

SNR Denton US LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005-3364 USA

Todd D. Daubert
Partner
todd.daubert@snrdenton.com
D +1 202 408 6458
T +1 202 408 6400
F +1 202 408 6399
snrdenton.com

December 10, 2012

FILED/ACCEPTED

DEC 10 2012

VIA E-MAIL

Marlene Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

Re: Coral Wireless d/b/a Mobi PCS
Request for Review of the Decision by Universal Service Administrator
CC Docket No. 96-45; WC Docket No. 05-337
Request for Confidential Treatment

Dear Sir or Madam:

On behalf of Coral Wireless d/b/a Mobi PCS ("Mobi PCS"), enclosed please find an original and 4 copies each of Mobi PCS'

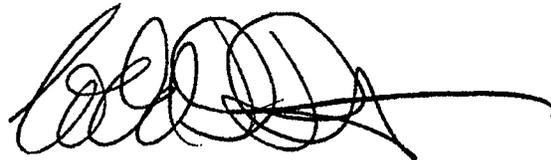
- (Confidential) Request for Review of the Decision by Universal Service Administrator; and
- (Public) Request for Review of the Decision by Universal Service Administrator.

A second copy of this letter has been included on top of the filing package for stamp and return receipt purposes. Please stamp and return the top copy for our records.

Pursuant to 47 C.F.R. § 54.721(c), a copy of Mobi PCS' Request for Review of the Decision by Universal Service Administrator has been served on the Universal Service Administrative Company.

Please contact the undersigned if you have any questions or concerns.

Sincerely,



Todd D. Daubert

Counsel to Coral Wireless d/b/a Mobi PCS

No. of Copies rec'd
List ABCDE

0+4

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

FILED/ACCEPTED

DEC 10 2012

Federal Communications Commission
Office of the Secretary

In the Matter of

Request for Review of The Decision By
Universal Service Administrator

Federal-State Joint Board on Universal Service CC Docket No. 96-45

High-Cost Universal Service Support WC Docket No. 05-337

REQUEST FOR REVIEW AND PETITION FOR WAIVER

Pursuant to 47 C.F.R. §54.719, Coral Wireless d/b/a Mobi PCS (“Coral”) requests review of a final decision of the Universal Service Administrative Company (“USAC”) to recover [begin confidential] [REDACTED] [end confidential] in previously paid High Cost Program Support from Coral based on an audit conducted by Deloitte & Touche (“Deloitte”) under the auspices of the FCC’s Office of Inspector General (“OIG”) Universal Service Fund Audit Program.¹ The erroneous USAC decision to exclude certain lines from Coral’s working line count culminated a fundamentally flawed proceeding in which USAC forced Coral to respond to an alleged “finding” by Deloitte without ever giving Coral a copy of the final audit report that contained the “finding.” Despite claiming to be based on this Deloitte “finding,” the erroneous USAC decision confirms that no such “finding” has ever existed. The USAC decision is also unlawful because it is inconsistent with the FCC’s rules and it departs from Commission precedent without explanation. Accordingly, the Commission should reverse the USAC decision to reclaim support from Coral as unlawful. To the extent the Commission nonetheless concludes that the disputed lines should be excluded, Coral seeks a waiver of either (a) the rule(s) requiring the exclusion or

¹ Letter from Universal Service Administrative Company to Mr. Barry Rinaldo, Coral Wireless (Oct. 9, 2012) (Att. 1 - Final USAC Decision).

(b) the rule phasing-out support to competitive Eligible Telecommunications Carriers (“ETCs”) – 47 C.F.R. §54.307(e) – to reduce the phase-down for Coral by the amount to be recovered.

I. STATEMENT OF ISSUES

Coral sells prepaid wireless services in Hawaii. When an end user opens a prepaid account with Coral, Coral assigns the end user a telephone number and activates it in the public switched telephone network (“PSTN”). Once Coral has opened an account and activated a number on behalf of a customer, Coral manages the account pursuant to its customer policy (the “Policy”), which each end user accepts when opening an account with Coral.

Coral follows the Policy to determine the date upon which a customer account is closed. On the date an account is closed, Coral disconnects the telephone number – which makes the number available for assignment to a different end user – and takes the necessary steps to ensure that the number is no longer active in the PSTN. From the date Coral activates a telephone number upon the opening of an account until the date Coral disconnects the telephone number and closes the account, the telephone number is controlled by the Coral customer (and can be ported away to another carrier), and all calls to the number are routed to Coral’s network on behalf of the customer. Coral sets the rates for its prepaid services based on all of the rights that customers have from the date upon which Coral opens a customer’s account until the date upon which Coral closes that customer’s account pursuant to the Policy, and thus prepayments generate revenue for an account until the account is closed.

The Policy permits Coral to begin routing non-emergency outbound calls to Coral customer service beginning thirty days after a customer has made his or her last prepayment, during which time the customer can also call customer service directly. Immediately upon making another payment, outbound calls are no longer routed through customer service. However, if a customer does not make any payments for ninety days, Coral closes the account.

When calculating the line count for FCC Form 525, which USAC used during the audit period to determine High Cost USF support, Coral included all active customer accounts – *i.e.*, accounts that Coral had opened on behalf of an end user and had not closed on or before the reporting date. During its audit of Coral, Deloitte considered whether accounts should be included in the line count for FCC Form 525 while Coral was routing calls associated with those accounts to Coral customer service pursuant to the Policy. Deloitte ultimately issued a disclaimer of opinion, explaining that “*the FCC rules do not clearly indicate these lines would be considered other than working loops*” properly included in Coral’s line count for FCC Form 525.² USAC’s decision nonetheless to recover funding from Coral raises the following issues:

1. Was USAC’s decision unlawful because USAC imported the concept of “revenue producing” from an inapplicable section of Part 36 of the FCC’s rules to exclude certain prepaid lines because the customer had not made a payment in the past thirty days?
2. Was USAC's decision to recover high cost support from Coral unlawful because USAC improperly disregarded a final finding by the Independent Auditor that the definition of “working loops” as used in Section 54.307 is “unclear” as applied to wireless ETCs, and instead relied upon canons of statutory interpretation to reach a contrary decision?
3. Did USAC violate its statutory obligations (*e.g.*, 31 U.S.C. § 3512(b)(3)) and regulatory obligations (*e.g.*, 47 C.F.R. § 54.702) by (a) failing to identify the factual and legal basis of its decisions in a sufficiently clear manner so that Coral could respond meaningfully to those decisions; and (b) reversing the determination of the Independent Accountants’ Report via a series of letters and internal memos that failed to address the concerns raised by Coral in its responses and the Independent Auditor in its final report?

II. SUMMARY OF THE FACTS

In 2008, USAC engaged the services of Deloitte to audit Coral’s compliance with Part 54, Subparts C and D of the FCC’s rules. During the audit, Deloitte considered whether certain lines had been improperly included in Coral’s line count for FCC Form 525 because Coral, pursuant to the Policy, was routing calls from those lines to Coral Customer service (the

² Att. 2 - Independent Accountants Report at 1.

“Disputed Lines”). Deloitte ultimately disclaimed an opinion in its final Independent Accountants’ Report, because it was “unable to clearly determine whether [the Policy] is in conflict with the FCC rules” and thus it was “unable to express, *and [did] not express*, an opinion on [Coral’s] compliance.”³ In support of its decision, Deloitte accurately noted that, “[a]part from Section 54.307(b) of the FCC’s Rules, no FCC rules, orders or decisions explicitly address the definition of CETC working loops for universal service support purposes.”⁴

On April 21, 2011, Wayne Scott of the USAC Internal Audit Division (“IAD”) notified Coral by letter that the IAD had “reviewed the audit work papers and supporting documentation completed by the Firm” and “determined that the Firm has obtained adequate documentation to support the working loop finding.”⁵ Accordingly, the IAD “extend[ed] the opportunity for Coral Wireless to review the Firm’s updated finding.”⁶ The USAC April 2011 Letter did not provide Coral with any information regarding, let alone supporting, the “updated finding.”

Coral requested, but was not provided, a copy of the “updated finding.” Despite the impossibility of responding to an “updated finding” that Coral had never seen, Coral responded on May 20, 2011 in order to preserve its rights and raise several objections, including:

- USAC had never provided the “updated finding” to Coral, identified the auditor, nor explained the process used to reach the “updated finding,” in violation of the Government Accounting Standards (“GAGAs”) and applicable law;
- USAC apparently had interpreted an unclear rule in order to reverse the findings of the Independent Accountants’ Report in violation of 47 C.F.R. §54.702(c); and

³ Att. 2 - Independent Accountants’ Report (emphasis added). The process included numerous conversations among Coral, Deloitte, and Warinner, Gesinger & Associates, LLC, (“WGA”), USAC’s consulting firm for conducting quality assurance reviews of its externally sourced audits.

⁴ Att. 2 - Independent Accountants’ Report at 3.

⁵ Att. 3 - USAC April 2011 Letter at 1.

⁶ *Id*

- The “updated finding” impermissibly expanded the scope of the audit to include FCC rules that (a) were not noticed in the underlying audit and (b) did not apply to wireless carriers or the Universal Service Fund rules.⁷

To date, USAC has never responded to Coral’s extensive filing or the objections it raised.

On June 12, 2012, the USAC High Cost Management sent a one page notification to Coral that “USAC will recover [begin confidential] ██████████ [end confidential] from the August 2012 support payment.”⁸ The USAC June 2012 Letter again failed to address Coral’s arguments or identify the audit upon which the recovery would be based. The USAC June 2012 Letter provided a 60 day window to appeal USAC’s decision to reclaim support.

On July 19, 2012, USAC responded to Coral’s repeated requests for a copy of the final audit report upon which USAC based its decision to recover support by providing an internal USAC memorandum dated August 22, 2011 that repeated the text of pages 3 to 5 of the USAC April 2011 Letter nearly verbatim.⁹ Without any information about the legal basis for USAC’s decision to recover support or a copy of the audit report upon which it was based, Coral, through no fault of its own, was not afforded the opportunity to mount an effective challenge to USAC’s decision to recover funding. Accordingly, Coral requested by letter dated August 10, 2012 that USAC either (a) rescind the June 2012 Letter notifying Coral of USAC’s decision to recover funding or (b) provide Coral with a copy of the final audit report upon which USAC had based its decision to recover funding and an additional 60 days from receipt of the report to respond to the June 2012 Letter. Finally, in order to protect its rights, Coral reasserted all of its previous

⁷ Att. 4 - May 2011 Coral Response. The April 21, 2011 Letter had established a response date of May 6, 2011. However, USAC authorized an extension of the deadline to May 20.

⁸ Att. 5 – USAC June 2012 Letter at 1.

⁹ Att. 6 – USAC August 2011 Memo.

objections and, in the alternative, asked that USAC treat Coral's letter as an appeal of the USAC decision to recover funding announced in the USAC June 2012 Letter.¹⁰

USAC neither rescinded the USAC June 2012 Letter nor provided Coral with a copy of the audit report upon which its decision to recover support was based. Rather, USAC treated Coral's August 2012 Letter as an appeal and, on October 9, 2012, denied the appeal (the "Final USAC Decision"). Inexplicably, the Final USAC Decision identifies, for the first time, Deloitte's Independent Accountants' Report as the basis for its decision to recover support from Coral despite Deloitte's decision to disclaim an opinion. Stranger yet, without any response to Coral's arguments, the Final USAC Decision repeats the same errors that USAC first announced in the April 2011 Letter. For example, without citation or quotation, USAC claims that the "Audit Firm . . . determined that Coral Wireless did not understand the Rules governing the reporting of line counts for High Cost Program support purposes."¹¹ However, the Independent Accountants' Report does not contain any statement that could rationally be characterized in this manner. Indeed, the Beneficiary's understanding of the rules is irrelevant to the Auditor's finding. Similarly, USAC states that "part of the follow-up work, USAC IAD reviewed the audit work papers and supporting documentation completed by the Audit Firm, including the working loop finding noted by the Audit Firm."¹² However, Deloitte made no working loop finding, apart from concluding that "we are unable to express, *and we do not express*, an opinion on [Coral's] compliance" because, "[a]part from Section 54.307(b) of the FCC's Rules, no FCC rules, orders or decisions explicitly address the definition of CETC working loops for universal service support purposes."¹³ It is this Final USAC Decision that Coral challenges here.

¹⁰ Att. 7 - Coral August 2012 Request.

¹¹ Att. 1 - USAC Final Decision at 1.

¹² *Id*

¹³ Att. 2 - Independent Accountants' Report at 3.

Throughout the audit and appeal process, USAC forced Coral to shadow box phantasms of USAC's creation. For example, USAC required Coral repeatedly (a) to respond to an adverse "working loop finding" that USAC never provided because, as the USAC Final Decision confirmed, it never existed, and (b) to request a copy of the final audit report upon which USAC based its decision to recover support, which USAC inexplicably refused to provide. USAC also refused, at every stage in the proceeding (including in the USAC Final Decision), to address Coral's position on the merits despite numerous substantive filings by Coral. Although due process and the GAGAS require USAC to engage meaningfully with objections raised by a petitioner such as Coral,¹⁴ USAC failed in every way and at every stage to do so here.

III. USAC VIOLATED SECTION 54.702(C) OF THE FCC'S RULES BY ENGAGING IN CREATIVE INTERPRETATION OF UNCLEAR FCC RULES

In order to receive high cost USF support, "a competitive eligible telecommunications carrier must report to the Administrator the number of **working loops** it serves in a service area."¹⁵ Section 54.307 of the FCC's rules defines "working loops" for the purpose of universal service support as "the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service."¹⁶ On its face, this definition was written for wireline, rather than wireless, carriers; wireless carriers do not have or use the wireline facilities mentioned in the definition. Because none of the terms used in the definition of "working loops" refers to facilities that wireless carriers could use to provide service, the definition of working loops for universal service

¹⁴ See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) ("It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'"); *Withrow v. Larkin*, 421 U.S. 35, 46 (1975) (ruling that due process "applies to administrative agencies which adjudicate as well as to courts"). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). See *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

¹⁵ 47 C.F.R. § 54.307(b).

¹⁶ *Id.*

purposes is inherently unclear with respect to wireless ETCs, as Deloitte confirmed in the Independent Accountants' Report.¹⁷ USAC has never provided any support for a contrary conclusion.

The FCC's rules expressly provide that USAC "may not make policy, *interpret unclear provisions of the statute or rules*, or interpret the intent of Congress", and that where "the Act or the Commission's rules are unclear, or do not address a particular situation, [USAC] shall seek guidance from the Commission."¹⁸ As such, USAC cannot rely upon traditional tools of statutory interpretation in implementing the FCC's rules, but must instead seek FCC guidance in any instance where the interpretation or an application of a rule is not clear.

The Final USAC Decision makes clear that USAC, not Deloitte, made the adverse finding upon which the decision to recover support is based. To justify its adverse finding, however, USAC necessarily engaged traditional tools of statutory interpretation, relying on a wide range of provisions (many not remotely applicable to competitive ETCs) to determine how the term "working loop" as defined in Section 54.307 should apply to wireless competitive ETCs.¹⁹ For example, USAC relied upon extrinsic evidence – an unrelated and inapplicable definition from an appendix to Part 36 of the FCC's rules – to introduce a new term that is not used in Section 54.307 itself – "revenue generating."²⁰ In addition to being wrong, the interpretive technique that USAC employed, which reflects the canons of statutory construction used by courts and agencies to interpret unclear statutes and regulations, is expressly forbidden

¹⁷ Disagreement among professionals about the meaning of a rule, particularly when the professionals include the independent auditors hired to review compliance (which applicable law requires to be qualified), confirms that the rule is ambiguous. See GAGAS §§ 2.08, 2.09 (incorporating the American Institute of Certified Public Accountants ("AICPA") Statements on Auditing Standards ("SAS")); AICPA ET § 201.01(A) (requiring members to "undertake only those professional services that the member's firm can reasonable expect to be completed with professional competence.").

¹⁸ 47 C.F.R. § 54.702(c) (emphasis added).

¹⁹ See Att. 1 - USAC Final Decision at 3 (citing FCC Rules Part 32 - Uniform System of Accounts, Part 36 - Jurisdictional Separation Procedures, Part 64 – Miscellaneous Rules, Part 69 - Access Charges).

²⁰ Att. 1 - USAC Final Decision at 3.

to USAC by Section 54.702(c).²¹ Under these circumstances the rules require USAC to seek formal guidance from the Commission, which USAC did not do.

IV. USAC’S INTERPRETATION OF SECTION 54.307 IS IMPERMISSIBLE

USAC’s interpretation of Section 54.307, the rule upon which USAC based its decision to recover support, is fundamentally inconsistent with the applicable law. USAC’s interpretation introduces the concept of “revenue producing” from Part 36 of the FCC’s rules into the definition of “working loops” in Section 54.307(b), which does not make any reference to revenue.²² Part 36 of the FCC’s rules, which governs the jurisdictional separations process for wireline incumbent local exchange carriers (“ILECs”), does not apply to competitive carriers like wireless CETCs. Because wireline ILECs have functioning loops to every single house, regardless of whether the house purchases services from the ILEC, the reference to “revenue producing” lines in Part 36 is designed to ensure that only loops being used for a customer at the time are counted for jurisdictional separations purposes. By contrast, wireless CETCs do not have a “loop equivalent” in place until a number is assigned to a customer and configured in the network, so the Part 36 “revenue producing” distinction is irrelevant for wireless carriers.

The definition of Working Loops for the purposes of the separations process also focuses solely upon whether the loop generates revenue rather than upon the specific timing of the payment of such revenue. As explained above, the prepaid rates that Coral establishes are designed to generate revenue from the point the payment is made until the account is closed pursuant to the Policy, and thus the Disputed Lines all generate revenue even if Part 36 were relevant. In any event, the revenue generating distinction found in Part 36 is irrelevant for universal service purposes, which is why Section 54.307 does not refer to revenues. Specifically,

²¹ See e.g., *United States v. Cooper*, 396 F.3d 308, 310 (3rd Cir. 2005) (“if the language of the statute is unclear, we attempt to discern Congress’ intent using the canons of statutory construction”).

²² See 47 C.F.R. § 36 *et. seq.*, Appendix – Glossary (“Working Loop - A revenue producing pair of wires, or its equivalent, between a customer’s station and the central office from which the station is served.”).

Section 54.307's definition of working loop does not focus upon whether a line is producing a specific type of revenue at a particular moment in time, which the FCC confirmed when it provided instructions to carriers about how to report universal service data for analysis purposes:

- Working loops include loops used for all services: message and special, *revenue and non-revenue*.
- Non-working loops include defective loops, loops reserved for some future activity, and loops with a pending connect status.²³

This definition, while not binding, reflects the FCC's interpretation of the term "working loops" for universal service purposes. Importantly, this definition is agnostic as to revenue generation. Coral notes that, under this definition, none of the lines at issue here were "non-working loops" because the lines were neither defective, reserved for future activity (Coral does not reserve telephone numbers for customers or offer seasonal use telephone numbers), nor designated as pending connect (which is inapplicable to wireless carriers). The FCC confirmed its view that lack of payment or usage by a customer does not immediately disqualify a line for universal service support merely because the line is not "revenue producing."²⁴

USAC's myopic interpretation of "revenue producing" also runs contrary to industry practice, in part because it cannot be applied by any carrier. Until a telephone number for a line is disconnected, it is impossible for any carrier – post-paid or pre-paid – to know on any given date whether the line is "revenue producing" under USAC's interpretation. For example, every carrier offering a post-paid plan has no idea whether any given customer will pay for the services it has already received, and nearly every carrier, *whether offering a post- or pre-paid plan*,

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 12 FCC Rcd 9803, 9805, ¶ 7 (1997) (emphasis added).

²⁴ *See Telecommunications Carriers Eligible for Universal Service Support (Virgin Mobile Designation as an Eligible Telecommunications Carrier)*, DA 10-2433, WC Docket No. 09-197, ¶ 24, n.53 (rel. Dec. 29, 2010). Under this decision, lines remain eligible for universal service support as long as the customer uses the service by the 89th day, which is entirely consistent with Coral's policies.

continues to provide service for a defined time period after the last payment. Under USAC's interpretation, if a customer ultimately chooses not to make another payment, the line would be deemed, retroactively, to have been "non-revenue producing" for the 30-90 days before disconnection. By contrast, if the customer makes another payment before disconnection, the line would be deemed, retroactively, to have been "revenue producing" the entire time. For this reason, no carrier could comply with USAC's interpretation, because it is impossible to know whether any given line is "revenue producing" as of the reporting date. For this reason, carriers typically count each line assigned to a customer as a "working line" until it is disconnected.

V. USAC'S INTERPRETATION OF SECTION 54.307 COULD BE APPLIED BY THE FCC ONLY ON A PROSPECTIVE BASIS

The FCC cannot apply USAC's interpretation of Section 54.307 on a retroactive basis. The courts and the FCC have consistently held that when a rule is unclear, the FCC's subsequent interpretation of that rule should be given prospective application only, because retroactive application of a new or changed policy is "extraordinary" and is disfavored by the law.²⁵ In the *Intercall Order*, for example, the FCC addressed a question of interpretation where it had been unclear to the industry and public whether a particular class of telecommunications providers was subject to the USF contribution requirements, and applied its interpretation on prospective basis only, in part because the ambiguity was due in part to the Commission's own actions.²⁶

²⁵ *Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 745-46 (D.C. Cir. 1986) ("When parties rely on an admittedly lawful regulations and plan their activities accordingly, retroactive modification or rescission of the regulation can cause great mischief."); *see also Bowen v. Georgetown*, 488 U.S. 204, 208-09 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result."); *Motion Picture Association of America, Inc. v. Oman*, 750 F. Supp. 3, 8 (D.D.C. 1990) (explaining that a long "line of Supreme Court decisions encourag[e] prospective rulemaking as the method for clarifying murky statutes or issuing needed regulations.").

²⁶ 23 FCC Rcd 10731 (2008).

The case against retroactive application of USAC’s interpretation here is even stronger than it was in the *Intercall Order*. Specifically, the definition of the term “working loops” in section 54.307 is so unclear as applied to wireless carriers that the wireless industry, through PCIA, asked the FCC to confirm that PCIA’s interpretation – the same interpretation Coral uses – is correct.²⁷ Despite assuring the wireless industry and the public in general that it was considering the requested clarification,²⁸ the FCC has yet to do so, which has contributed to the ambiguity during the decade since the wireless industry openly asked the FCC whether the interpretation Coral uses was acceptable. As such, the retroactive “clarification” proposed by USAC is impermissible because “some new liability is sought to be imposed on individuals [like Coral] for past actions which were taken in good-faith reliance on [FCC] pronouncements.”²⁹

VI. THE FCC SHOULD GRANT CORAL A ONE-TIME WAIVER FOR THE RECOVERED SUPPORT IF THE DISPUTED LINES ARE EXCLUDED

To the extent the Commission concludes that the disputed lines should be excluded, Coral requests a one-time, partial waiver of either Section 54.307(b) or Section 54.307(e) of the FCC’s rules so that USAC would not deduct [begin confidential] ██████████ [end confidential] from the continuing support provided to Coral.³⁰ As Coral continues to adjust to the financial challenges created by the FCC’s phase out of support to competitive ETCs, failure to provide the requested waiver(s) would harm consumers by limiting the availability of wireless services in rural areas.

²⁷ See PCIA Petition at 5 (“PCIA requests that the Commission clarify or, as necessary, reconsider this requirement with respect to wireless carriers and find that a ‘working loop’ for a wireless carrier is designated by a working phone number.”).

²⁸ *Federal-State Joint Board on Universal Service*, 18 FCC Rcd 22559, 22639 (2003) (declining to rule on PCIA’s petition requesting clarification of the definition of “working loop” as applied to wireless carriers because the Commission was considering the same issue in its ongoing portability proceeding).

²⁹ *NLRB v. Bell Aerospace*, 416 U.S. 267, 295 (1974).

³⁰ See 47 C.F.R. 54.307(b) (requiring competitive ETCs to report “working loops”); 47 C.F.R. § 54.307(e) (phasing down support to competitive ETCs in 20% increments over 5 years).

The Commission may waive its rules for “good cause shown.”³¹ Specifically, the Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.³² The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³³ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³⁴ Coral’s waiver request meets this standard.

Coral is a facilities-based wireless provider that serves wireless customers throughout the entire state of Hawaii. Coral’s business plan emphasizes the provision of services in rural, insular, and high-cost areas, including many areas designated as Hawaiian Home Lands. As a competitive carrier exclusively serving Hawaii, Coral has an excellent track record of providing high-quality services to consumers throughout Hawaii.

Recent universal service reforms have already taken a heavy toll on Coral, adversely impacting Coral’s ability to maintain and expand its network in the rural areas of Hawaii. Specifically, the phase-down has already reduced the amount of support that Coral planned to receive (and incorporated into its network expansion plans) by over [begin confidential] [REDACTED] [end confidential] in Q1 of 2013 alone. This drastic reduction has forced Coral to dramatically cut costs and network expansion plans, which ultimately harms the rural residents of Hawaii, including subscribers in Hawaiian Home Lands. The [begin confidential] [REDACTED]

³¹ 47 C.F.R. § 1.3. The Commission can also waive pursuant to Section 1.3 the waiver process established in the USF/ICC Reform Order. *USF/ICC Reform Order* ¶ 539 (establishing standards for applying for waiver of competitive ETC phase down rules).

³² *NE Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *aff’d by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

³³ *WAIT Radio*, 418 F.2d at 1159; *NE Cellular*, 897 F.2d at 1166.

³⁴ *NE Cellular*, 897 F.2d at 1166.

[end confidential] that USAC would withhold if the FCC does not reverse the USAC Final Decision would represent [begin confidential] [REDACTED] [end confidential] of Coral's Q1 2013 support. This sudden loss of revenue would, effectively, accelerate the sharp reductions in USF support caused by the phase-out of support to all competitive ETCs, and require Coral to halt its expansion plans and harm network maintenance programs in some of the highest cost areas of Hawaii. These types of "shocks to service provider that may result in service disruptions for consumers" are exactly the type of interruption the Commission sought to avoid when it chose to spread the phase-down over a five-year period.³⁵ By permitting Coral to retain the support it has already invested in network expansion during the phase-out of legacy USF support, the Commission would prevent unnecessary harm to residents in rural Hawaii relating to a program that has already been eliminated.

VII. CONCLUSION

For the foregoing reasons, Coral respectfully requests the Commission to reverse the USAC decision to recover support from Coral as unlawful or, in the alternative, to grant a waiver of its rules so that Coral's phased-down support is not further reduced to the harm of consumers.

Respectfully submitted,



Todd D. Daubert
J. Isaac Himowitz
SNR DENTON US LLP
1301 K Street, N.W.,
Suite 600 East Tower
Washington, DC 20005
(202) 408-6400

³⁵ USF ICC Reform Order ¶ 513.

(202) 408-6399 (facsimile)
todd.daubert@snrdenton.com

Counsel for Coral Wireless d/b/a Mobi PCS

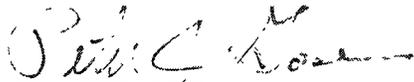
Date: December 10, 2012

DECLARATION OF PETER GOSE

I, Peter Gose, declare and state as follows:

1. My name is Peter Gose. I am the Director - Regulatory Affairs at Coral Wireless d/b/a Mobi PCS ("Coral"). My business address is Pacific Guardian Center - Makai Tower, 733 Bishop Street, Suite 1200, Honolulu, HI 96813.
2. I make this declaration based upon my own personal knowledge and my familiarity with the matters recited herein. I could and would testify to under oath to the same should I be called as a witness before the Court.
3. At all times relevant to the issues addressed in the attached letter, I held the position of Director - Regulatory Affairs at Coral, and was responsible for compliance with FCC rules and communications with the USF Administrator.
4. I have reviewed the attached Request for Review of The Decision By Universal Service Administrator prepared by counsel on behalf of Coral. All factual assertions made in that letter are true and correct to the best of my knowledge.
5. This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct.



Peter Gose
Director - Regulatory Affairs
Pacific Guardian Center - Makai Tower
733 Bishop Street
Suite 1200
Honolulu, HI 96813

Executed on December 10, 2012



Administrator's Decision on High Cost Program Beneficiary Appeal

Via Email and Certified Mail

October 9, 2012

Mr. Barry Rinaldo
Coral Wireless d/b/a Mobi PCS
Chief Financial Officer
733 Bishop St., Suite 1200
Honolulu, HI 96813

Re: Coral Wireless d/b/a Mobi PCS Report HC-2008-126

Dear Mr. Rinaldo:

The Universal Service Administrative Company ("USAC"), at the direction of the Federal Communications Commission ("FCC") Office of Inspector General (OIG), previously engaged the services of the independent accounting firm Deloitte and Touché, LLP (the "Audit Firm") to perform an examination and provide an opinion concerning Coral Wireless d/b/a Mobi PCS ("Coral") compliance with 47 C.F.R. Parts 54 and Part 36, and relevant FCC orders (collectively, the "Rules") and to assist in fulfilling FCC requirements related to the Improper Payments Information Act ("IPIA")¹ for High Cost Program ("HCP") support disbursements made by USAC during the period July 1, 2007 through June 30, 2008. [REDACTED]

[REDACTED] (The Independent Accountant's Report is provided in **Attachment A** to this correspondence.) [REDACTED]

USAC's Internal Audit Division ("IAD") performed, consistent with its authority under 47 C.F.R. § 54.707, follow-up work on Coral and other audit reports that were issued with a [REDACTED]. As part of the follow-up work, USAC IAD reviewed the audit work papers and supporting documentation completed by the Audit Firm, including the working loop finding noted by the Audit Firm. USAC IAD determined that the Audit Firm had obtained adequate documentation to support the working loop finding.

On April 21, 2011, USAC IAD sent you a letter inviting Coral to provide an updated response to the working loop finding noted by the Audit Firm (*see Attachment B* to this correspondence). Coral provided an updated response to USAC IAD on May 20, 2011

¹ See 31 U.S.C. § 3122; Public Law 107-300, Stat. 2350, November 26, 2002.

Mr. Barry Rinaldo
Coral Wireless
October 9, 2012
Page 2 of 5

(the “Coral May 20 Response”). USAC IAD and USAC High Cost and Low Income Program operations staff (collectively, “USAC”) reviewed the Coral May 20 Response. The information provided by Coral did not change USAC’s concurrence with the Audit Firm’s working loop finding.

[REDACTED]
[REDACTED]
[REDACTED]. On July 19, 2012, Wayne Scott, USAC Vice President of IAD, sent an email to Peter Gose of Coral, stating that the June 12, 2012 notice issued to Coral was “based on the follow [sic] audit work performed in 2011” (see **Attachment D** to this correspondence). Mr. Scott attached to his email a copy of the Coral May 20 Response and a USAC memo issued by Mr. Scott to Karen Majcher, USAC Vice President of the High Cost and Low Income Division, dated August 22, 2011 (see **Attachments E-1 and E-2** to this correspondence), discussing the follow-up work performed using the information contained in the Coral May 20 Response and the amount of previously disbursed HCP support to be recovered from Coral.

USAC received a letter from Todd D. Daubert, Esq. of SNR Denton US LLP, dated August 10, 2012, requesting that USAC “voluntarily withdraw its June 12, 2012 Letter to [Coral] and rescind its purported decisions to recover high-cost support from Coral” and requesting “that this letter be treated as an appeal to [USAC]...of the purported decision to reclaim support from Coral.” USAC also received an email from Isaac J. Himowitz, Esq., also of SNR Denton, on August 10, 2012 requesting that USAC rescind its June 12, 2012 letter or, if USAC chooses not to rescind the letter, then treat the email and attachments as an appeal. On August 17, 2012, USAC sent an email to Mr. Himowitz and Coral stating that USAC would treat the matter as an appeal of the USAC decision to recover previously disbursed funds from Coral. USAC received another letter from Mr. Daubert, dated August 21, 2012, which, among other things, demanded a copy of the “Final Audit Report.” Mr. Daubert sent a subsequent letter, dated August 24, 2012, to David A. Capozzi, Esq., USAC Acting General Counsel, purporting to articulate the contents of voicemails Mr. Capozzi left for Mr. Daubert concerning this matter. Mr. Capozzi sent an email to Mr. Daubert on August 24, 2012 stating his disagreement with Mr. Daubert’s characterization of the contents of the aforementioned voicemails. In a subsequent telephone conversation between Mr. Daubert and Mr. Capozzi, Mr. Capozzi indicated that USAC would send a follow-up correspondence to Coral concerning the issues raised in Mr. Daubert’s letters to USAC, which is the intent of this correspondence.

Consistent with Mr. Daubert’s letter of August 10, 2012 and Mr. Himowitz’s email of the same date, USAC has considered this matter as an appeal of the USAC decision of June 12, 2012 to recover previously disbursed HCP support from Coral.

Mr. Barry Rinaldo
Coral Wireless
October 9, 2012
Page 3 of 5

Decision on Appeal: Denied. USAC has determined that [REDACTED] of previously disbursed High Cost Program support should be recovered.

Discussion

The following discussion addresses portions of the correspondence received from Coral and Mr. Daubert that are germane to Coral's receipt of HCP support and whether Coral complied with FCC rules in applying for and receiving such support.

On page 7 of the Coral May 20, 2011 Response, Coral stated that USAC IAD mischaracterized the scope of the audit. USAC IAD acknowledges that the audit period in the original memo to Coral, dated April 21, 2011 (the "April 21 Memo") was in error. The audit period for the original audit as well as the scope of the follow-up work performed was for disbursements to Coral from July 1, 2007 to June 30, 2008. The error in the April 21 Memo does not change the scope of the follow-up work performed; and therefore, does not negate the audit finding noted by the Audit Firm and USAC IAD's concurrence with the audit finding.

On page 7 of Coral's May 20 Response, Coral alleged that USAC improperly increased the scope of the follow-up work to include references to 47 C.F.R. Parts 32, 36, 64, and 69. Under the appropriate auditing standards, USAC IAD reserves the right to increase the scope of work to "reduce audit risk to an appropriate level for the auditors to provide reasonable assurance that the evidence is sufficient and appropriate to support the auditors' findings and conclusions." (*Generally Accepted Government Auditing Standards*, GAO-07-162G, ¶¶ 7.05, 7.07 (2007 Revision, as amended)). USAC's review of Coral's compliance with 47 C.F.R. Parts 32, 36, 64, and 69 is appropriate because 47 C.F.R. § 54.307(a)(1) states "a competitive eligible telecommunication carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in Sec. 54.5 of this chapter, shall receive support for each line it serves in a particular service area based on the support the incumbent LEC would receive for each such line." Including references to 47 C.F.R. Parts 32, 36, 64, and 69 provides guidance on how an Incumbent Local Exchange Carrier (ILEC) would receive support for each such line it serves in a particular service area, which directly impacts how Coral Wireless, a competitive carrier, must report its lines to receive the same per-line support amount an ILEC would receive. In addition, 47 C.F.R. § 54.707 authorizes USAC to "establish procedures to verify...support amounts provided to a carrier...." USAC's follow-up work on the Audit Firm's audit was part of a procedure established for similarly situated audits of HCP support beneficiaries.

On page 9 of the Coral May 20 Response, Coral disputes USAC IAD's conclusion in the USAC April 21 Memo that Coral demonstrated a "lack of understanding" as the reason for the [REDACTED]. It appears Coral believes that its policy to report lines that are 60 to 90 days beyond expiration is in accordance with the Rules. However, Coral's policy does not comply with the Rules. 47 C.F.R., Appendix to Part 36 defines working

Mr. Barry Rinaldo
Coral Wireless
October 9, 2012
Page 4 of 5

loop as a “revenue producing pair of wires, or its equivalent, between a customer’s station and the central office from which the station.” The lines in question are not revenue producing working loops for which an ILEC would receive support because no end users are paying for service nor is there any voice or data traffic being transmitted over these facilities. In accordance with 47 C.F.R. § 54.307, because an ILEC cannot receive HCP support for lines that are not revenue producing working loops, the expired prepaid lines reported by Coral are also not eligible for HCP support. Failure to report only the working loops which are “in-service” as of the reporting date would result in incorrect High Cost Program payments, which is a violation of 47 C.F.R. § 54.307(b). Coral is not in compliance with Section 54.307(b) because expired pre-paid lines should not be considered a working loop and as such should not be reported for HCP support purposes.

On page 16 of the Coral May 20 Response, USAC IAD acknowledges Coral’s request for the disclaimer of opinion to remain in effect without modification. The purpose of the original audit and the follow-up work was to assist the FCC in fulfilling its requirements related to the IPIA. Disclaimers of opinions were reported to the FCC as 100% improper for the entire disbursement amount reviewed. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] reported as of December 31, 2006 where the Audit Firm determined that the end user’s prepaid service had expired and no additional payments were made to reactivate the line.

With regard to Mr. Daubert’s August 10, 2012 and August 21, 2012 letters demanding that USAC provide Coral with a final copy of the audit report, as discussed above, USAC previously provided Coral with a copy of the report. The report was sent to you via certified mail. The delivery receipt returned to USAC shows that Ms. Nina Daniels signed for the package on July 30, 2010.

Mr. Daubert’s letter of August 10, 2012 asserts on page 19 that “the FCC recently confirmed its view that lack of payment or usage by a customer does not immediately disqualify a line for universal service support merely because the line is not ‘revenue producing’” and cites to the FCC’s designation order of Virgin Mobile as an eligible telecommunications carrier for participation in the federal universal service Lifeline Program (*see Telecommunications Carriers Eligible for Universal Service Support (Virgin Mobile Designation as an Eligible Telecommunications Carrier)*, DA 10-2433, n.53). We note that the language cited to by Mr. Daubert in his letter is applicable to the time periods Virgin Mobile can obtain Lifeline support benefits for a particular inactive line. This designation order for a carrier participation in the Lifeline Program is not controlling precedent for another carrier’s eligibility for benefits under the federal universal service High Cost Program.

Mr. Barry Rinaldo
Coral Wireless
October 9, 2012
Page 5 of 5

USAC Action and Coral Appeal Rights

USAC hereby denies Coral's appeal and will recover of [REDACTED] n previously paid High Cost Program support within sixty (60) days of the receipt of this decision. USAC will offset any amounts to be recovered against support Coral is scheduled to receive through the monthly High Cost Program support disbursement process. If the recovery amount exceeds the current month's disbursement, USAC will continue to net the recovery amount against subsequent monthly disbursements. USAC also reserves the right in its discretion and at any time to issue an invoice to Coral for all or a portion of the amount to be recovered. If any further errors are found in Coral's reporting for the period under audit herein, USAC reserves the right to recover the financial impact of those deviations.

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54 Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/hc/about/program-integrity/appeals.aspx>.

//s// Universal Service Administrative Company

***Universal Service
Administrative Company
High Cost Support
Mechanism***

*Independent Accountants' Report on Compliance
Relating to High Cost Support Received by Coral
Wireless LLC d/b/a Mobi PCS (HC-2008-126) for the
Year Ended June 30, 2008*

INDEPENDENT ACCOUNTANTS' REPORT

Universal Service Administrative Company
Federal Communications Commission

We were engaged to examine the compliance of Coral Wireless LLC d/b/a Mobi PCS (Beneficiary), relative to Study Area Code No. 629002, with 47 C.F.R. Part 54, Subparts C and D of the Federal Communications Commission's ("FCC") Rules and related Orders governing Universal Service Support for the High Cost Program ("HCP") relative to disbursements of \$14,971,972 for telecommunication services made from the Universal Service Fund during the year ended June 30, 2008. Management of the Beneficiary is responsible for the Beneficiary's compliance with those requirements.

As discussed in Finding HC2008BE126_F01, FCC Rule §54.307(b) defines working loops for competitive eligible telecommunications carriers as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. The Beneficiary interprets the term working loop to include any line from the moment the Beneficiary connects the line by assigning a particular telephone number to a specific customer until the Beneficiary disconnects the line and returns that telephone number to available inventory for assignment to a new customer. The Beneficiary has the right to place various limits upon the service in the 60 to 90 days preceding the disconnect date. During the 60 to 90 days preceding the disconnect date, the Beneficiary considers these lines as working loops and includes them in line counts submitted in accordance with FCC Rule §54.307. Line counts are used in the calculation of the Beneficiary's Universal Service Support, which totaled \$14,971,972 for the year ended June 30, 2008. We were unable to satisfy ourselves concerning the acceptability of the inclusion of lines 60 to 90 days preceding their disconnect date as the FCC Rules do not clearly indicate these lines would be considered other than working loops as described above.

As we are unable to clearly determine whether the Beneficiary's policy is in conflict with the FCC Rules as discussed in the preceding paragraph, we are unable to express, and we do not express, an opinion on the Beneficiary's compliance referred to above.

This report is intended solely for the information and use of the Universal Service Administrative Company and the Federal Communications Commission, and is not intended to be and should not be used by anyone other than these specified parties.

INSERT DATE

cc: Management of the Beneficiary