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December 9, 2013

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Grande Communications Networks, LLC Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122

Dear Ms. Dortch:

Grande Communications Networks, LLC,¹ by its attorneys, submits this *ex parte* in response to the November 25, 2013 Declaratory Ruling issued by the Wireline Competition Bureau (the "Bureau").² In the *Declaratory Ruling*, the Bureau concluded that competitive local exchange carriers ("CLECs") are not required to report any portion of fixed local service revenues as interstate on the FCC Form 499-A.³ For the reasons described below, Grande respectfully submits that the Bureau's *Declaratory Ruling* controls one issue in Grande's pending appeal of a Universal Service Administrative Company ("USAC") audit decision - the

¹ This letter is submitted on behalf of Grande Communications Networks, LLC and its subsidiaries, Grande Communications ClearSource, Inc. and Denton Telecom Partners I, LP (collectively, "Grande").

² *See In re: Universal Service Contribution Methodology; Petition for Declaratory Ruling by the Rural Independent Competitive Alliance; Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, Docket No. 06-122, Declaratory Ruling and Order, DA 13-2254 (WCB Nov. 25, 2013) ("Declaratory Ruling").

³ *See Declaratory Ruling*, ¶¶10-12.

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classification of Grande's "customer line charge", a per line local exchange fee.⁴ Grande requests a prompt grant of its appeal in its entirety or, in the alternative, grant of the relevant portion of its appeal and an instruction to USAC to refund the amounts assessed to - and already paid by - Grande.

The Bureau's *Declaratory Ruling* was issued in response to two recent petitions for Commission review of USAC directives similar to those made in Grande's audit. In 2011, the Rural Independent Competitive Alliance ("RICA") submitted a Request for Declaratory Ruling after USAC directed several RICA members to allocate a portion of their fixed local exchange service revenues to the interstate jurisdiction on the Form 499-A.⁵ RICA requested the Commission declare that "end-user revenues received by CLECs pursuant to rates charged for exchange access service entirely within one state are intrastate revenues" and that none of these revenues were required to be reported as jurisdictionally interstate.⁶ In July 2011, Blackfoot Communications, Inc. ("BCI") submitted a Request for Review of a USAC Decision Letter requiring BCI to identify and allocate a portion of its fixed local exchange service revenues as interstate.⁷ BCI explained that it did not charge a federal SLC and its "subscriber access charge" was intrastate fixed service revenue.⁸ The *Declaratory Ruling* granted both of these filings.⁹ The Bureau ruled that CLECs are not required to collect a federal SLC.¹⁰ Moreover, the Bureau confirmed that CLECs are free to recover their non-traffic sensitive costs of providing interstate access in whatever manner they deem appropriate, subject to Section 61.26's limitations on CLEC access rates.¹¹

Grande respectfully submits that the Bureau's *Declaratory Ruling* controls an issue in Grande's Request for Review and that issue should be resolved consistent with the

⁴ See *In re: Grande Communications Request for Review of Decision of the Universal Service Administrator*, CC Docket No. 96-45 (filed Dec. 28, 2009) ("Request for Review").

⁵ Petition of the RICA Members for Declaratory Ruling Regarding Imputation of Interstate Revenue, at 2, WC Docket 06-122 (April 26, 2011) ("RICA Petition").

⁶ *Declaratory Ruling*, ¶7.

⁷ Request for Review by Blackfoot Communications, Inc. of Decision of Universal Service Administrator, at 5, WC Dkt. 06-122 (July 22, 2011) ("BCI Request").

⁸ *BCI Request* at 3.

⁹ *Declaratory Ruling*, ¶8.

¹⁰ *Declaratory Ruling*, ¶12.

¹¹ *Declaratory Ruling*, ¶12.

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Declaratory Ruling. In 2008-2009, USAC audited Grande's FCC Form 499-A filings covering calendar years 2004-2006.¹² Among other findings, USAC concluded Grande had failed to allocate a portion of its "customer line charge" revenues as jurisdictionally interstate.¹³ On December 28, 2009, Grande submitted its Request for Review of the audit decision, arguing that none of Grande's intrastate customer line charge revenues had to be reported as jurisdictionally interstate.¹⁴

USAC's conclusion was based on a misunderstanding of language then appearing in the Form 499-A instructions. At the time, those instructions stated that "[f]ilers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of line 404."¹⁵ However that instruction referred to filers with *federal subscriber line charges*.¹⁶ Grande had not tariffed or collected a federal subscriber line charge.¹⁷ Grande further explained that its "customer line charge" was a per-line, end user local service charge for the cost of providing dialtone services.¹⁸ The charge was not a federal charge for interstate service, *i.e.*, a federal subscriber line charge.¹⁹ Moreover, Grande reported the revenues from the customer line charge as purely intrastate revenues and assessed all intrastate taxes and fees, including Texas USF charges.²⁰ Grande asserted its customer line charge revenues were purely intrastate and, as a CLEC, Grande was not required to collect a federal

¹² See *Request for Review* at 3.

¹³ See *Request for Review* at 6-7. See also, *Independent Auditor's Report on Grande Communication Networks, Grande Communications ClearSource, and Denton Telecom Partners*, dated June 8, 2009, adopted by USAC Board of Directors, dated October 22, 2009 ("Audit Report").

¹⁴ *Request for Review* at 8-9.

¹⁵ See 2005 Form 499-A Instructions at 22-23; 2006 Form 499-A Instructions at 21-22; 2007 Form 499-A Instructions at 24-25. It is important to note that this language was removed from the Form 499-A instructions beginning in 2013. See 2013 Form 499-A Instructions at 15. Accordingly, it is clear the Commission does not intend to require non-incumbent LECs to allocate portions of fixed local exchange service revenues as interstate.

¹⁶ See 2005 Form 499-A Instructions at 22-23; 2006 Form 499-A Instructions at 21-22; 2007 Form 499-A Instructions at 24-25.

¹⁷ *Request for Review* at 7.

¹⁸ *Request for Review* at 7.

¹⁹ *Request for Review* at 7.

²⁰ *Request for Review* at 7-8.

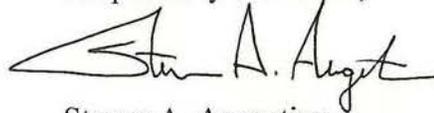
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subscriber line charge.²¹ Consequently, USAC could not require Grande to allocate any portion of its local exchange service revenues to an interstate jurisdiction on the FCC Form 499-A.

As the Bureau recognized in the *Declaratory Ruling*, the issues raised in the RICA and BCI petitions are the same as the issue Grande raised in its Request for Review.²² Therefore, the *Declaratory Ruling* mandates the same result with respect to Grande's Request for Review. Grande respectfully requests the Commission act promptly to grant Grande's entire Request for Review. In the alternative, Grande requests the Commission at least grant that portion of Grande's Request for Review regarding the customer line charge. Because Grande already paid the additional USF assessed in the USAC audit, it expects to receive a refund of USF charges upon the Commission's grant of its appeal. Grande therefore also urges the Commission to direct USAC to refund the amounts assessed to, and already paid by, Grande.

Please contact the undersigned at (202) 342-8612, if you have any questions regarding this filing.

Respectfully submitted,



Steven A. Augustino
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cc: Carol Matthey
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²¹ *Request for Review* at 9-11.

²² *Declaratory Ruling*, n.4 ("this issue is also before us in a request for review filed by Grande Communications.").