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

In the Matter of	)	
	)	
Request for Review by	)	
Nemont Telephone Cooperative, Inc of Decision of	)	CC Docket No. 96-45
Universal Service Administrator	)	

REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR

Nemont Telephone Cooperative, Inc., and its subsidiary Project Telephone Company ("Nemont"), pursuant to Sections 54.719(c), 54.720(a) and 54.721(a) –(c) of the Commission's Rules request that the Commission review the decision of the Universal Service Administrative Company ("USAC") to recover $256,892[1] in previously disbursed High Cost Support payments following an audit.[2] Nemont requests the Commission find that USAC should not have totally eliminated support for investments and expenses that Nemont had not properly documented or

[1] Nemont seeks review only of USAC's actions with respect to Issues 1 and 4 of the audit and does not contest $92,248 of the amount, leaving $164,604 in dispute.

[2] Letter from Universal Service Administrative Company to Aimee Dietrich, Nemont, March 1, 2013. The letter was signed only: "Universal Service Administrative Company." (included as Attachment A). On April 30, 2013 Nemont filed a timely appeal of the decision with the High Cost and Low Income Committee of USAC pursuant to Sections 54.719(a) and 54.720(b) of the Commission's Rules which state respectively: " (a) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), may seek review from the appropriate Committee of the Board, as defined in § 54.705" and "(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a), shall file such request within sixty (60) days of issuance of the decision by the division." On May 7, USAC Acting General Counsel responded (Attachment B) that the USAC Board had delegated its authority to decide appeals to three USAC executives so that the March 1 decision constituted a decision of the High Cost and Low Income Committee. Recognizing that Nemont may not have been aware of this delegation, the Acting General Counsel stated that an appeal to the FCC could be taken of his letter pursuant to Part 54. This appeal is filed less than 60 days from the date of that letter.

had incorrectly recorded on its books. Rather, as allowed by Generally Accepted Government Accounting Standards ("GAGAS"), the USAC audit should have utilized "alternative audit procedures" to determine what reasonable amounts of costs were legitimately includable in determining Nemont's support.

I Factual Background

On September 12, 2011, USAC Internal Audit Division[3] completed an audit of Nemont Telephone Cooperative, Inc. and its wholly owned subsidiary, Project Telephone Company with respect to its costs reported for 2006 for which high cost support was subsequently received. (Attachment D) On November 14, 2011 USAC Nemont notice of its intent to recover $256,892 of previously disbursed support. (Attachment E) On January 20, 2012 Nemont appealed the recovery in a letter addressed to the High Cost and Low Income Division of USAC. (Attachment F). As described above, on March 1, 2013 (14 months later) USAC staff rejected that appeal (Attachment A), and subsequently rejected Nemont's appeal to the High Cost and Low Income Committee of the USAC Board on the basis that the Board had delegated its appeal resolution authority to a committee of employees. (Attachment B)[4]

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[3] The text of the September 12, 2011 Report states that the audit was conducted by USAC Internal Audit Division, however the document's subject line is "Independent Auditor's Report…."

[4] The Board cited no authority under the Commission's Rules that would permit it or the High Cost and Low Income Committee to delegate their authority to an staff committee. Section 54.719(a) states: "Any person aggrieved by an action taken by a division of the Administrator… may seek review from the appropriate Committee of the Board, as defined in Sec. 54.705. Section 54.705(c) assigns oversight of high cost support to the High Cost and Low Income Committee and gives it authority to make decision concerning, *inter alia* "(iv) Performance of audits of beneficiaries….." There is no express authority to delegate this responsibility to the USAC staff. Because the Board of Directors is appointed by the FCC Chairman (54.703(c)(3), delegation of the review authority is inconsistent with the intended structure of USAC. The minutes of the July 24,2001Board meeting reflect that the delegation

In response to Nemont's inquiry as to the amount and timing of the recovery USAC replied that it would recover the undisputed amounts but would place the remaining amount on hold provided Nemont filed an appeal with the FCC by June 10, 2013 (Attachment E). This appeal follows pursuant to that schedule.

II Issues Presented

This appeal challenges the USAC decisions to (1) disregard entirely Nemont's investment in Materials and Supplies for the purpose of ascertaining the cost basis for its High Cost Support because Nemont had not properly documented their allocation among its subsidiaries; and (2) similarly disregard Nemont's pole rental expenses for 2006 because Nemont had incorrectly recorded its (lower) 2005 expenses as 2006 expenses. In both cases Nemont asserts that USAC erred by disallowing the entire amounts. Rather, the auditors should have employed "alternative audit procedures" to determine a reasonable amount of the two categories of costs or allowed Nemont to provide alternative justification. Alternatively, Nemont challenges the legality of the purported delegation by the USAC Board to its staff of authority to resolve audit appeal as inconsistent with the Commission's rule granting a right to such appeal.

III Basis for Reversal of USAC Decision

USAC's March 1, 2013 letter reiterates only that because Nemont's accounting records were incorrect, which Nemont does not dispute, that no costs related to material and supplies or pole rentals will be recognized. USAC does not contest the fact that Nemont made substantial investments and incurred substantial costs that were used and useful in providing services

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resolution was discussed with FCC staff who did not object (p.28), however it is well established that oral statements of the staff do not override Commission rules. Nevertheless, Nemont requests that the Commission resolve this appeal pursuant to Sections 719(c) *et seq.*.

supported by the High Cost Fund. Section 54.707 of the Rules provides USAC authority to "suspend or delay" support where the carrier provides inadequate verification, but necessarily implies that USAC has no authority to permanently disallow support where reasonable verification is subsequently provided.

A. Materials and Supplies

Nemont's January 20, 2012 Appeal to USAC provided a detailed reconciliation of the inventory amounts to its general ledger, which USAC agreed approximated the amounts recorded for the time period in question. This reconciliation provided documentation on Materials and Supplies by warehouse location, which provided only very minor variances from the year end 2006 Materials and Supplies utilized in the 2006 cost study and HCLS data submission. The variance for Nemont Telephone Cooperative, Inc. was a mere $5,348 overstatement on cost study Materials and Supplies of $1,857,946, or a variance of less than 0.3%. The variance for Project Telephone Company was $13,935 on cost study Materials and Supplies of $943,347, or a variance of less than 1.5%. These are insignificant variances that would be very unlikely to be deemed material in the context of a financial audit. USAC nevertheless decided that despite this confirmation the original calculations were not justified and that the entire support amount should be recovered.

Accounting standards allow and even guide auditors to implement alternative audit procedures when the initial audit plan cannot be carried out because the information requested by the auditors is not provided. Both the American Institute of Certified Public Accountants ("AICPA") Professional Standards and Generally Accepted Government Auditing Standards ("GAGAS") provide guidance on the requirements and expectations of auditors in the performance of the audit. USAC's audit was to be conducted in accordance with GAGAS, as identified in its findings letter dated September 12, 2011[5]. AICPA Professional Standards require auditors to "Obtain sufficient relevant data to afford a reasonable basis for conclusions on recommendations in relation to any professional services performed."[6] GAGAS allows that, "If auditors believe that it is likely that sufficient, appropriate evidence will not be available, they 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."[7]

USAC did not follow the guidance provided by the AICPA and GAGAS in the conduct of the Nemont audit. When Nemont was not initially able to produce the specific documentation requested by the auditors, USAC in effect determined that the entire amount of Materials and Supplies was not used and useful and would be excluded from the calculation of support. However, it was the auditors' obligation to obtain sufficient relevant data to come to a reasonable basis for their conclusions under the AICPA Professional Standards. Sufficient relevant data, but not the specific data that the USAC auditors initially requested was available and presented by Nemont, but the auditors refused to implement the alternative audit procedures allowed under GAGAS and consider this data.

GAGAS also states that, "Using the auditors' professional knowledge, skills, and experience to diligently perform, in good faith and with integrity, the gathering of information and the objective evaluation of the sufficiency and appropriateness of evidence is a critical

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5 See Attachment D.

6 *AICPA Professional Standards* – General Standards ET 201.

7 *Government Auditing Standards*, GAO-12-331G, Section 6.39 (2011 revision)

component of audits."[8] Sufficient and appropriate information was available, which the USAC auditors chose not to gather. Rather, they strictly adhered to their initial audit procedures, despite AICPA and GAGAS guidance that would have allowed them to modify these procedures to accomplish the objectives of the audit.

The USAC auditors could have implemented a variety of alternative audit procedures to determine the appropriate level of Materials and Supplies to be included in the calculation of support. The easiest approach would have been to utilize the Materials and Supplies inventory by location provided by Nemont in the appeals process to determine that the very minor variances in the cost study and HCLS data submission were not material and make no adjustment to support. However, if USAC cannot accept this documentation for some reason, then it could have implemented its own alternative allocation methodology. For example, the auditors could have performed an alternative allocation of Materials and Supplies based on Telecommunications Plant Under Construction ("TPUC"), the primary driver of Materials and Supplies, by Nemont affiliate to determine the appropriate amount of Materials and Supplies to be assigned to each affiliate.

While Nemont stands by its initial allocation as being reasonable, it recently conducted an analysis of the impacts of utilizing this TPUC based allocation on its High Cost Support. The result of this revised allocation of Materials and Supplies is a reduction in support of $31,823, which is $123,684 less than the $155,507 reduction in support that USAC determined as a result of the complete elimination of Materials and Supplies. This $31,823 is made up of a reduction of $7,139 in 2008 HCLS support (based on 2006 costs as reported in 2007) and a reduction of

[8] *Government Auditing Standards*, GAO-12-331G, Section 3.62 (2011 revision)

$24,684 in 2008 ICLS support (based on 2008 costs as forecasted and later trued up). The analysis that Nemont conducted is summarized in Table 1, attached.

Later, when Nemont provided additional relevant information on the allocation of Materials and Supplies, which closely approximated the original allocation, the USAC auditors chose not to include this information in the performance of their audit. Utilizing this data to perform alternative audit procedures would have produced even smaller variances than those summarized above. Either of the alternative audit procedures identified here would have allowed USAC's auditors to "obtain sufficient relevant data to afford a reasonable basis for conclusions on recommendations in relation to" the conduct of their audit in conformance with AICPA standards. However, the USAC auditors chose not to "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" in accordance with Government Audit Standards.

B. Pole Rental Expenses

As with Materials and Supplies, USAC does not challenge the fact that Nemont had substantial pole rental expenses for 2006. In fact its complaint is that Nemont's error in recording the expenses resulted in too *little* expense rather than too much. Nemont incorrectly recorded pole rental expense for 2005 in 2006 and pole rental expense for 2006 in 2007. Rather than implementing alternative audit procedures and calculating what support would have been had the pole rental expense been recorded in the correct year, the auditors chose to completely eliminate the pole rental expense from the calculation of support. Had the USAC auditors implemented alternative audit procedures and determined that actual pole rental expense for

2006 was greater than the amount recorded by Nemont, they would have come to the conclusion that Nemont's support was understated in 2008. In other situations where support is understated, USAC has either netted the impact with overpayments as a result of other findings in the same audit or eliminated the underpayment. In this case, USAC did neither, and completely eliminated the pole rental expense, which reduced Nemont's 2008 support by $8,897.

As discussed previously, auditors have an obligation under AICPA and Government Auditing Standards to obtain sufficient and relevant data as a basis for conclusions and to 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. The USAC auditors did not do so in analyzing the pole rental expense included in the calculation of support. As a result, Nemont's pole rental expense is not only understated, it is completely eliminated.

III Conclusion -- Request for Commission Action

For the foregoing reasons, Nemont requests that the Commission grant its request for review and direct USAC to accept Nemont's revised figures as the basis for its settlements during the audit period. Alternatively, Nemont requests that the Commission determine that the purported delegation of authority to determine audit appeals by the High Cost and Low Income Committee was *ultra vires* and direct the Committee to consider Nemont's appeal.

Respectfully submitted

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Attachments:

A. USAC Letter March 1, 2013

B. Nemont Appeal April 30, 2013

C. USAC Letter May 7, 2013

D. USAC Independent Auditors Report September 12, 2011

E. USAC Letter November 14, 2011

F. Nemont Appeal January 20, 2012

G. Table 1