

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the Universal
Service Administrator by
Nemont Telephone Cooperative, Inc.
WC Docket No. 08-71

ORDER

Adopted: October 3, 2014

Released: October 3, 2014

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a request filed by Nemont Telephone Cooperative, Inc. and its subsidiary Project Telephone Company (collectively known as Nemont) seeking review of a decision of the Universal Service Administrative Company (USAC). We conclude that USAC properly sought recovery of the federal universal service fund (USF or Fund) high-cost support provided to Nemont based on the company's failure to comply with the Commission's rules, and that USAC's High Cost & Low Income Committee did not exceed its authority by delegating review of audit appeals to specific USAC staff. We therefore direct USAC to proceed with the recovery of support related to Nemont's non-compliance with Commission rules.

II. BACKGROUND

2. Nemont (and its subsidiary Project Telephone Company) are incumbent wireline carriers that operate in Montana. Beginning in October 2009, USAC's Internal Audit Division conducted an audit of Nemont for the 2008 program year to determine whether Nemont submitted accurate underlying data for the calculation of high cost program support and complied with other Commission rules. The auditors granted numerous extensions to Nemont to provide supporting documentation for the costs in question, which contributed to a delay in completion of the audit. Upon the completion of the field work, consistent with normal practice, the auditors provided their findings to Nemont, and scheduled an exit conference to discuss the findings. The auditors set a final deadline of August 24, 2011 for Nemont to provide any written response to the findings and to provide any additional documentation to support its response to the findings. Nemont responded on August 25, 2011. USAC accepted the additional

1 Request for Review by Nemont Telephone Cooperative, Inc. of a Decision of the Universal Service Administrator, WC Docket No. 08-71 (filed June 10, 2013) (Nemont Petition).

2 Independent Auditor's Report on Nemont Telephone Cooperative, Inc. and Project Telephone Company's Compliance with High Cost Support Mechanism Rules (USAC Audit No. HC2009BE001), at 1 (Sept. 12, 2011) (attached to Nemont Petition) (USAC Audit Report). Given the two-year lag in recovering support, 2008 support amounts are based on 2006 expenses. See 47 C.F.R. § 54.1305. For ease of reference, we will use the term "USAC" when referring to USAC's Internal Audit Division.

documentation and adjusted the audit findings where appropriate.³ USAC then proceeded to finalize the audit report.

3. USAC concluded that Nemont did not comply with sections 32.12(b) and 32.12(c) of the Commission's rules by failing to document properly its allocation methodology for allocating its portion of material and supplies (account 1220) from an affiliated entity's financial records (audit finding #1).⁴ USAC also found that Nemont did not comply with section 32.12(b) of the Commission's rules by improperly recording in 2006 pole rental expense in its cable and wire facilities expense account (account 6410) that related to 2005 (audit finding #4).⁵ Based on these findings, the USAC Audit Report recommended recovery of \$163,886 in high-cost support.⁶

4. On September 12, 2011, after USAC finalized the audit report, Nemont submitted unsolicited revised responses to audit findings #1 and 4. It also provided additional unsolicited documentation to supplement its revised response.

5. In 2013, USAC denied Nemont's appeal of the two USAC Audit Report findings.⁷ Nemont then sought review of this action from the High Cost & Low Income Committee of the USAC Board of Directors.⁸ In response, USAC's Acting General Counsel stated that the three-person team of USAC executives that had decided the first appeal has delegated authority to review audit appeals on behalf of the High Cost & Low Income Committee.⁹

6. Nemont requests review of two of the findings in the USAC Audit Report, arguing that USAC should not have disallowed the entire support amounts associated with the audit findings.¹⁰

³ USAC Audit Report at 2-3. For example, after the auditors determined that a customer service expense was not allocated properly among Nemont's related entities, Nemont requested in its response to the audit report that the auditors reduce the expense allocated to Nemont and increase the expense allocated to its subsidiary Project Telephone Company. The auditors had already reduced the expense allocated to Nemont to the appropriate amount, but complied with Nemont's request and increased the expense allocated to Project Telephone Company. Based on this re-allocation, the auditors determined that Project Telephone Company had been underpaid \$2,888 in Local Switching Support, so they reduced the recommended recovery amount to reflect this underpayment. *Id.* at 13-14.

⁴ USAC Audit Report at 6-7. *See* 47 C.F.R. § 32.12(b) (requiring that financial records "be kept with sufficient particularity to show fully the facts pertaining to all entries in [the Uniform System of Accounts for Telecommunications Companies]" and that "detail records shall be filed in such manner as to be readily accessible for examination by representatives of this Commission"); 47 C.F.R. § 32.12(c) (stating that "[t]he Commission shall require a company to maintain financial and other subsidiary records in such a manner that specific information . . . will be readily available," that "subsidiary records shall be maintained in sufficient detail to facilitate the reporting of the required specific information," and that "[t]he subsidiary records, in which the full details are shown, shall be sufficiently referenced to permit ready identification and examination by representatives of this Commission").

⁵ USAC Audit Report at 13-14. *See* 47 C.F.R. § 32.12(b).

⁶ USAC Audit Report at 7, 13. Nemont does not dispute USAC's other findings. Nemont Petition at 1 n.1.

⁷ *See* Letter from Aimee Dietrich, Controller, Nemont Telephone Cooperative, Inc. and Project Telephone Company, to High Cost Low Income Division, USAC (filed Jan. 20, 2012) (attached to Nemont Petition) (First Nemont Appeal) (appealing the recovery amounts in the USAC Audit Report); Letter from USAC, to Aimee Dietrich, Controller, Nemont Telephone Cooperative, Inc. (March 1, 2013) (attached to Nemont Petition) (USAC Appeal Denial) (denying Nemont's appeal).

⁸ *See* Letter from Remi Sun, Chief Financial Officer, Nemont Telephone Cooperative, Inc., to High Cost & Low Income Committee, USAC (filed Apr. 30, 2013) (attached to Nemont Petition) (Second Nemont Appeal).

⁹ *See* Letter from David A. Capozzi, Acting General Counsel, USAC, to Remi Sun, Chief Financial Officer, Nemont Telephone Cooperative, Inc. (filed May 7, 2013) (attached to Nemont Petition). This team includes USAC's Chief Executive Officer, Chief Operating Officer, and General Counsel.

¹⁰ Nemont Petition at 1-2; 47 C.F.R. § 54.719(c).

Nemont claims that the auditors should have used “alternative audit procedures” to determine which costs Nemont should have submitted for the cost calculation, or permitted Nemont the opportunity to justify its costs.¹¹ In the alternative, Nemont argues that the High Cost & Low Income Committee’s authority to review the appeals was improperly delegated to USAC executives.¹²

III. DISCUSSION

7. We deny Nemont’s request for review. We conclude that USAC’s decision to seek full recovery of the support due to Nemont’s lack of sufficient, appropriate evidence of its actual costs is proper. Further, we find that the USAC High Cost & Low Income Committee acted within the scope of its authority when it delegated the review of this appeal to USAC executives.¹³

A. USAC is Justified in Recovering the Full Support Amounts Related to Nemont’s Non-Compliance

8. Based on our review of the record and the circumstances before us, we find that full recovery of the amount of 2008 support associated with the two audit findings is warranted due to the company’s non-compliance with Commission rules. The Commission has stated that “funds disbursed from the high-cost . . . support mechanism[] in violation of a Commission rule that implements the statute or a substantive program goal should be recovered.”¹⁴ Here, Nemont failed to comply with the Commission’s rules by not having supporting documentation for its allocation methodology readily available for its Materials and Supplies account and by not recording properly and providing to USAC accurate information about its pole expense rental costs.¹⁵ Without accurate data and documentation to support its costs, USAC is unable to determine whether Nemont received the proper amount of universal service support related to these costs and is unable to guard against waste, fraud, and abuse in the Fund.¹⁶

¹¹ Nemont Petition at 3.

¹² *Id.* at 2-3 n.4, 8.

¹³ The Wireline Competition Bureau (Bureau) conducts de novo review of such requests. 47 C.F.R. § 54.723(a).

¹⁴ *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007). We disagree with Nemont’s claim that section 54.707 of the Commission’s rules prohibits USAC from recovering all of the related support from Nemont “where reasonable verification is subsequently provided.” Nemont Petition at 4; 47 C.F.R. § 54.707 (stating that USAC may “suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request, or if directed by the Commission to do so”). Section 54.707 relates to future discounts, offsets, and support, not support that USAC seeks to recover due to non-compliance with the Commission’s rules. Moreover, as discussed more fully below, the auditors exercised professional judgment in determining that the evidence that Nemont provided was not sufficient and appropriate verification of their costs nor was it available upon reasonable request.

¹⁵ See 47 C.F.R. § 32.12.

¹⁶ This is consistent with precedent regarding recovery of support for entities that failed to maintain documentation as required by the Commission’s E-rate program. See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15825-26, para. 50 (2004) (stating that “failing to comply with an authorized audit or other investigation conducted pursuant to section 54.516 of the Commission’s rules (e.g., failing to retain records or failing to make available required documentation) is a rule violation that may warrant recovery of universal service support monies that were previously disbursed for the time period for which such information is being sought”); *Request for Review of a Decision of the Universal Service Administrator by Pennsauken Township School District Pennsauken, NJ, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 6019 (Wireline Comp. Bur. 2013) (denying an appeal request for an audit where USAC sought to recover a recipient’s support after it failed to maintain documentation explaining its vendor selection process); *Request for Review of a Decision of the Universal Service Administrator by Bell Gardens Christian School Bell, CA, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13011 (Wireline Comp. Bur. 2013) (same); *Request for*

(continued....)

Maintaining appropriate documentation to support information submitted in cost studies used to determine universal service support is critical to the Commission's ability to ensure that high-cost support is provided appropriately.

9. Nemont does not dispute that its accounting records were incorrect.¹⁷ Rather, it claims that USAC should not recover the full amount of support related to this non-compliance because if the auditors had accepted Nemont's late-submitted evidence or employed alternative audit procedures, they would have determined that there were insignificant variances in Nemont's Materials and Supplies cost study and an understatement of costs related to Nemont's pole rental expenses.¹⁸

10. We are not persuaded that USAC erred in declining to consider this late-submitted documentation. The audit report noted that Nemont's submission of a new report that had been generated on September 8, 2011, almost three years after the audit period, which purported to show Nemont's allocation methodology for its materials and supplies account, "increased" the auditors' "professional skepticism."¹⁹ The Generally Accepted Government Auditing Standards (GAGAS) require auditors to use their professional judgment in determining whether evidence provided by an auditee is sufficient and appropriate.²⁰ The auditors properly determined that they could not "conclude with reasonable confidence" that the evidence that Nemont submitted after the auditors' final deadline for submission of documentation was "accurate, relevant and reliable," and that their "ability to rely on the accuracy and sufficiency of audit evidence is reduced when documentation is received after audit completion."²¹ Based on the record before us, we conclude that the auditors properly exercised their professional judgment in declining to accept documentation that Nemont provided to the auditors after the audit report was finalized.

(Continued from previous page) _____

Review of Decisions of the Universal Service Administrator by Gila Bend Unified School District 24 Gila Bend, Arizona, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 6870 (Wireline Comp. Bur. 2011) (same).

¹⁷ See Nemont Petition at 3, 7.

¹⁸ *Id.* at 3-4, 7-8. See also Comments of NTCA—The Rural Broadband Association, WC Docket No. 08-71 (filed Aug. 19, 2013); Reply Comments of Montana Independent Telecommunications Systems, LLC, WC Docket No. 08-71 (filed Sept. 3, 2013).

¹⁹ USAC Audit Report at 3. See also USAC Appeal Denial at 2 (stating that "the carrier has not explained the original calculations that established the inventory levels for [Nemont] for the time period audited" and "the original calculations cannot be justified because the company did not maintain adequate documentation to ensure the allocation methodology was compliant with 47 C.F.R. § 32.12").

²⁰ United States Government Accountability Office, Government Auditing Standards (July 2007 Revision), at 7.55, 7.58, <http://www.gao.gov/new.items/d07731g.pdf> (GAGAS). We note that the audit was conducted pursuant to the 2007 Revision of the GAGAS, because it was completed in September 2011, prior to the 2011 Revision becoming effective (for performance audits beginning on or after Dec. 15, 2011). See United States Government Accountability Office, Government Auditing Standards (Dec. 2011 Revision), <http://www.gao.gov/assets/590/587281.pdf>. The American Institute of Certified Public Accountants (AICPA) Professional Standards apply to financial audits and attestation engagements for non-issuers, not to the performance audit conducted by USAC. See GAGAS at 1.15(a). Cf. Nemont Petition at 5 (citing to the AICPA Professional Standards and the 2011 Revision of GAGAS). GAGAS states that "[a]ppropriateness is the measure of the quality of evidence that encompasses the relevance, validity, and reliability of evidence used for addressing the audit objectives and supporting findings and conclusions." GAGAS at 7.59. GAGAS defines sufficiency as "a measure of the quantity of evidence used for addressing the audit objectives and supporting findings and conclusions." GAGAS at 7.66

²¹ USAC Audit Report at 3 (stating that the auditors "exercised professional judgment and considered the risk that [the auditors] may come to an improper conclusion by considering the documentation that was submitted after fieldwork completion").

11. Similarly, Nemont did not provide its explanation of the incorrectly reported pole rental expenses until after the auditor's report had been finalized, and it did not provide any evidence to support its claims regarding these expenses until its appeal of USAC's decision.²² Nemont submitted payment vouchers for its 2005 and 2006 pole rental expenses and claimed that because its annual pole rental payment is "paid in arrears in January of each year," it recorded improperly the 2005 expense in 2006 and then again recorded improperly the 2006 expense in 2007.²³ Nemont states, without support, that a failure of "communication" led to it submitting untimely evidence.²⁴ However, we find that Nemont has not demonstrated that the auditors' conclusion that these untimely submissions were not "sufficient, appropriate evidence" was in error.²⁵ Moreover, we conclude that requiring auditors to accept new evidence after their reports have been finalized would unnecessarily prolong and increase the costs of audits and make it difficult for auditors to draw final conclusions about an auditee's compliance.

12. We reject Nemont's argument that if the auditors did not accept the late-filed evidence, they should have used "alternative audit procedures" to determine a reasonable amount of the two categories of costs.²⁶ GAGAS permits, but does not require, auditors to use "alternative audit measures" and to modify the scope of their audit if, in the professional judgment of the auditors, such an approach would address "audit objectives."²⁷ In this case, USAC stated that the objective of its audit was to determine "whether the Beneficiaries complied with the Rules and submitted accurate underlying data for the calculation of" high-cost support.²⁸ USAC concluded that Nemont had not met its obligations. Based on our de novo review of the record, we agree. We conclude that Nemont utilized inaccurate accounting data to obtain high cost support, and it failed to meet the requirements of the Commission's rules that cost information be readily available for examination.

13. We find that it was not the responsibility of the auditors or within the scope of the audit for the auditors to recalculate, reconstruct, or correct Nemont's records, or examine financial records from years outside of the audited year to determine what Nemont's support levels should have been. Rather, it is Nemont's responsibility to comply with the Commission's rules by maintaining complete, accurate records and reporting accurate costs to USAC. Although GAGAS allows auditors, at their discretion, to employ alternative procedures and modify the scope of their audit, taking those additional steps in this case would not be appropriate, required or even advisable. A modification of the scope of the audit, as Nemont suggests, would increase the time and cost of the audit. Moreover, such an expansion would improperly shift the responsibility for properly documenting costs from the carrier to the auditors.

14. The auditors determined that in their professional judgment Nemont was unable to provide sufficient and appropriate evidence of Nemont's costs, and that Nemont therefore was not in compliance with the Commission's rules. Based on the record before us, we find that the auditors exercised appropriate professional judgment in concluding that Nemont had failed to provide sufficient

²² See First Nemont Appeal at 11; USAC Audit Report at 3.

²³ First Nemont Appeal at 11.

²⁴ *Id.* at 2-3, 5, 11.

²⁵ GAGAS at 7.55, 7.58.

²⁶ See Nemont Petition at 3, 6-8.

²⁷ GAGAS at 1.08-1.09, 7.40 (stating that auditors "may revise the audit objectives or modify the scope and methodology and determine alternative procedures to obtain additional evidence or other forms of evidence to address the current audit objectives" and explaining that such an explanatory standard "does not impose a professional requirement on the auditor or audit organization to perform the suggested procedures or actions," and that "[h]ow and whether to carry out such procedures or actions depends on the exercise of professional judgment consistent with the objective of the standard") (emphasis added).

²⁸ USAC Audit Report at 1.

evidence in support of its costs. Therefore, we direct USAC to proceed with the recovery of support related to Nemont's non-compliance with Commission rules.

B. The High Cost & Low Income Committee Properly Delegated the Review of Audit Appeals to USAC Executives

15. We also disagree with Nemont's claim that the High Cost & Low Income Committee's authority to review audit appeals was improperly delegated to three USAC management executives.²⁹ The Commission's rules do not prohibit the High Cost & Low Income Committee from delegating the responsibility to review appeals to a team of USAC management executives.³⁰ Such delegation of the High Cost & Low Income Committee's review authority is an administratively reasonable approach given the volume of audits conducted for the high-cost program. Moreover, the delegation does not diminish the High Cost & Low Income Committee's oversight role. To provide oversight of management, the USAC Board of Directors and each committee of the Board receives a report each calendar quarter from management of appeals received and decided during the quarter.

IV. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154, and 254, and pursuant to sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, the request for review filed by Nemont Telephone Cooperative, Inc. IS DENIED.

17. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

²⁹ Nemont Petition at 1-2 n.4, 8. *See also* 47 C.F.R. § 54.719 ("Any person aggrieved by an action taken by the Administrator . . . may seek review from the appropriate Committee of the Board . . .").

³⁰ We note that the High Cost & Low Income Committee, not the USAC Board of Directors, delegated the review of high-cost audit appeals to the USAC management executives. *See* USAC, 2001 Board of Directors Meetings Minutes at 13, http://www.usac.org/_res/documents/about/pdf/bod/minutes/bod/2001-bod-Minutes.pdf (2001) (stating that "the Board's programmatic committees have authorized USAC staff to resolve appeals within the programs" in most circumstances).