowledge of the FCC's Mobility Division, the division responsible for licensing Blanca's mobile cellular system, and the PSHSB, and at the request of neighboring carriers, Blanca has postponed its planned system shut down pending discussions which hopefully will result in the assignment of Blanca's cellular licenses to a third party which is able to implement E911 Phase 2 service.

<sup>15</sup> Generally stated, the FCC does not have any wireless rules which preclude exit from a wireless business and cancellation of a wireless license. Via decades old preemption states are precluded from regulating wireless entry and exit. See 47 U.S.C. § 332(c)(3); *In the matter of Preemption of State Entry Regulation in the Public Land Mobile Service*, 59 R.R.2d 1518 (FCC 1986).

regarding enforcement and it failed to do so here. *Jolly v. Listerman*, 672 F.2d 935, 940 (D.C. Cir. 1982) (“an agency is bound by its own procedural rules governing adverse action”).

47 U.S.C. § 503(b)(6)(B) affords the FCC one year from the alleged violation to institute an enforcement action. The June 2 Letter imposes a forfeiture for the years 2005-2010, a period of time well after the running of the one year limitation. The June 2 Letter at 2 even seems to note the FCC’s acknowledgment of a limitation problem because several years ago Blanca was requested to repay just a portion of the USF funding which the FCC now claims should be recovered.<sup>16</sup> June 2 Letter at 3. Now years later the FCC attempts to devise a way to get around that one year limitation regarding alleged overpayments to Blanca for 2005-2010 and here we are today.

Under the novel legal theory presented in the June 2 Letter, the Managing Director, or the Deputy Managing Director, or the Managing Director’s Summer Intern, in lieu of following the §503 forfeiture requirements, can investigate any rule matter and issue a DCA/DCIA “debt due” determination regardless of the timing of the alleged rule violation; the June 2 Letter effectively eviscerates §503. Using the June 2 Letter as a guideline the Summer Intern could, for example, find that a transmitter was out of spec 75 years ago without affording the licensee an opportunity to present a case, impose a forfeiture for the rule violation, classify that forfeiture as a Federal debt, tack on 75 years of interest, and demand immediate payment subject to the licensee being precluded from transacting business with the FCC if payment is not submitted immediately.

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<sup>16</sup> Blanca’s decision to pay back USF monies and to redo accounting ledgers were not actions made upon “forfeitures issued after a notice of apparent liability.” Accordingly, those actions do not constitute a partial payment debt acknowledgment under 47 C.F.R. § 1.1901(e). Moreover, as discussed above, Blanca did not admit wrong doing. Blanca was clearly settling an accounting matter to avoid protracted litigation. In retrospect, Blanca has ample reason to regret dealing informally with the FCC and NECA regarding the USF issue and the June 2 Letter constitutes a settlement breach.

31 U.S.C. §3716(e) provides that there is no limitation with regard to imposing an offset, but there is a world of difference between imposing an offset involving a pre-existing debt and instituting a proceeding for the purpose of adjudicating a debt claim and then imposing a DCIA inspired offset. There is absolutely nothing in § 3716(e) which even remotely suggests that the FCC's § 503 one year limitation to commence a rule enforcement proceeding is altered. § 3716(e) is not an invitation for the FCC to sit back on known facts for years and years and then find rule violations via summary decree and then transform that "money owed" into a Federal debt in an unnoticed proceeding.

The FCC's statutorily established rule enforcement procedure, 47 U.S.C. § 503(b)(4)(c), requires, *inter alia*, that the FCC give explicit notice identifying "each specific provision, term, and condition of any Act, rule, regulation . . . which such person apparently violated or with which such person apparently failed to comply" and afford an opportunity to present a case before the enforcement matter is decided. *See e.g., Notice of Apparent Liability for Forfeiture and Order, Total Call Mobile, Inc.*, 31 FCC Rcd. 4191, 4193 ¶ 6 (FCC 2016) (NALF issued which lists specific Part 54 USF rules purportedly violated and assessing a potential \$51 million penalty). The June 2 Letter at 2 states generally that Blanca "failed to comply with Parts 64 [Misc. Common Carrier Rules], 36 [Separations] and 69 [Access Charges] of the FCC's rules." There are literally scores of rules in those rule sections, it is impossible to know which rule the FCC thinks Blanca violated.

Perhaps even more importantly, the June 2 Letter does not even assert that Blanca violated any rule in Part 54 [Universal Service] rule even though the whole purpose of the June 2 Letter, and the whole purpose of the DoJ's threatened false claims suit, relates to the same pile of USF money which purportedly should not have been distributed to Blanca. It is arbitrary and capricious to assert

that a party received improper USF payments, but then in the ordering document completely fail reference Part 54, much less point to a specific Part 54 rule which was purportedly violated. The fact is, various Part 54 rules allow mobile carriers to apply for and receive USF high cost funding. *See* Attachment 2 (p. 12 of 39), FCC *Public Notice* issued October 19, 2015, FCC 15-133, at 1; 30 FCC Rcd. 11821 (FCC 2015); *see also* 47 C.F.R. § 54.101 (in high cost areas the carrier serving a subscriber is eligible to claim USF high cost support for “voice” services for that subscriber); 47 C.F.R. § 54.500 (“voice services” include “wireless telephone service such as cellular”); 47 C.F.R. § 54.5 (beyond Blanca’s certificated telephone exchange area Blanca is a “competitive eligible telecommunications carrier” a term which includes “cellular mobile radio service (CMRS) providers” by definition); 47 C.F.R. § 54.307(a)(1) (CTEC’s are eligible to receive USF funding for subscribers “based on the support the incumbent LEC would receive for each such line”); 47 C.F.R. § 54.307(b) (the “service location” for a wireless/mobile subscriber for the purpose of USF funding calculation is the subscriber’s billing address); 47 C.F.R. § 54.201(a) & 54.201(d) (“eligible telecommunications carriers designated under this subpart shall receive universal service support \*\*\* throughout the service area for which designation is received”). Blanca’s ETC status is unquestioned in the June 2 Letter.

## **2. The June 2 Letter Is Not Merely An Offset Letter**

The Debt Control Act of 1982 (DCA), 96 Stat. 1749, and the Debt Control Improvement Act of 1996 (DCIA), 100 Stat. 1321, establish many procedural protections which the June 2 Letter fails to honor. The June 2 Letter does not merely announce a debt collection demand and offset of an partially paid or adjudicated forfeiture, 47 C.F.R. § 1.1905, the letter finds multiple non-specific rule section violations, claims that USF payments to Blanca made as a consequence of those rule violations equals a Federal debt owed by Blanca, and then seeks to impose an offset for that newly

created “debt”. Absent a finding of rule violation, the FCC could not claim an offset.

At its core the June 2 Letter at 2 finds that the “debt” arises because Blanca “by including all costs attributable to its mobile cellular system in its cost studies, failed to comply with Parts 64, 36 and 69 of the FCC’s rules.” Thus, the June 2 Letter does not merely create an offset, it creates the debt obligation based upon a vague finding of rule section violation. The DCA and the DCIA presume the existence of an adjudicated pre-existing debt and provide ways for coordinate branch agencies to collect that debt. There is nothing in the legislation which suggests that an Independent Federal Agency can ignore its own standard enforcement procedures and create a new type of summary proceeding to issue a forfeiture to create a debt and then offset that “debt” years after the purported rule violations.

### **3. The DCA and DCIA Do Not Apply to the FCC**

31 U.S.C. § 3711(a) provides that

The head of an executive, judicial, or legislative agency—(1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency;\*\*\*

31 U.S.C. § 3701(a) provides that

“executive, judicial, or legislative agency” means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, including government corporations.

The FCC is an independent Federal Agency, it is not an agency within either the executive, judicial, or legislative branches of government. *See* 44 U.S.C. § 3502(5) (listing about 19 Independent Federal Agencies including the FCC); *compare* 44 U.S.C. § 3502(1) (Congress distinguishes between Independent Federal Agencies and executive branch agencies). Clearly, when Congress wishes to include the FCC and/or other Independent Federal Agencies within the purview of a statute it writes the legislation to express that intent. The legislation at issue instantly specifically

identifies the affected agencies able to implement debt collection rules and the FCC plainly is not an identified agency.

Notwithstanding the express statutory exclusion of the FCC from the DCA and the DCIA, the FCC nevertheless adopted debt collection implementing regulations pursuant to those statutes, 47 C.F.R. § 1.1901 *et seq.*, and Blanca has a right to challenge the FCC's application of its debt collection rules at the time of rule application. *Nextwave Personal Communications, Inc. v. FCC*, 254 F.3d 130, 141 (D.C. Cir. 2001), *aff'd* 537 U.S. 293 (2003). Because the DCA and DCIA do not apply to the FCC, the FCC's debt collection rules, and the June 2 Letter, are invalid. The FCC must utilize other statutory provisions if it wishes to conduct some manner of rule enforcement proceeding coupled with debt collection, assuming that Congress assigned a debt collection function to the FCC in some other legislation.<sup>17</sup>

The DCA and DCIA provide that the “head” of an agency may conduct debt collection activities. There is nothing in the DCA or DCIA statutes which allow for an agency head to delegate that authority to a subordinate. This statutory limitation clearly expresses a Congressional intent to make agency accountability easy to trace given the vast exercise of power the debt control statutes authorize and the FCC gives effect to Congressional intent at 47 C.F.R. § 1.1901(c) without exception or delegation of the Chairman's authority to any other person. The need for pinpoint accountability increases when statutes apply to independent agencies because such agencies are free from ballot box control. *In re Aiken County, et al.*, 725 F.3d 255, 259 (D.C. Cir. 2013). Therefore, to the extent that the June 2 Letter was issued by the “Deputy Managing Director,” the FCC's action is *ultra vires* under the express language of the DCA & DCIA.

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<sup>17</sup> The instant case does not concern a situation in which the DoJ or the Treasury Department, for example, requested that the FCC impose an offset because a regulated entity owed Federal back taxes.



The FCC delegated the purported power of the FCC Chairman under the DCA & DCIA to the “Managing Director.” *See Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, Report and Order*, FCC 04-72, 19 FCC Rcd. 6540, 6545 ¶ 16 (FCC 2004). But even if the DCA and DCIA did apply to the FCC, and even if those statutes allowed delegation from the agency head to the Managing Director, there is nothing in the FCC’s 2004 rulemaking which delegated to the “Deputy Managing Director” the power to adjudicate a USF-related debt claim in a summary proceeding.

While 47 C.F.R. § 0.11 is at hand, it is noteworthy that the Managing Director does not have the delegated authority to enforce the FCC’s USF accounting/bookkeeping rules. Indeed, except for the very limited authority to interpret “fee” rules with the concurrence of the General Counsel, the Managing Director is not authorized enforce, or even interpret, any FCC rules.

**B. No Adequate Alternative Means to Obtain Relief**  
**1. The June 2 Letter Does Not Provide for Review**

As discussed above, the FCC has taken 11 years to issue the subject order while simultaneously adopting unnoticed, novel enforcement procedures. Given the FCC’s carte blanche rescission of Blanca’s procedural rights to date, there is absolutely no level of comfort that the FCC would even entertain anything further from Blanca. Indeed, the June 2 Letter at 8 provides that Blanca may not examine the evidence the FCC found relevant in making its decision, including whatever documents NECA collected and/or created which the FCC relied upon. Not only does that ruling fly in the face of the routine administrative law requirement that the FCC must address significant matters in its decision, it runs contrary to the explicit requirement of the DCA & DCIA that Blanca be provided with an opportunity to inspect and copy the agency’s records. 31 U.S.C. § 3716(a)(2).

Moreover, while the June 2 Letter at 8 provides that Blanca is able to submit “verified

evidence” to supplement the FCC’s evidentiary record, the June 2 Letter does not provide an opportunity for Blanca to present legal argument or conclusions of fact and law or to otherwise seek review of the decision in violation of 31 U.S.C. § 3716(a)(3). The FCC collected evidence for eight years. With all due respect, the discovery phase of this process should have ended years ago. Even if the June 2 Letter had allowed for some type of review hearing, at this point that would not have been satisfactory. The FCC, working with the DoJ, are tag teaming a small company located in rural Colorado which has already endured eight years of investigation. It is respectfully submitted that the FCC has had more than an ample amount of time to act and requiring Blanca to try to seek reconsideration under the existing circumstances would effectively sentence Blanca to many more years of administrative purgatory.

The June 2 Letter creates a new type of enforcement proceeding at the FCC. There are no established rules regarding relief and it is not at all clear what procedural protections the FCC will recognize going forward. As discussed above, the FCC has already ignored numerous procedural safeguards. In the meantime, the FCC might turn on Blanca’s RED light if this matter remains pending at the FCC and put Blanca out of business. Accordingly, it would be inequitable to require Blanca to move forward via reconsideration at this point.

## **2. Blanca’s Right to Relief Is Clear and Indisputable**

This petition demonstrates that: 1) The DCA and DCIA do not cover independent Federal agencies like the FCC and the FCC cannot issue orders under the authority of those statutes; 2) The DCA and DCIA do not provide for delegation of head of agency powers; 3) the FCC’s DCA/DCIA rulemaking does not delegate any authority to the Deputy Managing Director to adjudicate debt claims; 4) the Managing Director does not have any authority in § 0.11 to interpret FCC USF rules or to issue enforcement orders regarding those rules; 5) the June 2 Letter creates a novel summary

debt claim adjudication procedure; 6) the June 2 Letter does not find a violation of the Part 54 USF rules; 7) the June 2 Letter denies Blanca's right to inspect agency records; 8) denies Blanca the right to a review proceeding; 9) the June 2 Letter fails to define specific rule violations and fails even to reference a violation of the Part 54 USF rules generally; and 10) the June 2 Letter effectively reads § 503 of the Act out of existence and denies Blanca's procedural protections which have existed for decades. The June 2 Letter constitutes "clear legal error" and relief is appropriate.

### **3. Equity Favors Relief**

It is respectfully submitted that this case presents an appropriate one for issuance of the requested relief. This appears to be the first time that the FCC's exercise of authority under the DCA and DCIA has been challenged. Moreover, as discussed above, Blanca has been subjected to a multi-year investigation by multiple government agents. After all of that, the June 2 Letter does not find any misrepresentation, false statement, concealment, obstruction, or lack of cooperation, on Blanca's part. In fact, the June 2 Letter is clear that Blanca requested funding for a "mobile" service and USF money was paid to Blanca on the basis of plain request—the USF payer could have said "no" if it thought there was a problem with Blanca's funding requests. Moreover, the June 2 Letter represents a wholesale rewrite of the FCC enforcement rules 1) without a rulemaking, 2) without statutory authority, and 3) it ignores §503. Blanca was nothing but cooperative and Blanca respectfully submits that it has "clean hands" and that the equities favor grant of the relief requested in this Petition.

### **C. Conclusion and Requested Relief**

Blanca's accounting practices have been investigated by: KPMG, LLC, OIG, NECA, USAC, DoJ, and the Managing Director. Since 2008 seven different investigating entities have investigated Blanca and it was not until eight years after the first investigation in 2008, and eleven

years after the first year (2005) for which the FCC is seeking recovery, that the FCC, at long last, puts pen to paper. However, the June 2 Letter is completely underwhelming because the gravamen of the FCC's complaint against Blanca is that Blanca received USF funds for "mobile" service.<sup>18</sup>

Aside from the numerous procedural problems engendered by the June 2 Letter, the FCC's focus on "mobile" ignores the fact that the Commissioners recently reminded everyone that USF funding, including the legacy USF funding at issue during the 2005-2010 time period covered in the June 2 Letter, is to be used to promote "mobile" voice and data services in high cost areas. *Public Notice*, FCC 15-133, released October 19, 2015; Attachment 2 (p. 12 of 39). The fact that Blanca sought USF funding for "mobile" service is not remarkable. What is remarkable is that the FCC spent eight years conducting multiple investigations of Blanca only to reach a conclusion which is completely at odds with the Commissioners' plainly, and recently, stated view and which utterly fails to provide Blanca with the procedural protections available to persons/entities charged with FCC rule violations and against whom forfeiture penalties are entered.

Eight years of auditing by a number of different government agencies and their agents has culminated in the June 2 Letter which fails to assert any Part 54 violation and which violates numerous of Blanca's procedural rights. It is long past time that the FCC terminated its time barred effort to redo accounting books which were closed years ago and if the books are still open the FCC is capable of moving items across NECA's ledger without violating § 503 in the process. Read in the light most favorable to the FCC, all the June 2 Letter generally alleges is that Blanca might have put items in the wrong column on USF accounting forms, but putting items into the wrong account on a form does not mean that Blanca received money improperly. Therefore, Blanca requests that

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<sup>18</sup> Over the course of eight pages the June 2 Letter hits the "mobile" nail on the head approximately 27 times, it is the central topic of discussion in the June 2 Letter.

the Commission 1) rescind the June 2 Letter and the associated forfeiture and offset, 2) allow Blanca to resume seeking USF funding for its mobile cellular system, 3) allow Blanca to recover USF funding for its mobile cellular system for the past 2 years, 4) repay to Blanca the USF money which Blanca returned to the USF fund in light the accounting settlement breach caused by the June 2 Letter, and 5) withdraw whatever referral was made to the DoJ on this matter and otherwise instruct the DoJ to cease and desist its effort to turn a time barred accounting matter in which no FCC USF rules have been broken into a Federal false claims case.

Respectfully submitted,  
BLANCA TELEPHONE COMPANY

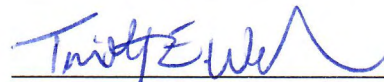
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June 24, 2016

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June 24, 2016

## **ATTACHMENTS**



Federal Communications Commission  
Washington, D.C. 20554

June 2, 2016

By UPS Overnight  
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  
Demand for Repayment of USF High-Cost Funds

**DO NOT DISCARD THIS IMPORTANT NOTICE**  
**OF A DEMAND FOR PAYMENT**  
**OF A DEBT OWED TO THE UNITED STATES AND ORDER OF PAYMENT**

Dear Mr. Wehe:

This letter is to notify you that the Federal Communications Commission (the "FCC") has determined that the Blanca Telephone Company ("Blanca" or the "Company") has received improper payments from the Universal Service Fund's ("USF") high-cost program in the amount of \$6,748,280, which was paid between 2005 and 2010. Our determination follows an investigation by the FCC's Office of Inspector General (OIG), the Universal Service Administrative Company (USAC), and the National Exchange Carrier Association (NECA). The determination of an overpayment also constitutes a debt owed to the United States that must be recovered and is immediately due and payable without further demand. Additionally, this is a Demand for Payment which provides you with certain important information including: (a) the fact that payment is due immediately, in full, and without further demand, (b) the background of the debt, (c) important rights, and (d) instructions for payment.



### Background

On March 17, 2008, KPMG LLP initiated an audit of Blanca in connection with Blanca's receipt of USF high-cost program support. Thereafter, the OIG issued five administrative subpoenas for, among other things, reports, filings, and correspondence that Blanca filed with NECA and USAC regarding USF high-cost support.

On August 24, 2012, NECA initiated a "Loop" and "Non-Reg Review" focused on the underlying records for Blanca's 2011 Cost Study in the area of non-regulated operations. NECA undertook the Loop review to provide assurance the loop counts used for the 2012-1 USF filing (December 2011 loops) were properly counted and categorized in accordance with FCC rules. NECA provided Blanca with questionnaires to which Blanca responded. NECA also conducted an on-site investigation of Blanca's headquarters in Alamosa, CO. Based on Blanca's submission and NECA's on-site inspection, NECA issued a report on January 29, 2013, which concluded Blanca impermissibly received USF high-cost support because its claims for support included costs and facilities for a *mobile* wireless system.

NECA required Blanca to substantially and materially revise its high-cost support filings beginning with the 2011 Cost Study. In response, Blanca retained Moss Adams to review and revise Blanca's submissions.<sup>1</sup> These revisions were required because Blanca did not track or allocate expenses associated with providing local service to customers over its landline and cellular systems or the expenses associated with providing service to customers of other carriers roaming on Blanca's cellular system. Blanca operated these cellular stations and its Local Exchange Carrier (LEC) telephone company under a single management structure without allocating costs and expenses between regulated and non-regulated services. In particular, Blanca characterized its cellular stations as Basic Exchange Telephone Relay Service (BETRS) facilities in its CPRs, and by including all costs attributable to its mobile cellular system in its cost studies, failed to comply with Parts 64, 36 and 69 of the FCC's rules. The inclusion in cost studies of such cellular investment, expenses, and costs that were not used and useful to provide regulated telephone service is prohibited, and resulted in inflated disbursements to Blanca from ICLS, LSS, High Cost Loop Support, and Safety Net Additive Support.

In Blanca's responses to the OIG subpoenas and during NECA's investigation, Blanca claimed it was providing fixed wireless service, *i.e.*, BETRS, for which it was entitled to receive high-cost support as a LEC. This was not the case. In particular, NECA determined that Blanca was not providing BETRS,

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<sup>1</sup> In addition to the Report's other findings, and in the section of NECA's report titled "Review Findings Report," NECA directed Blanca to remove from the 2011 cost study all costs and revenues associated with the wireless service, including but not limited to, towers, Blanca's ZTE wireless switch and radio equipment, including associated depreciation and expense, as well as ICLS, LLS and the 2012-1 cost loop filings. Additionally, Blanca was directed to remove all access lines and pool revenue associated with the wireless service from settlements for all months remaining in the pooling window (minutes, lines, SLCs, ARCs (starting July 2012), FUSC and switched access revenue). Blanca was also directed to remove 146 loops associated with the wireless service from the 2011 cost study, the 2012-1 high cost loop filing, and the January 2012 pool reporting. Additionally, 149 loops were to be removed from 2010 for cost study averaging. Blanca Telephone Company, 28th Access Year Review, Review Findings Report, January 28, 2013.

and instead was providing only mobile cellular service throughout its entire Eligible Telecommunications Carrier (ETC) study area. As such, Blanca improperly included costs and facilities attributable to non-regulated mobile cellular service, as well as wireless loop counts, in its cost studies that served as the basis for filing for USF high-cost funds. Although not addressed in NECA's report, Blanca's claims for USF support were also based in part on its costs to provide cellular services outside of its designated LEC study area, as demonstrated by a comparison of Blanca's LEC and cellular operating areas, a review of Blanca's billing records, and as confirmed by testimony provided during interviews of Blanca personnel as discussed below. Blanca therefore received USF high-cost support to which it was not entitled as a LEC because it submitted claims for support based upon the provision of *mobile* cellular service both within and outside of its LEC study area.

By correspondence to you on January 28, 2013, NECA directed Blanca to remove all costs attributable to its wireless service and provide documentation of the adjustments to NECA no later than February 22, 2012. Specifically, NECA directed Blanca to refile its cost study for 2011, removing all costs attributable to the wireless system, as well as revised Interstate Common Line Support (ICLS), Local Switching Support (LSS), and the 2012-1 High Cost loop filings. Blanca completed these revisions in a series of filings with NECA and USAC, and the funds for USF high-cost support for the post-2011 period have been recovered through charge backs and recoupments. Any improperly received USF high-cost support for periods prior to 2011 have not been recouped.

### **Findings**

Since as early as 2003, Blanca has claimed reimbursement from the high-cost program for the costs of providing telephone service as a rate of return, landline carrier. Blanca is authorized to provide landline telephone service as a LEC in portions of Alamosa and Costilla Counties, CO.<sup>2</sup> As a rural LEC, and based on the services Blanca provided during the relevant period, the Company could be reimbursed from the high-cost program for only the costs of providing regulated local exchange service within its authorized ETC study area. However, our investigation found that from at least 2005, Blanca claimed all of the costs it incurred to provide telephone service as a LEC were for landline and fixed wireless service, *i.e.*, BETRS, within its authorized study area even though Blanca was providing only *mobile* cellular service. In other words, the conduct that led Blanca to repay USF high-cost support payments after 2011 began as early as 2005. As such, Blanca received improper payments from the USF high-cost support program beginning in at least 2005.

A BETRS system, whatever the frequency utilized, must be dedicated to the end user and fixed at a customer's premises in order to qualify for high-cost support as a regulated local exchange service.<sup>3</sup>

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<sup>2</sup> Blanca was designated as an ETC by the Colorado Public Utilities Commission on December 17, 1997, which entitled it to receive federal universal service support in accordance with 47 U.S.C. § 254 and implementing regulations by the FCC.

<sup>3</sup> "BETRS is provided so that radio loops can take the place of (expensive) wire or cable to remote areas. It is intended to be an extension of intrastate basic exchange service." *Basic Exchange Telecommunications Radio Service, Report and Order*, 3 FCC Rcd. 214, 217 (1988). In the 1988 *Order*, the Commission made clear that it intended "that wire and radio basic exchange service [would] be treated similarly with regard to eligibility for high cost assistance." *Id.* at note 10. We also note that BETRS is treated the same as landline basic exchange facilities and service, rather than cellular or another mobile service, for purposes of the FCC's Uniform System of Accounts.

The definition of BETRS specifically excludes the provision of cellular mobile telephone service as was provided by Blanca.<sup>4</sup> In so concluding, we find unavailing your argument that for the purposes of receiving high cost support as an incumbent landline carrier, “the definition of ‘fixed’ includes wireless service that is provided to a defined, limited geographic area where it can be received by a device that is *not nailed or screwed down*.”<sup>5</sup>

In particular, your argument misreads NECA’s Paper 4.9, Use of Wireless Technology to Provide Regulated Local Exchange Service (“NECA Paper”) as applied to Blanca’s cellular system. There is nothing in the FCC’s regulations or precedents, or in the Communications Act of 1934, as amended, (the “Act”) to support Blanca’s position. Whether Blanca’s service is “mobile” or “fixed” is not determined based on whether Blanca’s LEC customers’ signals are automatically handed off to *other* carriers in adjoining cellular service areas, and the NECA Paper makes no such distinction. Nor does the NECA Paper suggest that “‘fixed wireless’ service may provide for geographic mobility to wireless subscribers within a broadcast area, as long as this mobility is not as extensive as the ‘full’ mobility provided by mobile wireless services.”<sup>6</sup> While the NECA Paper notes that one of the characteristics of new wireless technology is that the subscriber “may have some degree of ‘portability’ within the broadcast area,”<sup>7</sup> the Paper in no way equates that “portability” to a cellular company’s entire cellular service area.

Instead, the NECA Paper makes it clear, among other requirements, that a wireless system must be fixed, not mobile,<sup>8</sup> in order to qualify for high cost support as a rate of return company and that the LEC’s radio equipment at the customer site must be a *fixed* radio station.<sup>9</sup> While explaining that wireless technology can be an effective means to provide a supported service to telephone customers where it is cost prohibitive or impractical over wireline facilities, NECA explicitly cautions its member companies that the costs for a system to provide mobile services are outside the scope of Title II and cannot be reported to the NECA pool or recognized in USF loop cost reporting,<sup>10</sup> which is exactly what Blanca did, contrary to NECA’s admonitions.

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<sup>4</sup> The Commission recognized the use of cellular frequencies on a *fixed* basis to provide BETRS was appropriate and “in the public interest since it is intended to be an extension of basic exchange service in areas where there is inadequate or no basic exchange telephone service offered.” *In the Matter of Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service* in GEN. Docket No. 87–390, 3 FCC Rcd. 7033 (1988); *Reconsideration Granted in Part by In the Matter of Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, 5 FCC Rcd. 1138 (1990) (BETRS is a radio service that can be used to provide local exchange service in rural areas. It has no specified technology, but involves the use of mobile frequencies in radio loops between a basic exchange telephone subscriber and a telephone company central office.). *Id.* at note 2.

<sup>5</sup> Letter from Richard L. Tegtmeier, counsel for Blanca Telephone Company, dated October 30, 2015 in response to J. Chris Larson, Assistant United States Attorney, letter of August 10, 2015 regarding 408 Rule of Evidence Settlement Communication (“Settlement Letter”).

<sup>6</sup> Settlement Letter at 2.

<sup>7</sup> NECA Paper at 9.

<sup>8</sup> *Id.* at n.11.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *Id.* at 10.

As noted below, Blanca customers purchase service that allows them to use their cell phones throughout Blanca's cellular service area with handoff between multiple Blanca cell sites. They also can continue to use their phones by redialing and roaming on other cellular systems, and customers from other carriers have the ability to roam on Blanca's system when they make or receive calls in Blanca's cellular service area.<sup>11</sup> Thus, NECA's conclusion in its January 29, 2013 report (the "NECA Report"), that "[i]n order to include these costs in further filings Blanca would need to provide a wireless service that is fixed to the customer location in accordance with the cost issue,"<sup>12</sup> was consistent with the NECA Paper.

Our review of Blanca's operations further makes clear that Blanca was not providing BETRS or fixed telephone service to its customers over its cellular facilities. Blanca operates pursuant to two mobile cellular licenses, KNKQ427 serving CMA356- Colorado 9 – Costilla and KNKR288, serving CMA354 - Colorado 7 – Saguache, which provide mobile cellular service to Blanca's own customers as well as customers roaming on its cellular system serving Costilla, Alamosa, and Conejos Counties. Blanca provides mobile cellular service to customers via five cell sites which hand off to each other.<sup>13</sup> The nature of the cellular service Blanca provides and the scope of the stations' operations are documented in the series of applications Blanca filed with the Commission, the FCC-issued authorizations to provide cellular mobile service and by other representations made to the Commission.<sup>14</sup>

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<sup>11</sup> At one point Blanca conducted testing of its system because Verizon customers were having difficulty making and receiving calls within Blanca's service area. Deposition of A. Wehe in Cellular Network Inc. Corporation, individually and derivatively on behalf of Colorado 7-Saguache Limited Partnership vs. Sand Dunes Cellular of Colorado Limited Partnership, Colorado 7-Saguache Limited Partnership (Nominal Defendant) and Celco Partnership and Comnet Cellular (Additional Counterclaim Defendants), Case No. 03CV4096, District Court, Arapahoe County, Colorado, October 26, 2006, at 124. Wehe also provided oral testimony that Blanca obtained roaming revenue from other carriers for their customers roaming on Blanca's system. *Id.* at 211.

<sup>12</sup> Cover letter to the NECA Report, at 1. This conclusion is also consistent with the discussion of new wireless technologies in the NECA Paper. While these new technologies allow for some mobility within the range of their antennas, the operator can prevent mobile operations by fixing the receiver at the customer's location. ("Use of a permanently installed transceiver at the customer premises by the telephone company or by the customer can be effective at disabling or significantly limiting any portable or mobile capability of the radio system.") *Id.* at 9. And, when the NECA Paper referred to Commercial Mobile Radio Service (CMRS) leased capacity to provide regulated exchange telephone service by local exchange carriers such as Blanca, NECA conditioned the service being fixed without regard to any "broadcast area." *Id.* at 8.

<sup>13</sup> According to Keith Hazlett, a Blanca engineer, Blanca's cellular system had five cell sites which handed off to each other, and there was no requirement to his knowledge that a cellular customer be located at a fixed location. Oral testimony of Keith Hazlett, Civil Investigative Demand, Tr., at 11. Blanca did not have any restriction in its application for wireless service or on its company website that a customer be located at a fixed location as a condition of receiving cellular service. Alan Wehe also testified that a customer could use his or her cellular phone to make a call throughout Blanca's cellular network as well as roam on other carriers' systems with which Blanca had a roaming agreement. Oral testimony of Alan Wehe, Civil Investigative Demand, Tr. At 68-69.

<sup>14</sup> That Blanca's cellular system was designed and operated to provide cellular mobile service to its customers and those traveling through Blanca's cellular service area is evident from the application filed for a new cellular station at Antonito, CO. On November 20, 1995, Colorado RSA 7(B) (2) Limited Partnership (the "Partnership"), filed an application seeking to construct a new cellular system at Antonito. When the application was filed, Blanca owned 50% of the Partnership and later acquired the remainder partnership interests on September 11, 2000. The Partnership represented the station, later licensed under call sign KNKR288, would be operated in conjunction with Blanca's adjacent cellular station KNKQ427, Costilla, CO. The application proposed to cover more than 50 square miles of unserved areas in Conejos County in southeastern RSA No. 354B, and Costilla County in southwestern RSA No. 2356B, which was outside of Blanca's study area. The application represented that the cellular system would provide direct dial mobile and portable service to the public. "The cellular system will be interconnected so that local customers and roamers are able to place and receive calls to and from any telephone or terminal connected to the public



Blanca has participated in Commission proceedings as a mobile cellular carrier in WT Docket No. 05-265. In a Petition for Reconsideration, Blanca described itself as a “wireline company ... which expanded its operations to provide mobile wireless service.”<sup>15</sup> As Blanca explained, it was having difficulty obtaining roaming agreements for voice and data services from national wireless carriers so it could provide seamless coverage for its customers who traveled outside of its service areas. Consistent with Blanca’s representations in its Reconsideration Petition, records obtained from Blanca demonstrate the Company has negotiated dozens of roaming agreements. These agreements provided Blanca with revenues from other carriers’ customers roaming on its cellular system and also enabled Blanca’s mobile cellular customers to travel to other areas of the country and use their mobile cellular phones.

Although during NECA’s investigation Blanca professed to provide service to 146 customers who could not receive landline service because “many of BTC’s customers lack[ed] access to commercial power,”<sup>16</sup> Blanca’s operations as a cellular carrier were substantially more extensive than the representations made in the Settlement Letter that wireless service was provided to “remote” customers. Blanca provided its wireless service to any customer who requested it, whether or not the customer could receive wireline service or was located within an area where there was a source of electrical power, as Blanca represented to NECA. And, Blanca proactively upgraded its system and coordinated with other operators in the area to enable system handoff.<sup>17</sup>

Additionally, Blanca claimed USF high-cost support to provide service outside of its study area.<sup>18</sup> Section 214(e)(5) of the Act defines a service area as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. In the case of a service area served by a rural telephone company, service area means a company’s “study area.” Only

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switched telephone network, and to and from networks on other cellular or interconnected mobile systems. (Application, Exhibit VI, Colorado RSA 7B (2) Limited Partnership, Antonito, Colorado.) The Service Proposal noted that “[c]ustomers with complaints relating to their mobile or portable unit will be able to take it to the applicant’s service facility for repairs or call for a repairman to service it in the system’s service area where it is located.” Exhibit VI, Service Proposal, at 2. The application proposed to use Blanca’s cellular switch (Station KNQ427) and represented that the switching expenses would therefore be nominal. Exhibit IX, Construction Costs & First Year Operating Expenses. Blanca represented it “[had] the ability to construct and to operate the proposed system.” *Id.*

<sup>15</sup> Petition for Reconsideration filed by Blanca Telephone Company in WT Docket No 05-265, at 1 (June 6, 2011).

<sup>16</sup> NECA Report, Wireless Service Section at 1. Blanca also claimed that “[t]he Blanca Telephone Company has been using wireless technology since 1982 to provide basic service to approximately 150 customers in an unserved area (there are no land-line facilities available due to not being feasible and the installation would be cost prohibitive) and the area is sparsely populated.” Response of A. Wehe to OIG Subpoena dated October 23, 2012, Questions 26 & 27.

<sup>17</sup> In this regard, Blanca also took measures to ensure that its cellular system would be compatible with other systems. Blanca installed Evolution Data Only (EVDO) equipment for its cellular system in 2007, which Blanca described as “BETRS EVDO” in its cumulative property record (CPR), to add at its five cell sites. Blanca coordinated installation of the EVDO equipment with the adjoining cellular system in which Wehe and Verizon Wireless hold ownership interests. “Verizon Wireless suggests that Blanca move to a 41 channel spacing configuration to enable inter-system hand-off. If you have any questions, let us know. Please reply with your concurrence to the plan above and dates for implementation.” (Email from M. Sandoval, Director-System Performance, Mountain Region, Verizon Wireless to T. Welch, Blanca’s FCC counsel; cc to A. Wehe, and L. Stevens, D. Sisneros, and M. Skelton of Verizon Wireless, dated July 5, 2007.)

<sup>18</sup> Blanca provided cellular service to customers outside of Blanca’s LEC study area. For example, a review of billing records provided by Blanca reflects that customers received what it called its BETRS service in the city of Alamosa, outside of Blanca’s LEC study area, as well as in areas in which Blanca was not authorized to provide telephone service as a LEC. Response of A. Wehe to OIG Subpoena dated November 12, 2009, Question 24.

two of Blanca's cellular towers are located within Blanca's study area.<sup>19</sup> As a LEC, Blanca did not have authority to claim high-cost support for any costs to provide service for any of its cellular customers served outside of its study area or for customers of other cellular carriers roaming on Blanca's cellular system. Any costs and expenses attributable to such cellular services were disallowed.

As discussed above, NECA determined, and we agree, that the costs and line counts Blanca was utilizing to claim high-cost support were attributable to Blanca's non-regulated cellular operations, rather than to a BETRS fixed service and were therefore not entitled to High-Cost support. NECA's investigation resulted in the recoupment of USF high-cost support only after 2011, which is only a small portion of the period during which Blanca improperly received these funds. Based on a review of Blanca's books and records obtained during the OIG investigation and Blanca's own revision of its cost study and other filings for the post 2011 period, we have determined Blanca owes the Fund an additional \$6,748,280 (the "Debt"). Further details of the Debt may be found on Attachment A hereto.

Accordingly, this letter has notified you of the Debt and it demands payment, in full, and without further demand, in accordance with the **Notice Information** provided below and Payment Instructions at Attachment B. Furthermore, you are notified that the Commission may reduce the Debt by:

- (1) Making a recoupment or offset<sup>20</sup> against other requests for claims for USF minutes of use,
- (2) Withholding payments otherwise due to Blanca, and
- (3) Other action permitted by law.

### **Important Notice Information**

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996.<sup>21</sup> The Debt is owed to the United States. It is payable (the date of this letter is the Due Date) immediately, in full and without further demand. The Commission may apply any amount of undisbursed USF payments for minutes of use to offset or recoup the Debt.<sup>22</sup> Any portion of the Debt unpaid at the end of the Due Date is Delinquent on that date ("Date of Delinquency") and administrative charges,<sup>23</sup> interest, and penalties will accrue thereafter.<sup>24</sup> The amount of interest that accrues<sup>25</sup> from the Date of Delinquency and the administrative charges are waived if the complete amount of the Debt is paid within 30 days of the Due Date.<sup>26</sup> Additionally, a penalty of six percent per annum accrues from the Date of Delinquency on any portion of the Debt that remains unpaid 90 days after the Due Date.<sup>27</sup> Furthermore, the Commission may refer a delinquent Debt to the United States Treasury or

<sup>19</sup> Fort Garland KNKQ427 Location 1 and Blanca KNKQ427 Location 4 are situated within Blanca's authorized study area.

<sup>20</sup> An offset or recoupment means when any high-cost claim payment is due to you, the money will first be applied to any open debt followed by the pay out of any remaining balance. Such offset or recoupment does not stop interest, penalties, or other collection charges from accruing under 31 U.S.C. § 3717 and 31 C.F.R. § 901.9.

<sup>21</sup> See 31 U.S.C. §§ 3716, *et seq.*; 47 C.F.R. §§ 1.1911 and 1.1901, *et seq.*

<sup>22</sup> *United States v. Munsey Trust Co.*, 332 U.S. 234, 239, 108 S.Ct. 1599, 91 L.Ed. 2022 (1947) ("The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due him.'").

<sup>23</sup> 47 C.F.R. § 1.1940(c).

<sup>24</sup> Public Law 104-134, 110 Stat. 1321, 1358 Apr. 26, 1996). See also 31 C.F.R. § 900.1, *et seq.*; 47 C.F.R. § 1.1901, *et seq.*

<sup>25</sup> 31 U.S.C. § 3717(a)-(c).

<sup>26</sup> 31 U.S.C. § 3717(d) and 47 C.F.R. § 1.1940(g).

<sup>27</sup> 31 U.S.C. § 3717(e)(2).

the Department of Justice for further collection action.<sup>28</sup> The United States Treasury will impose an additional administrative collection charge,<sup>29</sup> and it may commence administrative offset.<sup>30</sup> An additional surcharge may be imposed in connection with certain judicial actions to recover judgment.<sup>31</sup>

If you have evidence establishing that you do not owe the Debt, or if you have further verified evidence to substantiate your entitlement to receive payment for the disallowed USF payments, provide such evidence to the Commission within 14 days of the Due Date. Because our determination is based on the information you either provided or were unable to provide, there is no apparent reason for you to inspect and copy those same records. Finally, you may request the opportunity to repay the debt under the terms of a written agreement; however, such request must be made with 14 days of the date of this notice, and you must execute the Commission's form of the agreement within thirty days of the date of this notice.

This letter is sent by overnight delivery service and by e-mail.

The points of contact on this letter are Neil Dellar, who may be reached at (202) 418-8214 and Thomas Buckley, who can be reached at (202) 418-0725.

Sincerely,



Dana Shaffer  
Deputy Managing Director

Copies:

Jonathan Sallet – General Counsel  
Richard L. Tegtmeier, Esq.

Enclosures: Attachments A & B

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<sup>28</sup> 31 U.S.C. §§ 3711(g); 3716; 28 U.S.C. § 3001, *et seq.*; 47 C.F.R. § 1.1912.

<sup>29</sup> 31 U.S.C. § 3717(e); 31 C.F.R. § 285.12 (j).

<sup>30</sup> 31 U.S.C. § 3716.

<sup>31</sup> 28 U.S.C. § 3011.

Attachment A

BLANCA TELEPHONE COMPANY: HIGH COST ANALYSIS HIGH COST SUPPORT 2005 - 2010 SUPPORT PAID VS. CORRECTED SUPPORT										
FUND	ROW	SCENARIO	YEAR						TOTAL	
			2005	2006	2007	2008	2009	2010		
HCL	(1)	Support Actually Paid	\$802,620	\$787,644	\$751,512	\$837,624	\$860,916	\$993,096	\$5,033,412	USAC Disbursement Records
	(2)	Government Calculation	\$575,225	\$595,364	\$628,352	\$729,442	\$790,817	\$779,550	\$4,098,750	Gov't. Study Calculations
	(3)=(1)-(2)	Difference	\$227,395	\$192,280	\$123,160	\$108,182	\$70,099	\$213,546	\$934,662	
LSS	(4)	Support Actually Paid	\$946,136	\$868,296	\$954,312	\$983,088	\$932,868	\$696,891	\$5,381,591	USAC Disbursement Records
	(5)	Government Calculation	\$116,660	\$150,261	\$170,321	\$171,884	\$166,471	\$225,558	\$1,001,155	Gov't. Study Calculations
	(6)=(4)-(5)	Difference	\$829,476	\$718,035	\$783,991	\$811,204	\$766,397	\$471,333	\$4,380,436	
ICLS	(7)	Support Actually Paid	\$437,352	\$421,224	\$472,206	\$520,236	\$545,652	\$593,280	\$2,989,950	USAC Disbursement Records
	(8)	Government Calculation	\$235,616	\$217,450	\$275,442	\$297,493	\$308,808	\$323,503	\$1,658,312	Gov't. Study Calculations
	(9)=(7)-(8)	Difference	\$201,736	\$203,774	\$196,764	\$222,743	\$236,844	\$269,777	\$1,331,638	
SNA	(10)	Support Actually Paid	\$19,164	\$19,164	\$19,164	\$19,164	\$12,444	\$12,444	\$101,544	USAC Disbursement Records
	(11)	Government Calculation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	Totally Unregulated
	(12)=(10)-(11)	Difference	\$19,164	\$19,164	\$19,164	\$19,164	\$12,444	\$12,444	\$101,544	
TOTAL	(3)+(6)+(9)+(12)	Total Overpayment	\$1,277,771	\$1,133,253	\$1,123,079	\$1,161,293	\$1,085,784	\$967,100	\$6,748,280	

(USAC Confidential - Contains Investigatory Information)





ATTACHMENT B

Payment Instructions

The following information is being provided to assist you in making your payment.

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Payment should be wired, pursuant to the following instructions:

ABA Routing Number: 021030004

Receiving Bank: TREAS NYC

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: FCC

ACCOUNT NUMBER: 27000001

OBI Field: USF – High Cost Program

APPLICANT FRN: \_\_\_\_\_ (Blanca Telephone Company)

DEBTOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: #979088

Please fax a completed remittance advice (Form 159) to U.S. Bank, St. Louis, Missouri at (314) 418-4232 at least one hour before initiating the wire transfer (but on the same business day).

For questions regarding the submission of payment, contact Gail Glasser, Office of the Managing Director, Financial Operations, at (202) 418-0578.



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

News Media Information 202 / 418-0500  
 Internet: <https://www.fcc.gov>  
 TTY: 1-888-835-5322

**FCC 15-133**

**Released: October 19, 2015**

## **ALL UNIVERSAL SERVICE HIGH-COST SUPPORT RECIPIENTS ARE REMINDED THAT SUPPORT MUST BE USED FOR ITS INTENDED PURPOSE**

**WC Docket No. 10-90**  
**WC Docket No. 14-58**

The Commission reminds all eligible telecommunications carriers (ETCs) that receive support from the Universal Service Fund's high-cost mechanisms (whether legacy high-cost program support or Connect America Fund support) of their obligations to use such support only for its intended purposes of maintaining and extending communications service to rural, high-cost areas of the nation.<sup>1</sup> Expenditure of legacy high-cost or Connect America support for any other purpose is misuse and may subject the recipient to recovery of funding, suspension of funding, enforcement action by the Enforcement Bureau pursuant to the Communications Act of 1934 or our rules, and/or prosecution under the False Claims Act.<sup>2</sup>

Universal service support to high-cost rural areas, whether under legacy high-cost or Connect America Fund support mechanisms, is designed to ensure that consumers in rural high-cost areas have access to modern communications networks capable of providing voice and broadband services, both fixed and mobile, at rates that are reasonably comparable to those in urban areas. The legacy high-cost and Connect America Fund support programs fulfill these goals by allowing eligible carriers who serve these areas to recover some of their costs from the federal Universal Service Fund.

Under federal law, high-cost support provided to an ETC must be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>3</sup> Pursuant to Commission rule, an annual certification to that effect must be filed, and support shall be provided in the subsequent year only to the extent the required certification has been filed.<sup>4</sup>

Corporate operations expense represents roughly 15 percent of total costs assigned to the loop for rate-of-return cost companies.<sup>5</sup> While ETCs are eligible to receive support to recover a portion of their

<sup>1</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.7. Connect America support includes Connect America Fund Inter-carrier Compensation replacement support received pursuant to section 54.304. 47 C.F.R. § 54.304.

<sup>2</sup> 31 U.S.C. §§ 3729-3733.

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> 47 C.F.R. § 54.314. State public utility commissions are required to file the required certification with USAC and the Commission to the extent they have jurisdiction over ETCs operating within their borders. ETCs not subject to state jurisdiction are required to file the certification themselves. The annual certification is due October 1<sup>st</sup>.

<sup>5</sup> See Universal Service Fund 2014 Submission of 2013 Study Results by the National Exchange Carrier Association, Inc., available at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/Monitor/usf14af.zip](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/usf14af.zip); see also Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Att. A at 1 (filed May 29, 2015).

costs relating to corporate operations,<sup>6</sup> those expenses must fall within the scope of the statutory requirement that support be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

A related issue concerns the expenses that rate-of-return carriers may include in their “revenue requirement,” which goes ultimately to the rates charged to end users. Just as carriers must not use USF funds for inappropriate expenses, we remind rate-of-return carriers that section 65.450 of our rules prohibits them from including expenses in their revenue requirements unless such expenses are “recognized by the Commission as necessary to the provision” of interstate telecommunications services.<sup>7</sup> The Commission likewise takes seriously any inclusion of inappropriate expenses for recovery by ratepayers, and will take appropriate steps to ensure that expenses are used and useful and prudently incurred.

We note that the Commission continues to look at methods of limiting expenses to reasonable levels, with a primary focus on corporate operations expenses that are excessive. We intend to take further action to ensure that high-cost funding is used for its intended purposes, and that ratepayers of rate-of-return carriers are not made to subsidize excessive expenditures.

With the above points in mind, we encourage state commissions to look carefully at the information provided to them in advance of the annual certification and to report any areas of concern to the Commission for further investigation and potential enforcement action. The following is a *non-exhaustive* list of expenditures that are not necessary to the provision of supported services and therefore may not be recovered through universal service support:

- Personal travel;
- Entertainment;
- Alcohol;
- Food, including but not limited to meals to celebrate personal events, such as weddings, births, or retirements;
- Political contributions;
- Charitable donations;
- Scholarships;
- Penalties or fines for statutory or regulatory violations;
- Penalties or fees for any late payments on debt, loans or other payments
- Membership fees and dues in clubs and organizations;
- Sponsorships of conferences or community events;
- Gifts to employees; and
- Personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC, including but not limited to personal expenses for housing, such as rent or mortgages.

ETCs should take all necessary steps to ensure that they and their agents, contractors, consultants, and representatives scrupulously adhere to the rules governing legacy high-cost and Connect America Fund program support. ETCs face significant consequences for rule violations that result in carriers obtaining funds to which they are not entitled, or misuse of funding received, or other abuses of the high-cost or Connect America Fund support mechanisms.

<sup>6</sup> Corporate operations expenses are capped under the Commission’s high-cost support mechanism rules. See 47 C.F.R. §§ 54.1308(a)(4)(ii)(A)-(C) (limiting corporate operating expense for purposes of High Cost Loop Support (HCLS)); 47 C.F.R. § 54.901(c)(1)-(2) (limiting corporate operating expense for purposes of Interstate Common Line Support (ICLS)).

<sup>7</sup> 47 C.F.R. § 65.450.

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**Federal Communications Commission**

**FCC 15-133**

For additional information on this proceeding, contact Suzanne Yelen ([Suzanne.Yelen@fcc.gov](mailto:Suzanne.Yelen@fcc.gov)) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

Action by the Commission on October 8, 2015: Commissioners Clyburn and O’Rielly issuing a joint statement and Commissioner Pai issuing a separate statement.

**-FCC-**

**JOINT STATEMENT OF  
COMMISSIONERS MIGNON L. CLYBURN AND MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

Today's public notice helps ensure that scarce consumer dollars are targeted to only costs directly related to deploying and providing service. The illustrative examples contained within the public notice do not meet that test. Our role is to ensure that any expenses recovered through the consumer-supported federal high-cost universal service program or consumer rates are tied to the provision of service. To be clear, the vast number of providers are good actors and would never take advantage of the system, but there are unfortunate examples to the contrary and spending on outrageous items has occurred. We therefore support today's public notice to remind all providers of expenditures that should not be supported by universal service.

We remain concerned that certain expenses not related to the provision of service, such as for artwork and cafeterias, may oddly be permitted under certain readings of our rules. These decades-old precedents, created under very different circumstances, must be realigned to reflect the Commission's more recent reforms. We believe it is appropriate for the Commission to initiate a proceeding to address these issues in the coming months.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

There's no question that the American people should not be expected to pay for the "personal travel," "entertainment," "alcohol," and "personal expenses of . . . family members of employees and board members of telecommunications carriers."<sup>1</sup> The question is why the FCC has turned a blind eye to such conduct for so long.

Since 2002, Sandwich Isles Communications has collected \$242,489,940 from the federal Universal Service Fund to serve no more than 3,659 customers.<sup>2</sup> During that same time, Albert Hee, the owner of Sandwich Isles's parent company Waimana Enterprises and affiliate ClearCom, apparently used the company as his family's personal piggy bank. For example, the companies apparently paid \$96,000 so that Hee could receive two-hour massages twice a week; \$119,909 for personal expenses, including family trips to Disney World, Tahiti, France, and Switzerland and a four-day family vacation at the Mauna Lani resort; \$736,900 for college tuition and housing expenses for Hee's three children; \$1,300,000 for a home in Santa Clara, California for his children's use as college housing; and \$1,676,685 in wages and fringe benefits for his wife and three children.<sup>3</sup>

That's not all. When the FCC last looked at Sandwich Isles's corporate expenses, our staff found that it was spending \$5,460,973 more on corporate operations each year than similarly sized companies, with significant management and leasing fees to affiliated companies (like Waimana and ClearCom) that benefited Hee and his family.<sup>4</sup>

On top of all that, seven years ago, Sandwich Isles dropped a \$1.9-million-a-year lease it had with an independent undersea cable network in favor of a \$15-million-a-year lease for a cable network built by ClearCom and owned by Paniolo LLC.<sup>5</sup> Unsurprisingly, Paniolo is itself owned by Blue Ivory LLC, which is wholly owned by Blue Ivory Hawaii Corporation, which in turn is owned by private trusts of Hee's three children.<sup>6</sup> What is worse, Sandwich Isles appears to no longer be paying what it owes to Paniolo—yet is still collecting payments from other rural telephone companies as if it were.<sup>7</sup>

What a disgrace.

Thankfully, the U.S. Attorney's Office in Hawaii this summer secured a federal conviction of Hee for "corruptly interfering with the Internal Revenue Service in the calculation and collection of his

<sup>1</sup> *Public Notice* at 2.

<sup>2</sup> See USAC, Funding Disbursement Search for Sandwich Isles, *available at* <http://www.usac.org/hc/tools/disbursements/default.aspx>; 2013 NECA Report, *available at* <http://go.usa.gov/3uPt4>.

<sup>3</sup> U.S. Department of Justice, U.S. Attorney's Office, District of Hawaii, *Honolulu Businessman Convicted of Tax Charges* (July 13, 2015) (*Department of Justice Press Release*), *available at* <http://go.usa.gov/3uPeh>.

<sup>4</sup> See *Connect America Fund, Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules*, WC Docket No. 10-90, Order, 28 FCC Rcd 6553, 6559–61, paras. 15–18 (Wireline Comp. Bur. 2013) (*Sandwich Isles Waiver Denial*).

<sup>5</sup> See *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647, 13649, 13654, paras. 5, 18 (Wireline Comp. Bur. 2010) (*Sandwich Isles Paniolo Order*).

<sup>6</sup> See *Sandwich Isles Waiver Denial*, 28 FCC Rcd at 6556, para. 7.

<sup>7</sup> See National Exchange Carrier Association Petition for Clarification And/Or Declaratory Ruling, WC Docket No. 09-133 (Feb. 6, 2015).

taxes, and with filing six false individual tax returns.”<sup>8</sup> One can only assume that this Public Notice, as well as the recent suspension of USF payments to Sandwich Isles, was a reaction to that conviction.

But it shouldn’t take a criminal conviction to spur a federal agency to protect the public fisc. For five years, the agency has been sitting on an application for review that would deny Sandwich Isles the millions of dollars it has been receiving to pay off the Paniolo Cable and line the pockets of Hee’s children.<sup>9</sup> And for five years, we’ve known of Hee’s penchant for self-dealing and skill at pocketing taxpayer dollars. I hope my colleagues will agree that a full investigation of Sandwich Isles and its untoward finances is in order, along with immediate action to recover whatever funds we can for the American taxpayer. It is time for the taxpayer-funded party to end.

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<sup>8</sup> See *Department of Justice Press Release*.

<sup>9</sup> The application for review challenges a 2010 order that authorized Sandwich Isles to profit an additional \$6.5 million each year for its self-dealing. See *Sandwich Isles Paniolo Order*, 25 FCC Rcd at 13662, para. 29. One of the first draft items I read as a Commissioner would have addressed that application for review. Based on the record compiled by the Commission at that time, I immediately instructed my staff to push to eliminate that funding. For some reason, the item was pulled from circulation and has never resurfaced.



**OFFICE OF INSPECTOR GENERAL**

**Washington, D.C. 20554**



November 12, 2009

VIA CERTIFIED UNITED STATES MAIL  
RETURN RECEIPT REQUESTED

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

RE: Federal Communications Commission Inspector General Subpoena

Dear Mr. Wehe:

Enclosed please find a *Subpoena Duces Tecum* issued by this office in connection with an investigation into receipt of federal universal service support by Blanca Telephone Company.

If you have any questions, please contact Carla Conover, Deputy Assistant Inspector General for Investigations. Mrs. Conover can be reached at (202) 418-7882 or [Carla.Conover@fcc.gov](mailto:Carla.Conover@fcc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "DL Hunt", is written over the typed name.

David L. Hunt  
Acting Inspector General

Enclosure



UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE INSPECTOR GENERAL

**SUBPOENA DUCES TECUM**

November 12, 2009

TO:

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

You are hereby commanded to produce documents to the attention of David L. Hunt, Esq., Acting Inspector General, Federal Communications Commission, Office of the Inspector General, 445 12th Street, S.W., Washington, D.C., 20554, by the 11<sup>th</sup> day of December, 2009 at 5:00 p.m. This subpoena is issued to you under the authority of section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. 3, as amended. Failure to comply with this subpoena may subject you to criminal penalties. You are hereby ordered to produce at such time and place the following as defined and instructed below:

## SECTION I – DEFINITIONS

- A. “Account” is a financial account or subaccount established pursuant to Part 32.
- B. “Affiliate” is any person or entity (including any company) that, directly or indirectly, controls, is controlled by or is under common control with Blanca as well as, in the case of an entity, its d/b/a, predecessor-in-interest or successor-in-interest. For clarity, “Affiliate” includes all parent entities and subsidiaries of Blanca.
- C. “Antenna” means any device capable of transmitting and/or receiving radio frequency (RF) signals.
- D. “Blanca” means The Blanca Telephone Company (a.k.a. Blanca Telephone Company), a Colorado corporation.
- E. “Blanca CPR” means the continuing property record previously provided by Blanca, attached as Appendix B.
- F. “Company” means Blanca and any Affiliates, d/b/a, predecessors-in-interest, wholly or partially owned subsidiaries, or other affiliated companies or businesses, segments, divisions, or other units, whatsoever titled, both presently existing and those which previously existed, and any present or former officers, directors, employees, consultants, contractors, agents, or members of the board of directors, and any other persons working for or on behalf of the foregoing at any time during the period covered by this subpoena.
- G. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.



H. "Document(s)" includes, but is not limited to: documents, correspondence; memoranda; notes; drafts; records; letters; envelopes; telegrams; messages; electronic mail; analyses; agreements; accounts; working papers; reports and summaries of investigations; trade letters; press releases; comparisons; books; notices; drawings; diagrams; instructions; manuals; calendars; diaries; articles; magazines; newspapers; brochures; guidelines; notes or minutes of meetings or of other communications of any type, including inter- and intra-office or company communications; questionnaires; surveys; charts; graphs; photographs; films or videos; tapes; discs; data cells; bulletins; printouts of information stored, maintained, or transmitted by electronic data or word processing equipment (including items posted on the internet or world wide web); electronic claims filing and transmittals, invoices, all other data compilations from which information can be obtained including electromagnetically sensitive stored media such as floppy discs, hard discs, hard drives or magnetic tapes, and such codes or instructions as will transform such information into easily understandable form; laptop computers issued to officers and employees; and, any preliminary versions, drafts or revisions of any of the foregoing.

I. "ETC" means "eligible telecommunications carrier" as such term is defined in 47 CFR §54.5.

J. "HOME System" means the system advertised on the website of Blanca as the 'HOME System' or the 'home system telephone service' associated with 'Wireless Telephone Service.'

K. "NECA" means the National Exchange Carrier Association, Inc., a Delaware non-profit corporation.

L. "Part 32," "Part 36," "Part 64" or "Part 69" is a reference, as applicable, to Part 32, Part 36, Part 64 or Part 69 of Title 47 of the Code of Federal Regulations (CFR) and the contents therein. An electronic copy of the CFR can be found at [www.gpoaccess.gov/CFR](http://www.gpoaccess.gov/CFR).

M. "Switch" means any piece of equipment or software that was included in Account 2210. For clarity, "Switch" includes, but is not limited to, both the DMS-10 and DMS-100 devices that are listed in the Blanca CPR.

N. "USAC" means the Universal Service Administrative Company, a Delaware corporation.

O. "USF" means the Universal Service Fund.

P. "Verizon Wireless" means Cellco Partnership, a Delaware general partnership, doing business as Verizon Wireless.

Q. Any reference to "us," "our," and "we" herein, refers to the Office of the Inspector General. Any reference to "you" refers to the Company and/or its representative(s).

## SECTION II - INSTRUCTIONS

(A) The words “and” and “or” in this subpoena shall be read in both the conjunctive and the disjunctive (*i.e.*, “and/or”), so as to give the document request its broadest meaning. “Any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.” Additionally, the word “each” shall be construed to include the word “every,” and the word “every” shall be construed to include the word “each.”

(B) Relevant time period: **Unless otherwise indicated, the relevant time period for this subpoena shall be for the period beginning on July 1, 2004 through the present**, and shall include all Documents created or prepared during that period, or referring or relating to that period, regardless of when the Document was created or prepared.

(C) Scope of search required: This subpoena calls for all Documents in the possession, custody or control of the Company, as defined above, including, but not limited to, its officers, directors, employees, agents, representatives, consultants and contractors. The Company is required to search all files reasonably likely to contain responsive Documents, including files left behind by former officers, directors, agents, representatives and employees. This search must include all offices, including, without limitation, offices maintained in homes of employees and officers, and including, without limitation, offices and storage facilities in any remote locations.

(D) If responsive Documents are no longer in your possession or control, identify each such Document by author, recipient, date, title, and specific subject matter, state what disposition was made of them, including identification and address of the person(s) who are or are believed to be in possession or control of such Documents.

(E) Manner of production: All Documents produced in response to this subpoena shall comply with the following instructions:

1. Fully legible, complete, and unaltered copies or electronic images of Documents responsive to this subpoena will be accepted in lieu of original Documents, provided that you make the original Documents available upon request. The Federal Communications Commission Office of Inspector General prefers to



receive electronic responses if they can be provided in accordance with the Federal Communications Commission Office of Inspector General Guidelines for Electronic Data Production, which is attached to this subpoena as Appendix A.

2. Documents that exist in an electronic medium *must* be produced in that electronic medium, identified with data set and format type. Documents in a commercially available software format must be produced in such format; Documents that exist in non-commercially available format must be produced with all software, codes, instructions, passwords or other elements necessary to view such material in its entirety.
3. All Documents produced in response to this subpoena shall be segregated and labeled to show the document request to which the Documents are responsive and the source and location where the Document was found.
4. A schedule must be supplied with the Company's production which lists, for each Document submitted in response to this subpoena, the numbered section to which the Document is responsive, the identifying logo and sequential number(s), a brief description of the Document, and an identification of the person(s) from whose files the Document was retrieved by name, title, and the organizational unit and the Company subsidiary or affiliate to which the Document pertains. If any Document is not dated, state on the schedule the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Company must identify with reasonable specificity all Documents provided in response to this subpoena.
5. To the extent that Documents are found in file folders and other similar containers, which have labels or other identifying information, the Documents shall be produced with such file folder and label information intact.

6. To the extent that Documents are found attached to other Documents, by means of paper clips, staples or other means of attachment, such Documents shall be produced together in their condition when found.
7. Each page produced must be marked with an identifying logo and sequential numbering. Identifying marks should be placed in the lower right hand corner of each page but should not obscure any information on the Document.

(F) If there are no Documents responsive to a particular subpoena request, provide a certification to that effect.

(G) If a claim of privilege is asserted with respect to any Document responsive to this subpoena, and such Document, or any part thereof, is not produced on the basis of such claim, for each such Document or part thereof that is not produced, you are directed to provide a privilege log wherein you identify the type of Document being withheld (*e.g.*, letter, memorandum, handwritten notes, marginalia, etc.), the author of the Document, all actual and intended recipients of the Document, its date, and the specific privilege being asserted, all with sufficient particularity so as to allow the Inspector General, and potentially a court, to assess the validity of the claim of privilege.



### SECTION III -REQUESTED DOCUMENTS

1. All Documents constituting maps indicating the locations of the facilities of Blanca including all facilities either owned by Blanca or leased from/to Blanca as of 12/31/2006, 12/31/2007, 12/31/2008, and 7/31/2009.
2. All Documents constituting maps indicating Blanca's study area boundaries.
3. All Documents reflecting FCC approval(s) granted to Blanca (*e.g.* a study area waiver) relating to changes to the study area boundaries.
4. All Documents constituting maps indicating the ETC boundaries approved by the appropriate regulatory authority in Blanca's application for ETC authorization.
5. All Documents constituting financial statements (both audited and unaudited) for 2004, 2005, 2006, 2007, and 2008 for (i) Blanca, and (ii) any Affiliate that charges costs, either directly or indirectly, to Blanca. Include all related or underlying (A) general ledgers, (B) sub-ledgers and (C) trial balances.
6. All Documents constituting monthly or other payroll journals prepared by or for Blanca.
7. The cumulative continuing property record with details reconciling to Blanca's balance sheets as of (i) 12/31/2005, (ii) 12/31/2006, (iii) 12/31/2007, (iv) 12/31/2008, and (v) the most current cumulative continuing property record.
8. *Part 64 Cost Studies.* All Documents constituting, referring to, or relating to any and all cost allocation studies, sometimes referred to as Part 64 studies, including, without limitation, all cost study adjustments, *i.e.* journal entry (book) adjustments, and non-journal entry (non-book) adjustments. Include all guidance and procedures used internally or externally to complete any related form submitted to USAC and/or NECA.
9. *Part 36/69 Cost Studies.* All Documents constituting, referring to, or relating to jurisdictional separations cost studies, sometimes referred to as Part 36 cost studies and/or Part 69 cost studies (including, but not limited to investments, expenses, revenues, reserves, and taxes), including,

without limitation, all cost study adjustments, *i.e.* journal entry (book) adjustments and non-journal entry (non-book) adjustments. Include all guidance given to consultants and all procedures used (including by, but not limited to, consultants) to complete any form submitted to USAC or NECA.

10. All Documents constituting, referring to, or relating to correspondence or other communications with any agent of the Company, including, without limitation, consultants, and all procedures used by such agents(s) to complete forms submitted to USAC or NECA by Blanca.
11. All Documents constituting or containing customer names, billing addresses, physical addresses (for the 911 Service Address), phone numbers, and Service IDs (as reported on the "List Active Ftr by Customers") which underlie the filing of line counts on the Annual 525 Form submitted by Blanca for annual periods ending as of 12/31/2006, 12/31/2007, and 12/31/2008.
12. All Documents constituting, referring to, or relating to cost sharing, settlement, and/or traffic exchange agreements between or among Blanca and any Affiliate (including, for purposes of this document request, San Isabel Cellular of Colorado Limited Partnership and Colorado 7-Saguache Limited Partnership and/or any of the Affiliates' parent companies, including but not limited to Verizon Wireless), and/or any other unrelated third party.
13. All Documents constituting, referring to, or relating to leases or other agreements for the use of facilities between or among Blanca and any Affiliate (including, without limitation, San Isabel Cellular of Colorado Limited Partnership and Colorado 7-Saguache Limited Partnership and any of the Affiliates' parent companies, including but not limited to Verizon Wireless) and renewals or amendments thereof.
14. All Documents constituting or containing financial statements (both audited and unaudited) for each of the Affiliates (including, without limitation, San Isabel Cellular of Colorado Limited Partnership and Colorado 7-Saguache Limited Partnership and any of the Affiliates' parent companies) for 2004, 2005, 2006, 2007, and 2008.



15. All Documents constituting or relating to all advertising of Blanca in any form, including print, broadcast, or web-based, relating to any type of telephone or cellular service directed at potential or current customers of Blanca.
16. All Documents constituting, referring to, or relating to the specifications, features, functions, capabilities and/or physical or virtual configurations, and network architecture of the following items, and any additional items that have replaced, expanded, amplified, supplemented, upgraded or retrofitted the following items:
  - (A) The Switches, *i.e.* DMS 10 and DMS 100, including systems, subsystems, physical elements and demarcation lines and any Virtual Private Networks (VPNs).
  - (B) Engineering – SN70 Switch (sic) & DTE Frame.
  - (C) Material/firmware – SN-70 Switch.
  - (D) Software MTX 10 Upgrade Blanca Site.
  - (E) Software MTX 10 Upgrade DMS100 Host.
  - (F) 1XRTT PDSN.
  - (G) Radius Server for 1XRTT Voice and Data.
  - (H) Passport 8600 for 1XRTT Voice & Data.
  - (I) Mobile Switching Center.
  - (J) Network Management System.
  - (K) DMS-10 Upgrade 411.10 Option/VM.
  - (L) Global Hub.
  - (M) 8 and 16 Channel Global Cell.

17. Pursuant to the instructions at the end of this document request 17, all Documents, including, without limitation, all logs in whatever form, constituting, referring to, or relating to the following information, for each Switch of Blanca:

(A) Inter-office Trunk Routing Translations for all traffic:

(i) Incoming trunk translations (including Common Language Location Identifier (CLLI) codes).

(ii) Outgoing trunk translations (including CLLI Codes).

(B) Tandem Office Interconnections:

(i) Incoming trunk translations (including CLLI codes).

(ii) Outgoing trunk translations (including CLLI Codes).

(C) Translations for Centrex/PBX/etc type services that have VPNs (Virtual Private Networks):

(i) Incoming trunk translations (including CLLI codes).

(ii) Outgoing trunk translations (including CLLI Codes).

**Instructions for document request 17:** If available, provide the information for the weeks of (i) 12/24/2006-12/30/2006, (ii) 12/23/2007-12/29/2007, (iii) 12/21/2008-12/27/2008, and (iv) 7/19/2009-7/25/2009. If the Company has the information requested on a historical basis but not for any of the above weeks, then provide the information requested in this section for the closest calendar week available to the Company. If the Company does not have the information requested in this document request 17 on a historical basis, provide all information currently available.

18. All Documents constituting, referring to, or relating to the financing of any of Blanca's Switches or any hardware or software upgrades or retrofits to the Switches, including all applications

submitted by Blanca for such financing to any financial institution or governmental agency whether for a loan or grant.

19. All Documents, constituting, referring to, or relating to communications between Blanca and any financial institution concerning the financing of Switch(es) for or on behalf of Blanca or any hardware or software upgrades or retrofits to the Switch(es).
20. All Documents constituting, referring to, or relating to bills of sale, invoices, billing statements, or lease agreements for a Switch of Blanca or any hardware or software, to upgrade, retrofit and/or maintain any such Switch after its acquisition.
21. All Documents constituting, referring to, or relating to the servicing and maintaining each of Blanca's Switches, including any warranty agreements.
22. All Documents constituting contracts or other agreements between Blanca and any entity under which any of the Switches of Blanca provided wireline or wireless switching services to that party.
23. All Documents constituting, referring to, or relating to statements for legal services for which Blanca was reimbursed, in whole or in part, directly or indirectly, from High Cost Program support.
24. Pursuant to the instructions at the end of this document request 24, all Documents, including, without limitation, all logs in whatever form, constituting, referring to, or relating to the following:

(A) Switched call detail and billing records.

(B) Homed telephone numbers (include mobile identification numbers (MIN)) and international mobile subscriber identity (IMSI) as well as supported IP addresses.

(C) Home location register (HLR) data (including supported phone numbers/MIN) and IMSI, IP addresses and associated service profile with numbers and addresses.



(D) Traffic configuration adjustment records, including mobile cellular traffic and experienced blockage at the cell sites.

(E) Call center customer complaint records.

**Instructions for document request 24:** If available, provide the information for the weeks of (i) 12/24/2006-12/30/2006, (ii) 12/23/2007-12/29/2007, (iii) 12/21/2008-12/27/2008, and (iv) 7/19/2009-7/25/2009. If the Company has the information requested on a historical basis but not for any of the above weeks, then provide the information requested in this section for the closest calendar week available to the Company. If the Company does not have the information requested in this document request 24 on a historical basis, provide all current information available.

25. All Documents constituting any maps, sketches, and diagrams that depict, in all or in part, the location and type of Antennas for fixed and mobile wireless services by Blanca.
26. All Documents referring or relating to the type of transmissions each Antenna is providing or supporting, *i.e.*, BETRS, cellular, or landline telephone exchange service.
27. All Documents that depict or identify, in all or in part, the type of transmissions each Antenna is providing or supporting, *i.e.*, BETRS, cellular, or landline telephone exchange service, including maps, charts, sketches, diagrams or lists.
28. All Documents constituting Blanca's complete 'Current Feature Count' for each month.
29. All Documents constituting, referring to, or relating to any call flow diagrams for voice and data in possession of the Company depicting any cellular system under the control of Blanca and any cellular system with which Blanca's system is interconnected.
30. All Documents constituting, referring to, or relating to statements for installation, construction, or engineering services incurred to provide service and equipment utilizing BETRS.
31. All Documents constituting, referring to, or relating to bills of sales, service warranties, and any service maintenance agreements in connection with or relating to a "BETRS Mobile Switching

Center,” “BETRS Global Hub,” and “BETRS 8 Global Hub” as referred to in the Blanca CPR under “Account 2212.1” per a line entry dated 12/31/95.

32. All Documents constituting all statements and/or invoices for legal services for “BETRS construction” as referred to in the Blanca CPR.
33. All Documents constituting contracts to which Blanca is or was a party under which it undertook to provide services utilizing BETRS to customers.
34. All Documents constituting, referring or relating to tariffs under which Blanca undertook to provide service utilizing BETRS to customers.
35. All Documents constituting a listing of customers of Blanca utilizing BETRS as of 12/31/2006, 12/31/2007, and 12/31/2008. In lieu of such listing, the Company may provide the billing records of customers of Blanca utilizing BETRS for the billing cycles that include 12/31/2006, 12/31/2007, and 12/31/2008.
36. All Documents constituting, referring to, or relating to customer premises equipment which Blanca offered for sale or lease to its customers for BETRS, however such equipment was categorized or promoted by Blanca to the public, including, but not limited to: all invoices, bills of sale, service warranties, and any service agreements from equipment vendors or manufactures for each type of customer premises equipment.
37. All Documents constituting all advertising in any form, including print, broadcast or web-based, for or including the service(s) categorized in the ‘Current Features Count’ provided by Blanca as ‘B.E.T.R.S. High Speed Internet’.
38. All Documents constituting, or referring to contracts or other agreements to which Blanca is a party under which it undertook to provide the service(s) categorized in the ‘Current Features Count’ provided by Blanca as ‘B.E.T.R.S. High Speed Internet’.



39. All Documents constituting customer records of Blanca for those customers who received the service categorized in the 'Current Features Count' provided by Blanca as 'B.E.T.R.S. High Speed Internet'.
40. All Documents constituting, referring to, relating to or depicting the configuration and/or specification for each piece of equipment and associated software used to provide 'B.E.T.R.S. High Speed Internet'.
41. All Documents constituting all advertising in any form, including print, broadcast or web-based, for or including the services categorized by Blanca as the HOME System.
42. All Documents constituting contracts or any form of agreement to which Blanca is a party under which it undertook to provide the services categorized by Blanca as the HOME System.
43. All Documents constituting customer records of Blanca for those customers who received service from the HOME System.
44. All Documents constituting, referring to, or relating to the configuration, function or specification for each piece of equipment and associated software used by Blanca to provide the HOME System.
45. All Documents constituting roaming agreements (referenced on the Blanca website) that are used by, underlie, are associated with, relate to or implement the HOME System.
46. All Documents constituting, referring or relating to the neighbor list(s) and associated radio parameters and configurations for each cell site/base transceiver station (BTS) of Blanca.
47. All Documents constituting contracts, leases or other agreements for the use of facilities by Blanca to provide cellular service where Blanca is providing cellular service through any third party. If such information is being provided in response to any other document request, identify the relevant response(s).



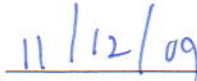
48. All Documents constituting or depicting specifications, functions and/or configuration of any Switches operated by Blanca to provide cellular service. If such information is being provided in response to any document request above, identify the relevant response(s).

Failure to obey this subpoena shall be enforceable by order of the appropriate United States District Court.

Issued by: \_\_\_\_\_



Date: \_\_\_\_\_



David L. Hunt  
Acting Inspector General

Appendix A  
**Federal Communications Commission Office of Inspector General**  
**Guidelines for Electronic Data Production**

The following guidelines refer to any document requests that you choose to provide in machine-readable form. You must confirm with the Office of Inspector General technical official, Angel Jones, that the proposed electronic data formats and media types will be acceptable to the government. Mr. Jones can be reached at (202) 418-1025 or [Angel.Jones@fcc.gov](mailto:Angel.Jones@fcc.gov).

**A. Magnetic and other electronic media types**

The Federal Communications Commission Office of Inspector General (OIG) will accept:

1. CD-ROMs formatted to ISO 9660 specifications.
2. DVD-ROM for Windows-compatible personal computers.
3. 3.5 inch microcomputer diskettes formatted for IBM compatible computers.
4. External USB 2.0 or Firewire hard drive for Windows-compatible computers with a MD5 hash for the contents of the drive.

**B. File and record formats.**

1. Electronic data from microcomputer (PC) systems.
  - a. E-mail: The OIG will accept MS Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files, or ASCII text files. Any other electronic submission of email must be approved by OIG technical staff prior to submission.
  - b. Document images: When submitting documents that have been scanned, please adhere to the following specifications.
    - i. All images must be single-page Group IV TIFF files.
    - ii. Image files must conform to the 8.3 naming convention, such as 12345678.TIF or ABC00001.TIF

c. Other PC files: The OIG will accept word processing documents in ASCII text, WordPerfect, or Microsoft Word. Spreadsheets should be in MS Excel (.xls), or Lotus-compatible format (.wk\*). Database files should be in MS Access. Database files may also be submitted as delimited ASCII text files, with field names as the first record, or as fixed-length flat files with appropriate record layout. For ASCII text files, field-level documentation should also be provided. Other proprietary formats for PC files should not be submitted without explicit discussion with OIG technical staff. Files may be submitted using the compressed ZIP format to reduce size and ease portability.

2. Electronic data from centralized non-microcomputer-based systems, such as IBM mainframes and UNIX machines.

a. The OIG will accept sequential files only, with the data fields in fixed-column positions. The data records must be fixed-length records, unless otherwise agreed to by the OIG. For each sequential file provided, the following information is required: a record layout, a short narrative description of what the file contains, translation of any coded fields, the number of records in the file, and a printout of the first 100 records in report format (hexadecimal dumps of the data are not appropriate). Date fields must contain year/month/day values and may not be a reference number. A record layout must contain the following pieces of information: field name, starting and ending position in the record, field length, and field characteristics (such as decimal, zoned decimal, alphanumeric, and so forth).

### C. Security

All submissions of electronic data to the OIG must be free of computer viruses. In addition, any passwords and/or encryptions protecting documents or files must be removed or provided to the OIG.

3/31/14

**Civil Investigative Demand - Oral Testimony**

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**United States Department of Justice**  
**Washington, D.C. 20530**

TO: Alan Wehe  
129 Santa Fe Ave.  
Alamosa, CO 81101-2807  
(719) 589-2964

Civil Investigative  
Demand No. 14-57

This Civil Investigative Demand is issued pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, in the course of a False Claims Act investigation to determine whether there is or has been a violation of 31 U.S.C. § 3729. The False Claims Act investigation concerns allegations that Blanca Telephone Company (Blanca) violated the False Claims Act in connection with the receipt of subsidies under the Universal Service Fund's (USF) High Cost Program.

You are required by this Demand to give oral testimony under oath, commencing thirty (30) days from the date of receipt of this Demand, at 10:00 A.M. at the United States Attorney's Office for the District of Colorado, 1225 17th Street, Suite 700 Denver, CO 80202, or at such time and in such other place as may be agreed upon by J. Chris Larson or Benjamin C. Wei and you. J. Chris Larson may be contacted at (303) 454-0252 and Benjamin C. Wei at (202) 616-2875. This is the original of the Demand; no copies have been served on other parties. The information provided in response to this Demand may be shared, used, and disclosed as provided by 31 U.S.C. § 3733.

J. Chris Larson or Benjamin Wei will be the False Claims Act investigator who will conduct the examination. The custodian to whom the transcript of the deposition will be delivered is J. Chris Larson.

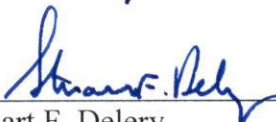
Your attendance and testimony at the oral examination are necessary to the conduct of the False Claims Act investigation described above. You have the right to be accompanied by an attorney and any other personal representative at the oral examination.

The general purpose for which this Civil Investigative Demand is issued is to discover your knowledge concerning allegations that Blanca improperly received subsidies from the USF's High Cost Program. The primary areas of inquiry are the witness' knowledge of: (1) requirements to allocate costs between regulated and non-regulated services; (2) Blanca's filings to the Federal Communication Commission; (3) Blanca's filings to the Universal Service Administrative Company; (4) Blanca's filings to the National Exchange Carrier Association; (4) Blanca's cellular operations; (5) Blanca's Basic Exchange Telephone Radio Service operations; and (6) Blanca's request for USF subsidies under the High Cost Program.



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Issued at Washington, D.C., this 30<sup>th</sup> day of January, 2014.

  
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Stuart F. Delery  
Assistant Attorney General  
Civil Division

## CERTIFICATION

I hereby certify under penalty of perjury that the factual information contained in the foregoing Petition for Reconsideration is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Alan Wehe', is written over a horizontal line.

Alan Wehe, General Manager  
Blanca Telephone Company  
June 24, 2016