

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Petition of GENESIS COMMUNICATIONS)	CC Docket No. 96-45
INTERNATIONAL, INC. for Declaratory)	
Rulings Affirming Right to Distribution of)	
Lifeline Assistance Revenues)	

COMMENTS

The National Exchange Carrier Association, Inc. (NECA) hereby files its Comments in the above-captioned matter.

Background

This matter arises out of a dispute involving eligibility for distributions of Lifeline Assistance support amounts for the period September 1996 through August 1997, inclusive. Under Commission rules then in effect, NECA was responsible, *inter alia*, for administering the Commission's universal service programs including distribution of the lifeline assistance revenues at issue here.

Petitioner Genesis Communications International, Inc. (Genesis) is a competitive local exchange carrier (CLEC) offering local exchange telephone service in the State of California on a resale basis. Genesis states that during the period at issue, it provided local exchange services to low income customers that were eligible for a 50% discount off the interstate End User Common Line Charge (EUCL) under the state of California's Universal Lifeline Telephone Service (ULTS) program.

According to the petition, Genesis informally contacted NECA and the Commission regarding methods of obtaining reimbursement of discounted EUCL amounts and was informed by Commission staff in August 1997 that it must obtain formal certification of its eligibility for distributions.¹ Genesis accordingly filed a letter with the Commission on September 19, 1997 seeking certification.²

The Commission responded to Genesis' request by letter dated September 23, 1997.³ The Commission's September 23 Letter indicated that it was provided in response to Genesis' letter "requesting certification for Genesis to receive federal support for the benefits of the California Universal Lifeline Telephone Service Program" and that Genesis' letter "stipulates compliance with orders issued by the Public Utilities Commission of the State of California."

The September 23 Letter notes that the California Commission's Lifeline program had been certified by the Commission on January 1, 1985. The letter then states:

Based on the California Public Utilities Commission authorization Order of February 23, 1996, and Genesis's stipulation, I find that the program is consistent with this Commission's requirements for lifeline assistance (47 C.F.R. 69.104(k)(1)). Accordingly, under delegated authority to review local telephone company plans to ensure compliance with federal standards, Genesis is hereby certified for federal lifeline assistance in California.⁴

¹ Genesis Petition at 3.

² Letter of Mary Ann Kremicki, Corporate Controller, Genesis Comm. Int'l to Secretary, Federal Communications Commission (Sept. 19, 1997).

³ Letter of Peyton L. Wynns, Chief, Industry Analysis Division to Mary Anne Kremicki, Corporate Controller, Genesis Comm. Int'l, Inc. (September 23, 1997) ("September 23 Letter").

⁴ September 23 Letter at 1.

The September 23 Letter concludes by pointing out that the Commission had then recently adopted a *Report and Order* in CC Docket 96-45 addressing recommendations made by the federal-state Joint Board in response to the Telecommunications Act of 1996, and that new rules governing Lifeline Assistance and Link-up Connection Assistance programs would become effective January 1, 1998.⁵

After receiving a copy of the Commission's letter, NECA began to distribute Lifeline Assistance revenues to Genesis. However, in the absence of any language in the Commission's September 23 Letter indicating that the Commission's certification should apply retroactively, NECA provided reimbursement payments to Genesis on a prospective basis only.⁶

Genesis sought reimbursement for prior-period Lifeline Assistance discounts from its underlying carrier, Pacific Bell. When Pacific Bell refused to pay Genesis for the Lifeline discounts provided by Genesis to its end users during the period prior to Commission certification, Genesis filed a complaint against Pacific Bell before the Commission. Genesis' complaint against Pacific Bell was denied by the Chief of the Commission's Enforcement Bureau on February 22, 2000.⁷

Genesis next filed suit against NECA in the Superior Court of the State of California, which action was subsequently removed by NECA to the United States

⁵ *Id.*

⁶ Section 1.102 of the Commission rules states that in non-hearing or interlocutory proceedings actions taken pursuant to delegated authority are effective "upon release of the document containing the full text of such action" 47 C.F.R. § 1.102(b)(1).

⁷ *Genesis Communications International, Inc. v. Pacific Bell*, E-98-20, *Memorandum Opinion and Order*, 15 FCC Rcd 4228 (2000); *review den'd*, *Order on Review*, 15 FCC Rcd 12, 697 (2000). NECA's decision to provide reimbursement on a prospective basis only was not raised as an issue in this proceeding. *Id.* at n. 10.

District Court, Central District of California.⁸ Shortly thereafter, the parties agreed to stay the action before the court pending referral to the Commission of Genesis' claim for retroactive reimbursements via the instant Petition for Declaratory Rulings.⁹

I. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING.

NECA agrees that the Commission should issue a declaratory ruling resolving issues associated with Genesis' claim for Lifeline Assistance revenues for the period at issue. As noted in Genesis' petition, this action arises out of a lawsuit that is currently under administrative stay in federal district court. The district court's order staying the action and referring the matter to the Commission was based upon the doctrine of primary jurisdiction, a procedure that allows a district court to refer a matter to the appropriate administrative agency for a ruling in the first instance, even when the matter is initially cognizable by the district court. *See Iowa Beef Processors, Inc. v. Illinois Cent. Gulf R.R. Co.*, 685 F.2d 255, 259 (8th Cir.1982).

Such references permit the court to obtain the benefit of the Commission's expertise and experience "in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion" *Far East Conference v. United States*, 342 U.S. 570 (1952).

The issues presented in this case clearly fall with the particular expertise of the Commission. Genesis claims, for example, that under section 69.104(j) of the Commission's rules it was not necessary for it to obtain separate, individual certification

⁸ Genesis Communications International, Inc. v. National Exchange Carrier Association, Inc. Case No. CV-OO-10362 MMM (SHx) (CD Cal. 2000).

⁹ *Id.*, *Stipulation and Order Staying Action* (filed Oct. 26, 2000).

of its eligibility to obtain distributions of lifeline Assistance revenues and that it was entitled to reimbursement by NECA for EUCL discounts afforded to end users under the California ULTS program.¹⁰ In this regard, Genesis asserts that the Commission's rules established two separate EUCL charge waiver options, that advance certification of carriers was required only for the second of these two options and that the California ULTS program qualified under the first, non-certification program.¹¹

To the extent that there is uncertainty surrounding the availability of Lifeline Assistance revenues for Genesis for particular periods, the Commission can resolve questions most expeditiously by issuing a declaratory ruling resolving the matter.

II. IN THE EVENT THAT THE COMMISSION DETERMINES THAT GENESIS IS OWED RETROACTIVE LIFELINE ASSISTANCE PAYMENTS, IT SHOULD PROVIDE DIRECTION TO THE CURRENT ADMINISTRATOR.

Should the Commission determine that Genesis was eligible to receive Lifeline Assistance funds for discounts provided in periods prior to September 1997, it must clarify that NECA has no responsibility to pay Genesis. Effective January 1, 1998, the Commission appointed the Universal Service Administrative Company (USAC) to administer the Commission's universal service programs (including the Lifeline Assistance mechanism).¹² NECA has long since transferred all universal service fund balances to USAC. Thus, in the event that the Commission determines that additional

¹⁰ Petition at 5.

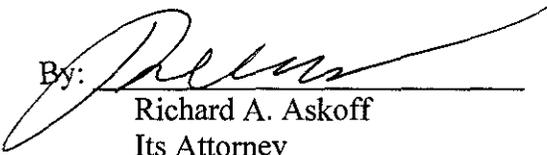
¹¹ *Id.* Genesis here refers to the programs described in sections 69.104(j) and 69.104(k) of the Commission's rules, 47 C.F.R. §§ 69.104(j) and (k).

¹² 47 C.F.R. §§ 54.701 and 54.702. *See generally* Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21 and Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Third Report and Order in CC*

Lifeline Assistance revenues are owed to Genesis, it should direct that such funds be paid by USAC.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, Inc.

By: 
Richard A. Askoff
Its Attorney

April 26, 2001

Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments was served this 26th day of April 2001, by electronic delivery or first class mail, to the persons listed below.

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