USAC
Universal Service Administrative Company

Administrator's Decision on Request for Payment/Refund of High Cost Support

Via Certified Mail

May 6, 2010

Ms. Gayle L. Gouker
Chief Financial Officer
Smith Bagley, Inc.
1500 S. White Mountain Road, Suite 103
Show Low, AZ 85901

Re: Interstate Access Support Payments in Covered Locations

Dear Ms. Gouker:

Your letter of February 25, 2010 requests, on behalf of Smith Bagley, Inc. (SBI), a refund of support for lines in covered locations (CL) study area codes (SACs): 459001, 499009 and 509002 that had been deducted by operation of the nationwide cap on Interstate Access Support (IAS) paid to competitive eligible telecommunications carriers (CETCs).

On May 1, 2008, the Federal Communications Commission (FCC or Commission) released an order capping the level of High Cost Program support CETCs in each state are eligible to receive at the March 2008 level of support available in the state, on an annualized basis.[1] Your letter cites to paragraph 32 of the *Interim Cap Order*, which states, "[w]e permit competitive ETCs serving Covered Locations to continue to receive uncapped high-cost support for lines served in those Covered Locations." Your letter also cites to paragraph 33, which states: "If a competitive ETC serves lines in both [CLs] and [non-CLs] (or only [CLs]), [USAC] shall determine the amount of additional support – after application of the interim cap – necessary to ensure that a competitive ETC receives the same per-line support amount as the incumbent LEC for the lines qualifying for the exception." (footnote omitted). You conclude that based on the language from these two paragraphs, that SBI is entitled to high cost support in Covered Locations that is "free of both the statewide cap and the nationwide IAS cap."

However, the exception to the interim cap on CETC high cost support that is discussed in your letter applies to the statewide cap on CETC high cost support that is adopted at paragraph 26 of the *Interim Cap Order*. The FCC explains that "we adopt an interim, emergency cap on the amount of high-cost support that competitive [ETCs] may receive. Specifically . . . total annual competitive ETC support for each state will be capped at the

[1] *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for designation as Eligible Telecommunications Carriers, RCC Minn., Inc. & RCC Atlantic, Inc. N.H. ETC Designation Amendment*, Order, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122, ¶¶ 1, 26 (2008) (hereinafter *Interim Cap Order*).

level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis . . . . [W]e adopt a limited exception [to this cap] for [CETCs] serving in [CLs]." *Interim Cap Order* at ¶ 1. The CL limited exception was adopted by the FCC at paragraph 32 in the *Interim Cap Order*, as noted in your letter.

This limited CL exception, however, is not applicable to the nationwide cap on IAS that was also established by the FCC at paragraph 35 in the *Interim Cap Order*. Paragraph 35 of the *Interim Cap Order*, states: "...we find it necessary to adjust the calculation of IAS for both incumbent and competitive ETCs. . . . The annual amount of IAS available for competitive ETCs shall be set at the amount of IAS that competitive ETCs were eligible to receive in March 2008 on an annual basis." Thus, both incumbent LECs, as well as CETCs, are subject to the nationwide IAS cap set at paragraph 35 in the *Interim Cap Order*. Further, unlike the interim cap adopted at paragraph 26 of the *Interim Cap Order*, the Commission did not provide any exceptions to the operation of the nationwide IAS cap. Thus, the language of the *Interim Cap Order* does not support your argument that the limited CL exception to the statewide cap on CETC high-cost support also applies to the nationwide IAS cap that was set at paragraph 35.

The Commission, at paragraph 35 of the *Interim Cap Order,* also directed: "...USAC to calculate and distribute IAS for each pool to eligible carriers consistent with existing IAS rules." *Id.* at ¶ 35. Accordingly, USAC calculates IAS and total CETC High Cost support pursuant to the *Interim Cap Order* as follows:

1. Total IAS uncapped demand is determined nationwide for all incumbent LECs and CETCs. As noted in paragraph 35 of the *Interim Cap Order*, there are two pools of capped IAS, one for incumbent LECs and one for CETCs.

2. Then, the nationwide IAS cap amount for CETCs is applied against total CETC IAS demand to produce a reduction factor to ensure all CETC IAS remains under the nationwide IAS cap.

3. The reduction factor is then applied to each CETC's IAS uncapped demand to produce the eligible amount of IAS that is available to each CETC.

4. USAC takes the amount of reduced IAS and adds each CETC's other uncapped CETC High Cost Program component demand to produce an aggregate of High Cost Program demand for each CETC. This calculation is done on a state by state basis to determine the statewide CETC demand for the High Cost Program.

5. The total state uncapped CETC High Cost Program demand is compared to the state's baseline for CETC High Cost support, annualized based on the amount of High Cost support CETCs were eligible to receive in March 2008. A statewide

reduction factor is calculated to ensure all CETC High Cost support remains under the interim cap established in paragraph 26 of the *Interim Cap Order*.

6. Each CETC in the state then has its High Cost support reduced by the computed statewide reduction factor. However, if the CL limited exception set forth in paragraph 31 of the *Interim Cap Order* applies, then, as set forth in paragraph 33 of the *Interim Cap Order*, USAC will "determine the amount of additional support –after the application of the interim cap– necessary to ensure [the CETC] receives the same per-line support amount as the incumbent LEC for lines qualifying for the exception."

7. If the CL exception applies, USAC will add back the amount of CETC High Cost support that was reduced by the interim cap adopted at paragraph 26 of the *Interim Cap Order*. However, because incumbent LECs and CETCs are both subject to the nationwide cap on IAS established at paragraph 35 of the *Interim Cap Order*, that amount of IAS is not added back pursuant to the CL exception for the interim cap. As noted above, the Commission did not provide any exceptions for the operation of the nationwide IAS cap.

Consistent with the requirements of the *Interim Cap Order*, USAC applies the nationwide IAS cap on CETC support regardless of the CL exception set forth in paragraphs 32-33 of the *Interim Cap Order*. As explained above, the CL exception applies to the CETC interim cap, but not to the nationwide IAS cap. USAC calculates CETC IAS for CLs in accordance with existing IAS rules, as directed by the Commission. USAC has and will continue to pay IAS for CETCs serving CLs in accordance with the *Interim Cap Order*.

With regard to the SACs identified above, USAC properly calculated Smith Bagley's November 2009 IAS for lines in CLs and no refund/payment of support beyond what was paid is due.

If you wish to appeal this decision, you may file an appeal with the FCC. Detailed instructions for filing appeals are available at:

http://www.usac.org/hc/about/filing-appeals.aspx.

Sincerely,

//s//
Karen Majcher
Vice President, High Cost & Low Income Division