

**David Cosson**  
ATTORNEY AT LAW

2154 Wisconsin Ave, N.W.  
Washington, D.C. 20007

Telephone (202) 333-5275  
Telecopier (202) 333-5274

December 15, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

By Electronic Filing

Re: Grande Communications Networks, LLC, Request for Review of Decision of the Universal Service Administrator. Rural Independent Competitive Alliance, Petition for Declaratory Ruling; Blackfoot Communications, Inc., Request for Review of Decision of Universal Service Administrator. WC Docket No. 06-122.

Ex Parte Notice

Dear Ms. Dortch:

On December 14, 2011, Steven A. Augustino, representing Grande Communications, LLC, Gregory W. Whiteaker, representing Blackfoot Communications, Inc. ("Blackfoot"); and myself, representing the Rural Independent Competitive Alliance ("RICA"), met with Vickie S. Robinson, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau (the "Bureau"). Joining the meeting by conference call were Claudia Fox, Carol Pomponio and Chin Yoo of the Bureau and William Squires, Senior Vice President and General Counsel of Blackfoot.

We began the discussion of the pending proceedings by emphasizing that the CLECs represented in the above proceedings do not oppose the establishment of rules by the Commission that would require them to make equitable and non-discriminatory contributions to support Universal Service on a prospective basis. Rather, the CLEC's dispute the authority of the Bureau to establish, by form instruction, an obligation of CLECs to report a portion of their local service revenue as interstate. Such an obligation may only be instituted through a notice and comment rulemaking by the Commission, and such a proceeding has not occurred.

In response to staff questions regarding the local service offerings, we explained that in some cases CLECs may establish an element designated “customer line charge” or similar wording as part of their local exchange rate structure. These elements are useful to consumers in a competitive environment because they allow a more “apples to apples” comparison with the rates of the ILEC. These charges are intended to recover only the cost of providing intrastate service within the local exchange. The CLEC rates are filed in state tariffs where required by applicable state law, and are not intended to be, or denominated as, federal charges. Where the CLEC is required to contribute to a state USF, the revenues are included in the base for that contribution.

We also explained that the Commission has not applied its jurisdictional separations rules to CLECs and that there is no existing restriction prohibiting the CLECs from electing to determine that their costs of originating and terminating interstate access traffic is recovered entirely through interstate access charges filed pursuant to the Commission’s benchmark rules.

Finally, we stressed the importance of timely action on the pending items. Until the Commission resolves the pending requests, USAC will continue to apply its interpretation to other CLECs, which will result in more appeals before the Commission. Moreover, delay harms CLECs financially, as, in many cases, CLECs are making monthly payments, under protest.

Attached is a summary of the issue that was distributed to the meeting participants.

Please direct any questions on this matter to me.

Sincerely yours

David Cosson  
Counsel to Rural Independent Competitive Alliance

Attachment

cc: Vickie Robinson  
Claudia Fox  
Carol Pomponio  
Chin Yoo

## Imputation of an Interstate Portion To CLEC Local Service Revenue

### 1. Origin of Issue

USAC auditors concluded CLECs failed to follow Form 499-A Instructions to identify an interstate portion of fixed local exchange services, citing page 25 of the 2010 instructions to FCC Form 499-A. CLECs paid under protest, RICA filed Petition for Declaratory Ruling on behalf of its members. Blackfoot and Grande have filed appeals of USAC audits.

### 2. Description of CLEC Local Service Offerings

The CLECs offer local and long distance service to subscribers and interexchange access to carriers in the same manner as ILECs. Local service provides calling within a local (not interstate) exchange at rates specified in state tariffs. Local service rates are intended to recover the costs of service within the exchange and no portion of cost of providing interstate originating or terminating access. The level of rates is not regulated by state commissions. The costs of providing interstate switched access are recovered through tariffed interstate switched access charges.

### 3. No FCC rules prescribe jurisdictional allocation of CLEC investment and expenses.

ILECs are subject to rate regulation at both the state and federal level for services provided over facilities used for both inter- and intrastate services. Accordingly, per *Smith v. Illinois Bell*, the investments and expenses must be allocated between the jurisdictions in order to avoid gaps or overlaps. The Commission's Part 36 Rules establish the allocation for ILECs, but not CLECs. The FCC requirement that ILECs recover a portion of their interstate costs through subscriber line charges is within its authority to prescribe rates to recover costs subject to its jurisdiction. The SLC revenues are, accordingly, interstate revenues, the rates for which are filed in interstate tariffs.

CLECs are not rate regulated at the state level and the FCC jurisdictional separations rules have never been made applicable to CLECs. Accordingly there is no federal rule establishing, or requiring a CLEC to establish, an interstate portion of the investment and expenses used to provide local exchange service. The CLECs have not filed interstate tariffs for subscriber line charges.

### 4. The Bureau is without authority to establish a binding requirement that CLECs identify an interstate portion of fixed local exchange service revenues.

The sole source of the USAC auditors' claim is the cited provision of the Instructions to Form 499-A which were prescribed by the Bureau. Because the requirement to identify a portion of local exchange service revenue has a material effect on a CLEC's contribution obligation, the instruction constitutes a new substantive obligation, but one which was not established by statute or pursuant to a valid notice and comment rule making proceeding. The Commission has expressly denied the Bureau delegated authority to create substantive USF requirements.

Assuming *arguendo*, the Bureau had such delegated authority, no APA compliant rulemaking proceeding was conducted.

5. CLECs are not opposing the establishment of rules requiring equitable and non-discriminatory contributions to support Universal Service.

CLECs do not dispute that their contribution obligations to support Universal Service should be equitable, non-discriminatory, and competitively neutral. The sole issue is their contention that such obligations must be established by the Commission in a notice and comment rule making proceeding conducted in accordance with the Administrative Procedure Act.