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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of the )  
Request for Review by Aventure ) WC Docket No. 06-122  
Communication Technology, L.L.C. )  
of Decision of Universal Service Administrator )

**REQUEST FOR REVIEW BY AVENTURE COMMUNICATION  
TECHNOLOGY, L.L.C. OF DECISION OF THE  
UNIVERSAL SERVICE ADMINISTRATOR**

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AVENTURE COMMUNICATION  
TECHNOLOGY, L.L.C.

Its Attorneys

Date: May 5, 2014

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## **I. GENERAL SUMMARY STATEMENT OF INTEREST, ISSUES FOR REVIEW AND RELIEF REQUESTED.**

Pursuant to Sections 54.719(c), 54.721, and 54.722 of the Federal Communications Commission ("Commission") rules, Aventure Communication Technology, L.L.C. ("Aventure") seeks review of findings by the Internal Audit Division of the Universal Service Administrative Company ("USAC") in an audit of Aventure's compliance with High Cost Support Mechanism Rules (USAC Audit No. HC2011BE011) of May 15, 2012.

The IAD report of May 15, 2012 concluded that Aventure incorrectly reported lines associated with calls to conference operators on the Aventure network as USF-Eligible Lines. The report based this conclusion on five findings:

1. The Aventure lines do not carry supported services.
2. The Aventure lines are not "revenue producing".
3. The Aventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Aventure service area, because the conference bridge locations cannot be defined as "end user" premises.
5. Aventure's designation as an Eligible Telecommunications Carrier (ETC) is in doubt.

On December 18, 2012, the USAC High Cost and Low Income Division sent a letter to Aventure asserting a claim for **begin confidential....end confidential** for virtually all high cost funds received by Aventure between 2007 and 2011. (Attachment 1) On February 18, 2013, Aventure filed with USAC a letter of appeal asking the High Cost and Low Income Division to reverse the findings

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of the IAD report. (Attachment 2) In a decision of October 29, 2013, the USAC administrator denied Aventure's letter of appeal of February 18, 2013. The administrator's decision of October 29, 2013 is appended as Attachment 3. On December 24, 2013, Aventure filed with USAC a "Letter requesting Board review" of the administrator's decision of October 29, 2013. The letter requesting Board review is appended as Attachment 4. On January 21, 2014, USAC denied Aventure's letter requesting Board review.

On March 4, 2014, USAC seeks to recover **begin confidential....end confidential** in High Cost program support previously dispersed to Aventure. The letter of March 4, 2014 is appended as Attachment 5. In response to the USAC letter, Aventure has filed the instant appeal.

Aventure seeks review and reversal of the IAD report and USAC administrator's decision on the following grounds:

1. The IAD report and administrator's decision are ultra vires the authority granted USAC by the FCC.
2. The specific findings of the IAD report and the administrator's decision are not supported by evidence or precedent.
3. A substantial portion of the forfeiture or reimbursement sought by USAC is barred by the one year statute of limitations set forth at 47 USC§503(b)(6).

## **II. SPECIFIC ISSUES FOR REVIEW**

### **A. Background and Final Audit Report**

In November 2011, IAD initiated an audit of Aventure. On May 8, 2012, IAD provided Aventure with a draft Detail Exception Worksheet (DEW) and conducted an Exit Conference with representatives of Aventure and their counsel. On May 15, 2012, Aventure, through

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counsel, submitted its opposition to Internal Audit Division Draft Detail Exception Worksheet ("DEW Opposition"). The DEW Opposition made the following points:

1. The DEW conclusions are not supported by an precedent and fail to comport with long established industry practices.
2. The DEW conclusions that Aventure's lines are not "working loops" and are special access lines are wrong as a matter of law and fact.
3. The DEW conclusions that the calls to Aventure's conference operators do not "terminate" in Aventure's service territory, and do not terminate to "End Users" are unsupported and ignore relevant precedent.
4. The DEW relies on an order of the Iowa Utilities Board is based on state law, and is inconsistent with FCC rules.
5. The DEW refuses to consider factors that mitigate the damages it asserts. Imposing a retroactive refund obligation on Aventure would cause irreparable harm.

On May 15, 2012, the IAD issued its IAD Report (USAC Audit No. HC2011BE011).

The report concluded that Aventure incorrectly reported lines associated with calls to conference operators on the Aventure network as USF - Eligible Lines. The report based this conclusion on 5 findings:

1. The Aventure lines do not carry supported services.
2. The Aventure lines are not "revenue producing".
3. The Aventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Aventure service area, because the conference bridge locations cannot be defined as "End User" premises.
5. Aventure's designation as an Eligible Telecommunications Carrier ("ETC") is in doubt.

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On December 18, 2012, the USAC High Cost and Low Income Division sent a letter to Aventure asserting a claim for \$6,454,952.00 in Federal Universal Service High Cost Program support dispersed for the 2007 - 2011 program years. On February 18, 2013, Aventure filed with USAC a letter of appeal asking the High Cost and Low Income Division to reverse the findings of the IAD report. (Attachment 2) On October 29, 2013, the USAC Administrator denied Aventure's appeal. (Attachment 3) On March 4, 2014, USAC sent Aventure an action letter indicating that USAC would seek to recover **begin confidential....end confidential** in High Cost Program support previously dispersed to Aventure for 2007 - 2011 program years. (Attachment 5)

On December 24, 2013, Aventure appealed the October 29, 2013 Administrative's decision to the USAC Board. (Attachment 4) By letter of January 21, 2014, the USAC Board denied Aventure's December 24, 2014 Request for Review. In response to USAC's March 4, 2014, action letter to Aventure (Attachment 5), Aventure has filed this instant appeal.

**B. The IAD Report and Administrative's Decision are ultra vires the authority granted USAC by the FCC.**

Section 54.702(c) of the FCC's rules restricts USAC to applying established FCC precedent, and prohibits USAC from making new policy or interpreting unclear policies:

**"The administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the act or the Commission's rules are unclear, or do not address a particular situation, the administrator shall seek guidance from the Commission". 47 C.F.R. §54.702(c)**

In discussions of specific decisions in the IAD Report and Administrative's Decision below, Aventure will identify numerous instances in which USAC has made new policy

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decisions, and made decisions in areas where the law clearly has not been settled by the Commission. In these instances, the IAD Report and Administrative's Decision are ultra vires USAC's delegated authority, and must be reversed.

**1. The IAD Report and Administrative's Decision disregard the FCC's Statement of the Law.**

Aventure's letter requesting Board review of December 24, 2013, appended hereto as Attachment 4, at pages 5-6 discuss USAC's disregard of the FCC's Statement of the Law and is incorporated by reference.

**2. The specific findings of the IAD Report and the Administrative's Decision are not supported by evidence or precedent and are unsustainable.**

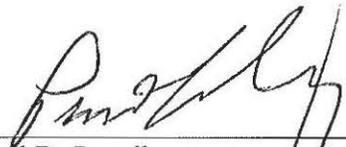
Aventure's argument to USAC, which it incorporates here, is set forth in its letter requesting Board review of December 24, 2013, appended hereto as Attachment 4, at pages 6-13, set forth Aventure's arguments as to why the IAD Report and the Administrative's Decision are not supported by evidence or precedent.

**3. A substantial portion of USAC's refund claim against Aventure is barred by the one year statute of limitations under 47 USC §503(b)(6).**

Section 503(b)(6) of the Communications Act imposes a one year statute of limitations on actions for forfeiture or penalty. The USAC action letter of March 4, 2014, (Attachment 5) seeks forfeiture of USAC's payments made to Aventure between 2007 and 2011. The IAD audit was initiated in November 2011. Any recovery by USAC for USF payments made prior to November 2010, one year before institution of the audit, would be barred by this one year statute of limitations.

### III. CONCLUSION; SUMMARY OF RELIEF REQUESTED

For the reasons set forth herein, Aventure requests that the FCC reverse the IAD audit findings and Administrative's Decision of October 29, 2013. If, as Aventure argues, USAC "made new law" in its audit findings and Administrative's Decision, that decision should have prospective application only. Aventure respectfully requests that USAC's decision to recover **begin confidential....end confidential** in federal Universal Service High Cost Program from Aventure be reversed and dismissed.



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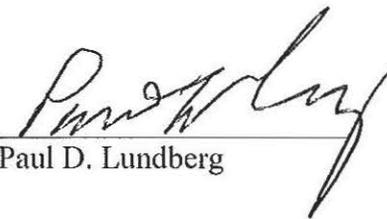
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**Certificate of Service**

I, Paul D. Lundberg do hereby certify that I have caused the foregoing Request for Review by Aventure Communication Technology, L.L.C. of Decision of the Universal Service Administrator to be served on the Universal Service Company at the following address as provided by the Universal Service Administrative Company:

Universal Service Administrative Company  
Letter of Appeal  
Billing, Collections, and Disbursements  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

Dated May 5, 2014.

  
Paul D. Lundberg

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# **ATTACHMENT 1**



*By Certified Mail, Return Receipt Requested*

December 18, 2012

Bradley Chapman  
CFO  
Aventure Communication Technology, LLC  
401 Douglas Street, Suite 409  
Sioux City, IA 51101-1471

Re: Action to be Taken Resulting from High Cost Audit of Aventure Communication Technology, LLC (SAC 359094) Audit Report HC2011BE011

Mr. Chapman:

An audit of Aventure Communication Technology, LLC (Aventure) for Study Area Code (SAC) 359094 was conducted by USAC Internal Audit Division. The final report from that audit was recently sent to the company.

USAC's auditors determined that Aventure included ineligible lines in its quarterly line counts filed in order to receive High Cost Program support for support years 2007 through 2011. As such, USAC will recover all support paid on the ineligible lines outlined in the audit report. For support years 2007 through 2011, USAC will recover [REDACTED] of High Cost Program support. For January 2012 through October 2012, USAC will recover [REDACTED] of frozen High Cost Program support. The total amount of support to be recovered will be [REDACTED].

USAC will recover these previously disbursed High Cost funds from Aventure's February 2013 High Cost Program support payment, which will be disbursed at the end of March 2013. If the recovery amount exceeds the company's disbursement for that month, USAC will invoice and collect any remaining amounts owed.

Beginning with the November 2012 support payments, USAC will reduce Aventure's monthly frozen High Cost Program support to include eligible lines only. Aventure's revised monthly frozen support amount will be [REDACTED].

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. The appeal must be filed within 60 days of the date of this letter as required by 47 C.F.R. § 54.720(a). Detailed instructions for filing appeals are available at:

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

Sincerely,

//s// Universal Service Administrative Company

# **ATTACHMENT 2**

CONFIDENTIAL  
PROPRIETARY

February 18, 2013

VIA E-MAIL

**Jonathan E. Canis**

Partner  
202.857.6117 DIRECT  
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jonathan.canis@arentfox.com

**LETTER OF APPEAL**

High Cost and Lifeline  
Universal Service Administrative Company  
2000 L Street, NW, Suite 200  
Washington, DC 20036  
[HCLI-IndustrySupport@usac.org](mailto:HCLI-IndustrySupport@usac.org)

Re: **LETTER OF APPEAL: Independent Auditor's Report on Aventure Communication Technology, L.L.C.'s Compliance with High Cost Support Mechanism Rules (SAC 359094) (USAC Audit No. HC2011BE011)**

To the High Cost and Low Income Division:

This Letter of Appeal is submitted by Aventure Communication Technology, L.L.C. ("Aventure"), by its undersigned counsel, in response to USAC's letter to Bradley Chapman, CEO of Aventure, dated December 18, 2012, and pursuant to the rules of the Universal Service Administrative Company ("USAC") and Sections 54.719-54.725 of the rules of the Federal Communications Commission ("FCC"), 47 C.F.R. §§ 54-719-54-725. This letter asks USAC to reverse the conclusions set forth in the Independent Auditor Report, issued by USAC and the Internal Audit Division ("IAD"), dated May 15, 2012, and in the USAC Management Response appended to that same document at pages 71-82 (together, the "*IAD Report*"). As Aventure demonstrates in this letter, the *IAD Report* is premised on a factual misunderstanding of the circuits and services at issue, and is inconsistent with the FCC's rules and orders.

The *IAD Report* concludes that Aventure incorrectly reported lines associated with calls to conference operators on the Aventure network as USF-eligible lines. The *Report* bases this conclusion on five findings:

1. The Aventure lines do not carry supported services.
2. The Aventure lines are not "revenue producing."
3. The Aventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Aventure service area, because the conference bridge locations cannot be defined as "end user" premises.

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5. Adventure's designation as an Eligible Telecommunications Carrier ("ETC") is in doubt.

As Adventure discusses in this Letter of Appeal, these findings are wholly unsupported, and cannot be maintained. In fact, Adventure has already made this demonstration in its Opposition to the IAD's draft Detail Exception Worksheet ("DEW"), which was submitted to USAC on May 15, 2012. The *IAD Report* fails to rebut any of Adventure's showings, but rather simply states its disagreement with Adventure's showings, or disregards them altogether. Below, Adventure again addresses the findings of the IAD, and demonstrates that they cannot be supported. Moreover, Adventure demonstrates that IAD can cite no precedent to support its findings and conclusions – all of its interpretations of FCC rule language, and its attempts to extrapolate from FCC decisions not on point, are novel interpretations of the rules, and a case of first impression. While IAD may establish new policies and interpretations regarding these matters, such new decisions can have only prospective effect.

**I. THE IAD REPORT CONTAINS ALL THE ADMISIONS NECESSARY TO PROVE ADVENTURE'S CASE**

As discussed in this Letter of Appeal, the *IAD Report* does not present any precedential support of its conclusion that Adventure incorrectly reported lines carrying voice calls to conference bridges as eligible for High Cost support. Rather, the *Report* simply restates its earlier conclusions and dismisses without substantive analysis the arguments from Adventure's Opposition, or ignores them altogether. The *IAD Report* is significant in one respect, however – it contains admissions of fact and law sufficient to support Adventure's arguments, and to reverse the *IAD Report's* conclusions. These admissions are:

- The FCC's *Connect America Order*<sup>1</sup> "did revise the supported services." Report at 66.
  - The Adventure Opposition cites to this Order as grounds to reverse the *IAD Report's* conclusion that Adventure's calls do not "terminate" in its service area, that it's "end user" customers are not located in its service area, and that Adventure's loops are not "revenue producing." Adventure Opposition at 9,11-12.
  - As discussed further below, the *IAD Report's* attempt to dismiss the applicability of the *Connect America Order* to the audit at issue in this case are wrong as a matter of law. The *IAD Report's* admission of the impact of the *Connect America Order* compels rejection of these findings.
- Adventure provided massive amounts of documentary evidence, which Adventure submitted to demonstrate that it provided terminating access service and that all of its lines are "revenue producing." Opposition at 8. The *IAD Report* states "IAD

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<sup>1</sup> *Connect America Fund*, 26 FCC Rcd 17663 (2011).  
RPP/582546.1

acknowledges that Beneficiary provided the documentation as described.” *IAD Report* at 64-65.

- IAD goes on to argue that all of the documentation provided by Aventure is either inadequate or irrelevant, based on its theory that Aventure’s calls do not “terminate” in its service area, and that Aventure has no “end user” customers in its service area. *IAD Report* at 64-65.
  - As discussed below, IAD’s theories about termination and end users must be dismissed as a matter of law. Absent these theories, Aventure’s evidence is probative of the fact that Aventure’s reported lines are active and “revenue generating,” and IAD’s acknowledgement requires that the evidence be considered in support of Aventure’s case.
- The *IAD Report* concedes that voice grade lines carried over high capacity circuits are eligible for High Cost Support. The *Report* states that, if Aventure was connected to the conference bridges by DS1 lines, instead of DS3s, it could collect USF. *IAD Report* at 61.
  - IAD acknowledges, as it must, that Aventure’s conference bridges are located in its end office facility in Salix, Iowa (*IAD Report* at 62), and that Salix is within the Aventure service area approved by the Iowa Utilities Board (“IUB”) (*id.*). “All calls were terminated at the FCSC’s respective DS3 equipment located at the central office in Salix, Iowa.” *Id.*
  - The term “terminate” on which the *IAD Report* relies, “is not explicitly defined in the audit finding. . . .” *IAD Report* at 62.

These admissions confirm that Aventure has documented its line counts and termination points for the lines it has reported; and that FCC rules govern the services it provides. Below, Aventure demonstrates that IAD’s only stated objections do not reflect incorrect reporting, but rather interpretations of federal telecom law and policy that cannot be justified in light of the precedent that Aventure has provided.

**II. THE CONCLUSION THAT AVENTURE DOES NOT PROVIDE SUPPORTED SERVICES MISREADS THE PLAIN LANGUAGE OF § 54.101 OF THE COMMISSION’S RULES AND IGNORES AVENTUE’S ARGUMENTS**

The primary rationale for the *IAD Report*’s conclusion that Aventure’s reported lines are not eligible for High Cost support is that Aventure’s service to conference operators does not “provide” the functionalities required by 47 C.F.R. § 54.101(a). *IAD Report* at 3, 8, 57-60 and *passim*. On pages 5-6 of the *Report*, the IAD lists the specified “services or functionalities that shall be supported by federal universal service support mechanisms,” and concludes that

Aventure does not provide all of the functions, and so its reported lines are not eligible for High Cost support.

The *IAD Report* can only reach this conclusion by conflating the terms “offering” and “providing.” Section 54.101(b) states that “An eligible telecommunications carrier must offer voice telephone service as set forth in paragraph (a) of this section in order to receive federal universal service support. But IAD reads this provision as requiring an ETC to provide all enumerated services. This inconsistency is illustrated by the *IAD Report’s* summary Condition: “The Beneficiary did not provide the FCSC customers with single-party service or its functional equivalent, access to emergency services, access to operator services, or access to directory assistance. To receive federal universal service support, an ETC must offer each of the services set forth in 47 C.F.R. § 54.101(a).” *IAD Report* at 8 (emphasis added). So while the *IAD Report* correctly reflects the language of the rules, it applies the rules in direct contravention of that language.

Aventure directly addressed this issue in its Opposition at 2-4, and demonstrated that its switch contains all the functions required by § 101.54(a) and (b), and in fact does provide these features to its full-service retail customers. In response, the *IAD Report* simply reasserts the conclusions from the DEW that Aventure does not “provide” these functionalities in terminating calls to conference operators. IAD states that calls to conference bridges are “one way” terminating services, and so do not provide in-bound and outbound calling service (*Report* at 57-58), emergency 911 service (*id.* at 58-59), operator service and directory assistance (*id.* at 59), and concludes that this failure to provide such services renders Aventure’s lines to conference bridges ineligible for High Cost support.

In making this finding, IAD is establishing a new *per se* rule of law – no one-way circuits can be supported by High Cost USF. However, nowhere in the *IAD Report*, the DEW, or in other communications with IAD or USAC personnel has IAD identified any FCC or federal court decision that supports this finding. IAD has had no lack of opportunity to present such precedential support – counsel for Aventure first asked this question of IAD Staff in the DEW post-audit conference call held on May 8, 2012. Aventure made the point that the DEW conclusions were completely unsupported by precedent throughout its Opposition. Finally, Aventure submitted a Freedom of Information Request to the FCC, and copied USAC, on May 15, 2012. That request expressly requested if the FCC, USAC or the courts had ever issued any decisions regarding whether circuits carried over high capacity lines to terminate service to conference and chat line operators are eligible for High Cost support. See Aventure Opposition at Attachment 6. Since filing, the FCC and Aventure have come to agreement on the price of any necessary research related to the FOIA request, but the FCC has to date not responded to Aventure’s FOIA request. Neither the IAD nor the FCC have provided any evidence of a

decision by IAD, USAC, the FCC or a federal court to support the *IAD Report's* interpretation of the language of §54.101, and to the best of Adventure's knowledge, no such precedent exists.

Finally, the *IAD Report* states that an Adventure officer "verbally admitted that all of the FCSC accounts did not have access to and were not set-up for emergency services, operator services or directory assistance." Adventure vehemently denies this assertion. At all times during the audit, and in its written communications with USAC and IAD, Adventure has confirmed that its switch is a fully functional "Class 4/5" switch and is equipped to provide emergency calling, operator services and directory assistance, and that Adventure provides these services to its more than 300 retail service users. Adventure Opposition at 3. Adventure does not provide these services to its conference operator customers because they cannot use such services.

**III. THE IAD REPORT'S CONCLUSION THAT THE SERVICES AT ISSUE ARE SPECIAL ACCESS DEDICATED CIRCUITS IS WRONG AS A MATTER OF FACT AND LAW**

The *IAD Report* concludes that the facilities used by Adventure to terminate voice grade calls to its conference operator customers are DS3 special access services, and so are not eligible for High Cost support. *IAD Report* at 60, 73. The *Report* expressly states that it ignores Adventure's arguments that analogize its transport circuits to voice grade circuits transmitted over PBX or Centrex services. *Id.* at 60. Finally, IAD concludes that the Adventure service is "merely a DS3 circuit with no direct connection to any specific end user." *Id.* at 71. As discussed below, in all respects, the *IAD Report* is wrong.

**A. The Commission's Rules Make Clear That Voice-Grade Switched Access Lines Terminated Over High Capacity Circuits Are Not "Special Access"**

The IAD Report cites several sections of the FCC's Part 36 rules, and interprets their language as determinative that the facilities used by Adventure to terminate voice grade calls to its conference operator customers must be defined as DS3 special access circuits. *Report* at 61, 73. In making its conclusions, the IAD cites to no precedent – no FCC or court decisions that apply the language of the rules in the way IAD asserts. In fact, there is no precedent that can support the IAD's interpretation of the rules language. In fact, the plain language of more specific rules under part 51, and industry practice as documented by NECA presentations, proves the contrary.

Part 51.5 of the Commission's rules contains the definition of "business line":

*Business line.* A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of

business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies:

- (1) Shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,
- (2) Shall not include non-switched special access lines,
- (3) Shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."

47 C.F.R. § 51.5 (emphasis added). The language of Part 51 of the Commission's rules, which is more specific in defining what constitute "lines" for filing purposes, must take precedent over IAD interpretations of less specific rule language. Moreover, as discussed in the following sections, this interpretation of the more specific rule language is fully supported by NECA publications and FCC rulings.

In addition, the IAD conclusion that the Aventure facilities do not directly connect with an end user, and so do not meet the definition of Category 1 Loops under 47 C.F.R. § 36.152(a)(1) (*IAD Report* at 71) is wrong as a matter of fact and law. Section IV, below describes in detail that, under controlling FCC precedent, as a matter of law, Aventure's conference operator customers are "end users."

**B. The FCC's Reports And Reporting Instructions Have Always Defined Special Access Service As A Non-Switched Service**

Special access service – including DS1 and DS3 service – has always been described by the FCC as "non-switched" service.<sup>2</sup> In contrast, switched services provided over high capacity circuits have consistently been reported according to the voice grade circuits they carry: "For switched loops served via a concentrator or carrier system, count the actual number of customer lines served, not the transmission channels at the wire center." Federal-State Board on Universal Service, 12 FCC Rcd 9803, 9806 (1997). "ISDN and other digital access lines should be reported as 64 kbps equivalents. A fully-equipped DS-1 line, for example, corresponds to 24 64 kbps equivalents." Revision of ARMIS annual Summary Report (FCC Report 43-01), 17 FCC Rcd 25421, 25450 (2002) (emphasis added).

<sup>2</sup> *E.g.*, Industry Analysis and Technology Division, Local Telephone Competition: Status As Of December 31, 2011, 2013 WL 164840 (F.C.C., Public Notice, January 2013) at 48.  
RPP/582546.1

In Attachment 5 to its Opposition, Aventure provided extensive evidence that the service it provided to its conference operator customers was switched access service, which generated call billing detail that accounted for minutes of traffic at each NPA-NXX assigned to a conference operator customer. Only switched services can generate this type of information – special access circuits cannot. Given the FCC’s well-documented and consistent treatment of switched access services carried over high-capacity facilities, the *IAD Report’s* conclusion that Aventure’s DS3 facilities are special access must be reversed.

C. NECA Has Made Clear That Voice-Grade Switched Access Services Terminated Over High Capacity Circuits Are Not “Wideband” Or “Special Access”

The *IAD Report* concludes that Aventure’s service to its conference operator customers constitutes DS3 “special access” service, and such service is not eligible for High Cost support. *IAD Report* at 60, 71. While it is correct that special access service is not supported by USF, it is demonstrably incorrect that Aventure’s service to its conference operator customers can be so classified. As discussed in subsection (E) below, NECA’s Loop Count Guide allows for the reporting of high-capacity PRI ISDN lines as eligible for High Cost support. This practice means that IAD’s contention that all high capacity circuits are special access, and must be excluded from USF-eligible line counts, cannot be sustained.

Moreover, NECA expressly has found that channelized high capacity circuits are fully eligible for High Cost support. In a NECA presentation entitled “Universal Service Fund, Loops, Lines and Miscellaneous,” NECA defines loops that are, and are not, eligible for High Cost support. A copy of the NECA presentation is appended to this letter at Attachment 1. NECA begins by acknowledging that “The loop can be provisioned in many ways using a combination of technologies and transmission mediums,” and includes an illustration showing home-run voice-grade copper loops, and high capacity circuits terminating to a concentrator and a remote office. NECA presentation, Attachment 1, at slide 8. The latter example reflects Aventure’s network. The NECA presentation goes on to explain:

- Category 2 – Wideband
  - A communication channel of a bandwidth equivalent to twelve or more voice grade channels. For example:
    - DS1
    - DS3
    - SDSL > 768 Kbps (Data Only)
    - ADSL (Data Only)

- Does not include channelized services provided over a T1 facility.  
For example:
  - 14 voice grade services provisioned over a T1 facility
  - ISDN
  - Local Digital Transport Service (“Super Trunk”) or like service

NECA presentation, Attachment 1, at slide 16 (emphasis added). The NECA presentation correctly reflects industry practice, and Adventure’s line-reporting practices have been fully compliant with the NECA approach at all times.

**D. Since 2001, The FCC Consistently Has Recognized That Calls Terminated To Conference Operators And Chat Lines Are Switched Access Service**

In 1996, AT&T filed formal complaints before the FCC against three rural LECs. Each AT&T complaint charged that the practice of invoicing tariffed per-minute switched access charges for calls delivered to chat line operators was unreasonable. In a series of decisions in 2001 and 2002, the FCC rejected all three AT&T complaints, and allowed the LECs to collect their tariffed per-minute switched access charges for such traffic. *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc’ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002).

The next time the FCC expressly addressed the classification of calls terminated to chat lines and conference operators was in 2007. In May, 2007, Qwest brought a formal complaint against an Iowa ILEC, contesting the collection of access charges on calls terminating to conference operators. Later that year, the FCC issued its order in *Qwest Commc’ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, 22 FCC Rcd 17973 (2007) (“*Farmers & Merchants Order*”), finding that Farmers and Merchants exceeded its rate of return, but that its tariff was effective, and “deemed lawful.” Because the tariff was lawful, it could be enforced, and Farmers and Merchants could collect its tariffed, per minute switched access rates for terminating calls to conference operators.

In November, 2009, the FCC issued its second order on reconsideration of the *Farmers & Merchants Order*, and reversed its finding that the Farmers and Merchants tariff was lawful. The FCC explained that it received new evidence that the ILEC “backbilled” its customers for services during the course of the litigation. The FCC never went further, either to define the service, or to determine if switched access rates could be collected – the parties subsequently settled their dispute, and the FCC dismissed the case with prejudice. *Qwest Commc’ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, 27 FCC Rcd 9377 (2012). Thus, the *Qwest v. Farmers and Merchants* case proceeded from an initial finding that the termination of calls to conference operators constitutes switched access service, and never reversed that decision. To the extent that a carrier may not be RPP/582546.1

able to enforce payment under its switched access tariff for such traffic, the FCC must make a specific finding to that effect. Of course, the FCC has never made such a finding against Adventure, and at all times relevant to the IAD audit, and continuing to date, Adventure has had a valid, and enforceable switched access tariff on file.

And as Adventure discussed at length in its Opposition, the FCC's 2011 decision in its *Connect America Order* explicitly found that calls to conference operators are switched access services, billable at per-minute switched access rates. *Connect America Fund*, 26 FCC Rcd 17663, 17877-82 (2011). Thus, in every case in which the FCC has addressed the classification of calls terminated to conference operators and chat line services – from 2001 through 2011 – it has consistently found that the service is switched access service, billed at per minute switched access rates. In light of this established line of precedent, the IAD may not interpret the FCC's rules to hold that the same lines must be classified as special access.

Finally, as discussed in Section VI below, even the Iowa Utilities Board has confirmed that Adventure's termination of calls to its conference operator customers constitutes switched access service. Adventure consistently has demonstrated that rulings by the IUB do not constitute directly applicable precedent, because those rulings apply Iowa state law, and that past rulings have been inconsistent with FCC rules and policies. However, the IUB's decisions lend support to Adventure's position that its services are switched access service. As noted below, the IUB has defined the termination of calls to conference operators and chat lines as "High Volume Access Service" and has opened a new proceeding to prescribe switched access rates that will be tariffed and enforced for the provision of such service. In this regard, the IUB decisions are fully consistent with the established FCC precedent discussed above, and support the conclusion that Adventure's service is switched access, not special access.

**E. The IAD Report Admits That Voice-Grade Lines Delivered Over High-Capacity Circuits Are Eligible For High Cost Support, And This Conclusion Is Supported By The NECA Loop Count Guide**

The *IAD Report* refers to the NECA Loop Count Guide, and notes that Primary Rate Interface Integrated Services Digital Network ("PRI ISDN") circuits should be reported as five loops. *IAD Report* at 7, 61. This admission directly undercuts the *IAD Report*. IAD acknowledges, as it must, that NECA's rules confirm that PRI ISDN lines are eligible for High Cost support, even though they are high capacity circuits. This cannot be squared with the IAD conclusion that none of Adventure's high capacity circuits are eligible for High Cost support. It is true that NECA does not allow High Cost recovery for the maximum of 24 voice-grade equivalent lines that could be carried by a PRI ISDN circuit – it allows reporting of only 5 lines per PRI. However, IAD holds that Adventure cannot report any circuits at all, and this conclusion cannot be sustained in light of NECA's established practice for PRI ISDN circuits.

**IV. THE IAD REPORT'S FINDING THAT ADVENTURE'S CALLS DO NOT "TERMINATE" AND THAT IT HAS NO "END USER" CUSTOMERS IN ITS SERVICE AREA IS HOPELESSLY CONFUSED AND CONTRAVENES FCC RULINGS**

Adventure's Opposition notes that the Draft DEW is "confusing" because it makes assertions that Adventure's calls do not "terminate" at any "end user's premises." Opposition at 17. The Opposition demonstrates that these assertions are not true, and moreover, IAD never explained what relevance these assertions have to the eligibility of high cost support. The IAD Report spends eight pages addressing this issue, but manages only to make its position even more confused.

**A. The IAD Report's Conclusions That Adventure Has No "End Users" In Its Service Territory, And That Its Calls Do Not Terminate At The Conference Bridges In Its Salix Facility, Directly Violate The FCC's Rulings**

The *IAD Report* starts by admitting that "the word 'terminate' is not explicitly defined in the audit finding," (IAD Report at 62), but asserts that Adventure is "fully aware of its meaning." *Id.* Adventure can attest that this is not the case – in fact the *IAD Report's* arguments regarding "termination" of traffic and whether Adventure has "end users," and what their location might be, is incomprehensible.

It appears that the *IAD Report* is pursuing the following argument:

- IAD acknowledges that the conference bridge equipment resides at Adventure's Salix central office. *Report* at 62.
- However, "the billing address of the FCSC customers as well as the billing address of the actual end-users who call into the conference calling lines are located in areas outside the Beneficiary's service, area, including other states." *Report* at 63.
- "While the conference bridge equipment resides at the central office in Salix, Iowa, the actual end-user is not located in the Beneficiary's designated service area." *Report* at 62. One FCSC bill produced in the audit showed the corporate billing address in New Jersey. *Report* at 63.
- "IAD determined during the audit that the Beneficiary assigned the NPA-NXX of the FCSC lines by number availability and customer request, not by the actual location of the customer." *Report* at 62. Nevertheless, the Report appears to find that what it defines as the "end user" location is the determining factor, and concludes that "the Beneficiary may

not claim support for High Cost Program purposes outside of its designated service area.”  
*Id.*

IAD apparently believes that the “real” end user is the person who originates the call into the conference bridge, and that person is typically out of state. Because these callers are not located in Salix, Aventure is claiming High Cost support for areas outside its service area.

The FCC has already rejected this interpretation of “end users” and the location of call terminations in the context of conference calling. In its decision in the first *Farmers and Merchants Order*, Qwest made exactly the argument that IAD appears to have adopted in its *Report*. The FCC rejected the Qwest argument, and noted that to accept it would produce “anomalous results” which the FCC explains in detail:

32. Qwest argues that calls to the conference calling companies are ultimately connected to -- and terminate with -- users in disparate locations. According to Qwest, when a caller dials one of the conference calling companies’ telephone numbers, the communication that he or she initiates is not with the conference calling company, but with other people who have also dialed in to the conference calling company’s number. Qwest argues that such calls terminate at the locations of those other callers, and that Farmers is providing a transiting service, not termination. Farmers’ view of the calls, however, is that users of the conference calling services make calls that terminate at the conference bridge, and are connected together at that point. We find Farmers’ characterization of the conference calling services to be more persuasive than Qwest’s.

33. Qwest’s view of how to treat a conference call leads to anomalous results. For instance, suppose parties A, B, C, and D dial in to a conference bridge. According to Qwest, A has made three calls, one terminating with B, one with C, and one with D. But in fact, B, C, and D have actually initiated calls of their own in order to communicate with A. What Qwest calls the *termination* points are actually *call initiation* points. Moreover, under Qwest’s theory, the exchange carriers serving B, C, and D would all be entitled to charge terminating access. In fact, each of those carriers would be entitled to charge terminating access three times -- B’s carrier could charge for terminating calls from A, C, and D, and so forth. This conference call with four participants would incur terminating access charges twelve times. Qwest has not addressed this logical consequence of its theory, nor has it offered any evidence that conference calls are treated as terminating with the individual callers for any purpose beyond the circumstances of this case.

*Id.* at 17985-86, ¶¶ 32-33 (footnotes omitted) (emphasis in original). As the *IAD Report* correctly notes, parts of the FCC's ruling were later changed on reconsideration – but not this conclusion. The FCC's ruling, and its explanation for it, clearly demonstrates that IAD's reference to originating callers as “end users” and the point of termination being the calling party's location is nonsensical.

Despite its preference for originating callers as “end users,” IAD also appears to be arguing that the FCSC may also be an end user. IAD admits that the FCSCs all have their conference bridges located in Salix. (*Report* at 62.) But it appears to argue that, if the FCSC's corporate billing address is outside of Salix – say, in New Jersey – somehow Aventure is seeking High Cost support for New Jersey, and not Salix. This argument is similar to IAD's other “end user” argument, and is equally unsupportable. The FCC's decision in the *Farmers and Merchants Order* expressly finds that calls to conference bridges terminate at those bridges, and not at any other point.

Finally, the *IAD Report* asserts that an Aventure Officer “verbally admitted to IAD that . . . there were no end-users located in the Beneficiary's designated study area.” *Report* at 62. Aventure vehemently denies making any such admission. As discussed above, IAD admits that all conference equipment is located in Salix, within the Aventure service area. Aventure's business is to terminate the calls to that conference equipment, and the corporate offices of Aventure's FCSC customers, or the locations of the originating callers, have nothing to do with the terminating point of the traffic. Aventure consistently has argued before the IUB, the FCC, and the Iowa federal district courts that its FCSC customers are end users, and that its calls terminate at their conference bridges in Aventure's Salix facility.

**B. Aventure Has Already Demonstrated That The IUB Decision Used As Support For The *IAD Report* Cannot Support The Conclusion That Aventure Does Not “Terminate” Calls In Its Service Area, And Has No “End User” Customers There**

The WEB, and the *IAD Report*, rely extensively on a 2008 decision by the Iowa Utilities Board for their conclusions that Aventure does not “terminate” service in its service area, that it has no “end user” customers in its service area, and that its loops are not “revenue producing.” *IAD Report* at 62-63, 76. In its Opposition, Aventure demonstrated in detail that the 2008 IUB decision cannot be considered instructive precedent because it is based exclusively on Iowa state law, and is inconsistent with FCC rulings. Aventure Opposition at 10-12.

The *IAD Report* attempts to justify its reliance on the IUB's 2008 order by stating that "intrastate services are included in the calculation of incumbent carriers' line costs, which determines High Cost Program support." Report at 68. This is irrelevant. Intrastate costs form the basis of NECA cost studies for incumbent LECs. However, this has nothing to do with the IUB's policies regarding carrier interconnection and the IUB's decisions concerning Aventure, and there is nothing in the record of the instant case that demonstrates otherwise. Finally, as discussed in Section VI below, since its 2008 order, the IUB has issued two subsequent orders, including one that initiated an ongoing proceeding, that supersede and effectively reverse the 2008 order. The *IAD Report* does not, and cannot, justify its reliance on the 2008 decision by the Iowa Utilities Board.

Moreover, the FCC long-ago completely deregulated the relationship between carriers providing interstate service and their end user customers: "[W]e continue to abstain entirely from regulating the market in which end-user customers purchase access service."<sup>3</sup> IAD and USAC do not have the authority to adopt rules and policies that govern an end user relationship that the FCC has expressly deregulated. Indeed, the FCC does not have any rules of general applicability that regulate how regulated carriers of interstate service sell access services or local services to their customers. Moreover, the FCC's *Connect America Order* makes clear that, as a general rule, the FCC considers any form of revenue sharing agreement, written or oral, to be adequate. See discussion and quote from Section IV(c), immediately below. For all these reasons, the *IAD Report's* analysis is fatally flawed.

C. The *IAD Report* Wrongly Dismisses The FCC's *Connect America Order* As Controlling Precedent

The Aventure Opposition cited the FCC's *Connect America Order* (referenced in the *Report* and the Aventure Opposition as the "USF/ICC Transformation Order") for a number of propositions. First, that any inquiry into whether calls to conference operators "terminate" and whether conference operators are "end users," has been resolved by the *Connect America Order*. Also, any inquiry into whether Aventure billed and collected charges from its FCSC customers is irrelevant, because the *Connect America Order* expressly rejects any specific form or level of billing and collection, as a requisite for defining "end users." As Aventure demonstrated in its Opposition, the *Order* expressly accommodates any "access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party. . . ." Opposition at 9, citing *Connect America Order*, 26 FCC Rcd at 17878, ¶ 669.

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<sup>3</sup> *Access Charge Reform*, Seventh Report and Order, 16 FCC Rcd 9923, 9938 (2001). RPP/582546.1

IAD denies that the *Connect America Order* has any precedential value to its *Report*. IAD admits that the *Order* “did revise the supported services,” but contends that it can ignore the *Order* because it took effect at the end of the audit period, and because its rulings are prospective. *IAD Report* at 66. IAD demonstrably misreads the *Connect America Order*.

IAD is correct in noting that the new rules regarding access stimulation service – defining calls to conference operators and chat lines as a new category of switched access service, and prescribing new rates for such services – had prospective effect. But this does not mean that those same services existed in a regulatory vacuum prior to December 30, 2011. Rather, the *Connect America Order* confirmed that access stimulation services are switched access services, subject to the same tariff and “benchmark rate” regulatory structure that the FCC established for CLECs in 2001<sup>4</sup>:

We maintain the benchmarking approach to the regulation of the rates of competitive LECs. . . . There is insufficient evidence in the record that abandoning the benchmarking approach for competitive LEC tariffs . . . . Instead, we believe it is more appropriate to retain the benchmarking rule but revise it to ensure that the competitive LEC benchmarks to the price cap LEC with the lowest rate in the state, a rate which is likely most consistent with the volume of traffic of an access stimulating LEC.

*Id.* at 17887-88 ¶ 694 (emphasis added).

Further evidence that the *Connect America Order* confirms that calls to conference operators and chat lines have been regulated as switched access services is found in several other FCC rulings. In 2001 and 2002, the FCC heard three complaints against local exchange carriers that terminated calls to chat lines and conference bridges. In each case, it found that the federal access tariffs applied to the service, and upheld the application of access charges to the services.<sup>5</sup> *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc'ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002). As a result, it does not matter that the *Connect America Order* took effect at the end of the IAD audit, or that its rules revising the types of rates LECs can charge for calls to conference operators had prospective effect. The line of decisions from the *Jefferson*, *Frontier*, and *Beehive* cases of 2001-2002, through the *Farmers and Merchants Order* of 2007, to the

<sup>4</sup> In 2001, the FCC adopted regulations governing the switched access rates that CLECs charge long distance carriers. Those rules required that CLECs set their rates at a “benchmark” that reflected the rates charged by the incumbent LEC that provided service in the same area served by the CLEC. *Access Charge Reform*, Seventh Report and Order, 16 FCC Rcd 9923 (2001).

<sup>5</sup> *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc'ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002).  
RPP/582546.1

*Connect America Order* of 2011, all confirm that calls to conference operators are switched access service that terminates to end users just like any other voice-grade access service. IAD does not have the authority to find otherwise.

V. **THE IAD REPORT'S FINDING THAT AVENTURE'S REPORTED LINES ARE NOT "REVENUE PRODUCING" IGNORES THE EVIDENCE ON THE RECORD AND CONTRAVENES FCC DECISIONS AND INDUSTRY PRACTICE**

The *IAD Report* finds that Aventure did not adequately bill its end user customers for service, and refuses to recognize the billed access charges that are the subject of three collection actions in federal district court. It therefore concludes that Aventure's lines are not "revenue producing" and therefore are ineligible for High Cost support. This conclusion must be reversed on three separate grounds.

First, under the FCC's rules and policies, any agreement of value between a local exchange carrier and a conference operator is deemed a valid form of "access sharing" agreement. Opposition at 9, citing and quoting from the FCC's *Connect America Order*. Given the FCC's extraordinarily broad definition of "access sharing," the IAD cannot find that Aventure's relationships with its conference operator customers are noncompensatory.

Second, Aventure has billed for interstate switched access charges, and is pursuing collection actions against the long distance carriers to recover them. Opposition at 8. While the IAD Report takes issue with Aventure's failure to discount the potential recovery amount (at 65-66), IAD offers no rationale for assigning a collection likelihood of zero.

Finally, as NECA has made clear, a carrier does not have to bill or collect any amount in order to report a "revenue producing loop." The NECA presentation, "Universal Service Fund, Loops, Lines and Miscellaneous" expressly addresses the definition of "revenue producing" loops, and makes clear that the term is defined broadly. The NECA presentation states:

Revenue Producing – The term "revenue producing" means the loop can access the local and toll networks and messages are being recorded, regardless of who the user is and whether or not the company is billing for service.

Non-revenue producing loops are never counted

- Test Circuits
- PBX battery or generator feeds
- Spares

NECA presentation, Attachment 1, at slide 11 (emphasis added). For all these reasons, the *IAD Report's* conclusion that none of Aventure's loops are "revenue producing" must be reversed.

**VI. AT ALL TIMES RELEVANT TO THE IAD'S AUDIT, AVENTURE HAS BEEN, AND CONTINUES TO BE, DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER BY THE IOWA UTILITIES BOARD**

The *IAD Report* states that, in a 2008 order, the Iowa Utilities Board ("IUB") "asserted that the Beneficiary's 'eligibility is at issue in open dockets before the Board [IUB] and FCC.'" *Report* at 10 and n.8. The IAD does not explain the significance of this statement, or explain what role the IUB's assertion played in IAD's conclusions. The same IUB order is cited again, this time in the "USAC IAD Response" section of the *IAD Report*. In this section, IAD states that "Because the IUB is responsible for determining the Beneficiary's eligibility to receive universal service fund support, the IUB's certifications and conclusions, such as those included in the IUB Order, are applicable to the IAD audit, the purpose of which was to assess compliance with the Rules." *IAD Report* at 68.

It appears that the IAD wishes to rely on the IUB dicta that is prejudicial to Aventure, while ignoring the rulings that currently apply to Aventure, and that have applied at all times relevant to the IAD audit. The IUB initially granted Aventure ETC status on March 6, 2006. Aventure Opposition at 1. That IUB order remains in effect to date – Aventure's IUB status has never been revoked by the IUB, and its current "good standing" status is accurately reflected on the USAC website.

Moreover, in response to the FCC's *Connect America Order* and a complaint filed by Aventure against the major long distance carriers, the IUB opened a new docket that will address both Aventure's complaint, and an IXC's counterclaims. Specifically, the new proceeding – IUB Docket No. FCU-11-0002 – will prescribe intrastate switched access rates that Aventure will charge IXCs for terminating their intrastate access calls to Aventure's conference operator customers. That proceeding will also evaluate Aventure's certificate of public convenience and necessity. That proceeding was initiated by IUB order dated April 22, 2011, and the most recent hearing in that docketed proceeding was held on January 28 and 29 of this year. The current IUB proceeding confirms: 1) that intrastate calls to conference operators fall under the IUB's classification of High Volume Access Service; 2) that such service is subject to intrastate switched access service, at a rate that will be prescribed by the IUB; and 3) that Aventure's status as a certificated CLEC and ETC remain in good standing, and will continue to do so unless and until the IUB rules otherwise. A copy of the IUB order is appended to this letter at Attachment 2.

The *IAD Report* selectively picks prejudicial dicta from a 2008 IUB order, while ignoring exculpatory rulings from 2011. This demonstrates that the IAD Report's conclusions and methods are outcome-driven, arbitrary and capricious, and prejudiced against Aventure. If IAD's statement that "the IUB's certifications and conclusions, such as those included in the IUB Order, are applicable to the IAD audit" is to be given effect, then the IAD must accept all rulings by the IAD. It must therefore recognize that Aventure's ETC status has been in effect at all times relevant to the audit, and remains so today. Moreover, even though the IUB decision is limited to intrastate service, the IAD must give weight to the IUB's recent rulings that calls to conference operators are intrastate switched access service, provided pursuant to Aventure's intrastate switched access tariff, and billed at per-minute switched access rates. By recognizing all the relevant findings of the IUB, and not just a selection from a five-year-old order that contained references prejudicial to Aventure, IAD must find that the IUB supports the conclusion that Aventure's reported lines are correctly reported as switched access lines – not special access, and that calls to conference bridges constitute switched access service.

## VII. AVENTURE'S RESPONSE TO MISCELLANEOUS FINDINGS

### A. The IAD Report's Conclusion That Aventure's Treatment Of Its Collectibles Violates GAAP Is Unreasonable And Not Supported

The *IAD Report* supports its conclusion that Aventure's reported lines are not "revenue producing" by ignoring all of the evidence Aventure has provided regarding the access charges it has invoiced to long distance carriers, and the multiple federal court collection actions it has initiated in order to collect. IAD takes the position that Aventure should discount the invoiced amounts as "doubtful accounts" and that, by not doing so, it violates Generally Accepted Accounting Principles. *IAD Report* at 65-66.

The *IAD Report* provides no authority for these conclusions. Moreover, even if IAD was correct – and it is not – it provides no rationale for refusing to consider any of Aventure's evidence in this regard. Although it does not explain its position, IAD apparently believes that Aventure should assign some percentage likelihood of losing its collection actions, and that Aventure cannot assume a 100% likelihood of success in enforcing its federal tariff. However, by ignoring all of Aventure's evidence, IAD is imposing a supposition that Aventure is 100% likely to fail to recover any of its tariffed and invoiced access charges. This is certainly the effect of IAD's wholesale refusal to consider Aventure's evidence. IAD nowhere tries to explain how this outcome would be required by GAAP or the FCC's rules, and its position is unreasonable on its face.

**B. The Intercall Order Does Not Support IAD's Conclusions**

In its Opposition, Aventure cited the FCC's *Intercall* decision.<sup>6</sup> In *Intercall*, the FCC found that conference operators were required to pay into the Universal Service Fund. In so finding, the FCC did not establish a regulatory classification of conference operators, or the service they provided. Instead, the FCC found that conference operators could be either providers of "telecommunications" or "telecommunications services" and in either case would be subject to making USF contributions. Aventure cited and quoted from that decision to demonstrate that the FCC recognized calls to conference operators as individual voice-grade services, and not as single, high-capacity transport circuits. Opposition at 5.

The IAD Report largely ignores this argument, and instead cites the *Intercall* order as support for its finding that conference operators are not "end users." *IAD Report* at 73-74. As discussed in Section IV, above, this is the first step in IAD's tortured conclusion that, if conference operators cannot be defined as "end users," then Aventure's service cannot "terminate" to such end users, and Aventure cannot be found to be providing service to end users in its service area, and so its lines cannot be classified as "revenue producing." In any event, *Intercall* cannot be used as IAD posits.

The *Intercall* decision found that conference operators cannot be classified as "end users" for purposes of determining who is obligated to pay into the USF. This determination is governed by § 254(d) of the federal Communications Act. *Intercall*, 23 FCC Rcd at 10731. In contrast, the issue of defining "end user" in the Iowa Utilities Board order, the *Farmers and Merchants* decisions, and the *Connect America Order* go to the rights of regulated telecommunications service providers to tariff and collect switched access charges. Under federal law, these determinations are governed by §§ 201-203 of the Communications Act. That the two have nothing to do with each other is self-evident – only providers of telecommunications services can tariff and collect access charges. On the other hand, USF contribution obligations apply to regulated carriers, unregulated private carriers, and unregulated providers of telecommunications.

The *Intercall* order remains instructive in the analysis of whether Aventure provides a single high-capacity circuit, or multiple voice-grade lines. As discussed in the Aventure Opposition, *Intercall* fully supports the Aventure position in this regard. Opposition at 5. *Intercall* also stands for the proposition that IAD cannot impose new findings on a retroactive basis. This issue is discussed further in the immediately following section.

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<sup>6</sup> *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, 23 FCC Rcd 10731 (2008). RPP/582546.1

## VIII. THE CONCLUSIONS OF THE IAD REPORT ARE NOVEL AND CANNOT BE ACCORDED RETROACTIVE EFFECT

The *IAD Report*, like the WEB upon which it is based, does not cite a single decision by USAC, the FCC or a court to support its conclusion that voice grade services terminated over a high-capacity circuit do not qualify for USF. See *Aventure Opposition* at 14. Instead, IAD quotes the language from various FCC rules, and interprets it de novo, without reference to any precedent, except for the 2008 ruling by the Iowa Utilities Board.

Aventure has repeatedly requested that IAD Staff identify the precedent upon which they base their determinations, and has received no response. Counsel for Aventure first made this request in the exit status conference regarding the draft DEW, which was held with IAD Staff on May 8, 2012. Aventure discussed the absence of precedent at length in its *Opposition to the DEW*, and took the extraordinary step of filing a FOIA request that sought disclosure of any precedent upon which IAD, USAC or the FCC relied. *Opposition at Attachment 6*. To date, Aventure has received no response.

The demonstrable lack of precedent illustrates the obvious – USAC has never made a determination re whether High Cost support can be collected on calls to conference operators delivered over high capacity facilities. Indeed, it would be highly unlikely for IAD to do so – the FCC only established the definition of access stimulation as a unique service, subject to new rules, in its *Connect America Order*, and the *IAD Report* refuses to consider that ruling because it took effect at the end of the audit period.

The *IAD Report* states that, if Aventure was connected to the conference bridges by DS1 lines, instead of DS3s, it could collect USF. *IAD Report* at 61. IAD then states in dicta that Aventure would only be able to obtain High Cost support for five voice grade lines, and cites 47 C.F.R. § 69.152(1)(2) for support. However, there is no precedent at all regarding treatment of voice grade services provisioned over a DS3 facility, or how this may translate into High Cost line reports. The *IAD Report* deals with a case of first impression, and an unprecedented finding by IAD and USAC.

In the *Intercall Order*, the FCC reversed USAC on a similarly novel determination. In that case, USAC found that conference operators were providers of telecommunications, and so had an obligation to contribute to USF. It applied that decision retroactively. The FCC reversed that part of the USAC ruling, finding that:

The record before us indicates that it was unclear to InterCall, as well as to the industry, that stand-alone providers of audio bridging services have a direct USF contribution obligation.

\* \* \* \* \*

In part because of the lack of clarity regarding the direct contribution obligations of stand-alone audio bridging service providers that these actions may have created, we find that prospective application of our decision is warranted. . . . Therefore, we reverse USAC's decision requiring InterCall to file FCC Forms 499-A and 499-Q for past periods, and instead require InterCall to directly contribute to the USF as of the calendar quarter immediately following the next regularly scheduled FCC Form 499-Q filing after the release date of this order.

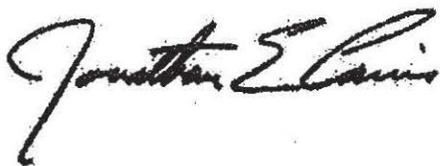
\* \* \* \* \*

Today we make clear that providers of these services have a direct contribution obligation. We further find that a uniform application of USF contribution obligations to all audio bridging service providers will promote the public interest by establishing a level playing field and encouraging open competition among providers of audio bridging services.

*Intercall*, 23 FCC Rcd at 10738 – 39.

The FCC's interest in avoiding surprise to affected parties, in announcing new policies and having them apply to all similarly situated parties equally, and in abiding by the requirements of the Administrative Procedures Act, should apply equally to the instant case. Because the record of this audit demonstrates that the *IAD Report* is a case of first impression, there is no basis for determining that Aventure should have acted differently than it did in the past. Indeed, Aventure's Opposition clearly demonstrates that Aventure did everything possible to determine the correct way to report its lines – including talking to NECA Staff and USAC Staff. Retroactive application of this novel determination would violate the notice and comment provisions of the Administrative Procedures Act, would result in a discriminatory application of a new rule retroactively, and would be arbitrary, capricious and biased. For these reasons, Aventure requests that USAC reverse the IAD decision, and make its application prospective only.

Respectfully submitted,



Jonathan E. Canis

# **ATTACHMENT 3**



*Administrator's Decision on High Cost Program Beneficiary Appeal*

Via Email and Certified Mail

October 29, 2013

Jonathan E. Canis, Esq.  
Arent Fox LLP  
1717 K Street, NW  
Washington, DC 20036-5342

Re: Appeal of the Independent Auditor's Report on Aventure Communication Technology, L.L.C.'s Compliance with High Cost Support Mechanism Rules (USAC Audit No. HC2011BE011)

Dear Mr. Canis:

The Universal Service Administrative Company (USAC) has reviewed the appeal you filed on behalf of Aventure Communication Technology, L.L.C. (Aventure), dated February 18, 2013, concerning USAC's decision to recover [REDACTED]<sup>1</sup> in federal Universal Service High Cost Program support disbursed for the 2007 through 2011 program years. The amount to be recovered was determined by an audit of Aventure conducted by USAC's Internal Audit Division (IAD).<sup>2</sup> Aventure appealed USAC's determination that Aventure's Free Conference Service Carrier (FCSC) lines reported on the FCC Forms 525 for the period audited were ineligible for federal Universal Service High Cost Program support.<sup>3</sup>

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

Background and Discussion

Aventure appealed USAC's determination that Aventure's FCSC lines reported on the FCC Forms 525 during the timeframe audited do not meet the criteria required pursuant

<sup>1</sup> This recovery represents amount disbursed in 2007 through 2012. The 2012 amount relates to frozen high cost support that was based on 2011 line count data.

<sup>2</sup> See *Independent Auditor's Report on Aventure Communication Technology, L.L.C.'s Compliance with High Cost Support Mechanism Rules* (USAC Audit No. HC2011BE011) (May 15, 2012) (*Aventure Audit Report*).

<sup>3</sup> Letter from Jonathan E. Canis, Arent Fox LLP, Counsel to Aventure, Communication Technology LLC, to Universal Service Administrative Company, High Cost and Low Income Division (Feb. 18, 2013), at 1 (*Aventure Appeal Letter*).

to 47 C.F.R. Part 36, Subpart G and 47 C.F.R. § 54.101, and therefore, are ineligible to receive High Cost Program support.<sup>4</sup> In the appeal letter, Aventure asserts:

1. All of the admissions are contained within the IAD report prove Aventure's case that its FCSC lines are eligible for High Cost Program support;
2. USAC misread and misapplied the regulations at 47 C.F.R. § 54.101;
3. USAC's determination that the services offered by Aventure are special access service is incorrect;
4. USAC's determination that Aventure's calls do not terminate and that Aventure has no end users in its designated service area contravenes FCC rulings;
5. USAC's determination that Aventure's lines reported are not revenue producing lines also contravenes FCC decisions and industry practice;
6. Aventure was an eligible telecommunications carrier for all periods audited; and
7. USAC's conclusions are novel and cannot be applied retroactively.<sup>5</sup>

I. Aventure Asserts That USAC's Audit Report and Aventure's Documentation Provided During the Audit Fully Support That Its FCSC Lines Are Eligible for High Cost Program Support<sup>6</sup>

Aventure first argues that the Federal Communications Commission's (FCC's or the Commission's) *Connect America Fund Order*<sup>7</sup> and supporting documentation that was provided by Aventure during the audit supports finding that Aventure provides terminating access service and all of its reported lines are "revenue producing."<sup>8</sup> However, as previously discussed in USAC's management response in the *Aventure Audit Report*, the *Connect America Fund Order* "is effective prospectively and covers disbursements for 2012 and thereafter. Therefore, the *Order* is not applicable to the scope of this audit. However, even if the *Order* had been applicable during the audit period, the Beneficiary would still not have been eligible to receive High Cost Program support for its FCSC customers. While the *Order* did revise the supported services, carriers are still required to provide access to emergency services [pursuant to the *Order*]. The Beneficiary did not provide its FCSC customers with access to emergency services, and therefore, these lines are not eligible for High Cost Program support under both the Rules in effect during the audit period and the [revised] Rules in effect under the *Order*."<sup>9</sup>

<sup>4</sup> See *Aventure Audit Report*, at 71.

<sup>5</sup> See *Aventure Appeal Letter*, at 1-2.

<sup>6</sup> *Id.*

<sup>7</sup> *In the Matter of Connect America Fund, A Nat'l Broadband Plan for Our Future, Establishing Just and Reasonable Rates for local Exchange Carriers, High Cost Universal Service Support, Developing and Unified Intercarrier Compensation Regime, Fed.-State Joint Bd. on Universal Service, Lifeline and Link Up, Universal Service Reform – Mobility Fund*, WC Docket Nos. 10.90. 07-135, 07-135, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Rep. & Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (*Connect America Fund Order*).

<sup>8</sup> See *Aventure Appeal Letter*, at 2-3.

<sup>9</sup> *Aventure Audit Report*, at 66.

Additionally, Aventure asserts that it has provided documentation to USAC that demonstrates it provided terminating access service and that all of its reported lines are thus revenue producing.<sup>10</sup> IAD concluded after reviewing the documentation provided by Aventure that it did not contain sufficient detail to be in compliance with § 54.202(e).<sup>11</sup> As such, the documentation that was provided by Aventure “did not demonstrate sufficient, appropriate evidence that the FCSC customers were billed for these lines and the Beneficiary did not provide any other documentation to demonstrate that it assessed or collected any fees related to [the FCSC] lines, including the end user common line charge required for MLB lines per the Form 525 Instructions.”<sup>12</sup> “Without sufficient, appropriate evidence to conclude otherwise, it appears these [FCSC] lines are not revenue producing working loops and may not be reported as such for High Cost Program purposes.”<sup>13</sup>

Aventure further argues that USAC “concedes that voice grade lines carried over high capacity circuits are eligible for High Cost Support.”<sup>14</sup> In addition, Aventure argues that USAC acknowledged in the audit report that “Aventure’s conference bridges are located in its end office facility in Salix, Iowa,” which is located in Aventure’s designated service area and that “[a]ll calls were terminated at the FCSC’s respective DS3 equipment located in Salix, Iowa.”<sup>15</sup> Aventure concludes that the reported FCSC lines are thus, eligible for USF support.<sup>16</sup>

While the conference bridge equipment may reside at Aventure’s central office in Salix, Iowa, Aventure’s actual end-users were not located in the Beneficiary’s designated service areas.<sup>17</sup> Pursuant to 47 C.F.R. § 54.201(b),<sup>18</sup> it is the responsibility of state commissions to designate a carrier’s service area for the purposes of receiving universal service support. As the customers claimed by the Aventure for High Cost Program support were located outside of its service area designated by the Iowa Utilities Board

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<sup>10</sup> *Aventure Appeal Letter*, at 2-3.

<sup>11</sup> *See Aventure Audit Report*, at 64-68 (describing the documentation that was provided by Aventure and explaining why each type of documentation was insufficient or not relevant to the issues raised during the audit). *See also* 47 CFR § 54.202(e) (“All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. These records should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding.”).

<sup>12</sup> *See* FCC Form 525 Instructions, OMB Control No. 3060-096, at 2.

<sup>13</sup> *Aventure Audit Report*, at 67.

<sup>14</sup> *Aventure Appeal Letter*, at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *See id.* (concluding that Aventure properly documented its line counts and termination points for the lines reported in accordance with the FCC rules).

<sup>17</sup> *See Aventure Audit Report*, at 63 (discussing the issue that Aventure’s conference operator customers were located outside of Aventure’s designated service area).

<sup>18</sup> 47 CFR § 54.201(b) (“A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.”).

(IUB), these lines were not eligible to receive High Cost Program support.<sup>19</sup> In addition, USAC further found that although the calls may have terminated at the conference bridge equipment located in Salix, Iowa, none of the end-users using the bridge conference equipment were located in Aventure's designated service area and thus, these lines were not eligible for High Cost program support.<sup>20</sup> During the audit, the auditors also found that Aventure did not use the FCSC customers' billing addresses for the reported lines because these customers were located outside of Aventure's designated service area in Iowa.<sup>21</sup>

USAC does not concur with Aventure's assertion that the information provided in the audit report and Aventure's documentation support finding that its FCSC lines were eligible for High Cost Program support. In addition, USAC will further explain below as to why it determined that the FCSC lines reported and claimed by Aventure in 2007 through 2011 were not eligible for High Cost Program support.

II. Aventure Failed to Provide All the Designated Services Set Forth at 47 C.F.R. § 54.101 for Its FCSC Lines Thereby Rendering These Lines Ineligible for High Cost Program Support

As explained previously in USAC's management response, "The Beneficiary does not meet the criteria required by 47 C.F.R. § 54.101, and therefore, is ineligible to receive High Cost Program support for their FCSC lines. Aventure's FCSC service does not qualify as single party service because it fails to meet the definition set forth in Subpart G that requires an end user line must be a direct connection from a central office switch to the end user's premises. The facility provided by Aventure is a DS3 circuit with no direct connection to any specific end user. The service can be deemed neither single nor multi-party without a direct connection to any end user customer."<sup>22</sup> Therefore, Aventure's FCSC service lacks the required functionality that eligible telecommunication carriers (ETCs) must provide to their customers to receive High Cost Program support.

Aventure states that its switch contains technology to provide the services required by the Rules and that having a switch that is capable of providing all of the designated services at 47 C.F.R. § 54.101(a) satisfies the FCC rules for receiving universal service support.<sup>23</sup> While Aventure asserts its switch has the capability to provide the required services pursuant to 47 C.F.R. 54.101(a), the failure to actually provision these services to its FCSC customers means the carrier is not satisfying the "designated services" requirement and is not entitled to receive universal service.<sup>24</sup>

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<sup>19</sup> *Aventure Audit Report*, at 62.

<sup>20</sup> *See id.*

<sup>21</sup> *See id.* at 63.

<sup>22</sup> *Aventure Audit Report*, at 71.

<sup>23</sup> *See Aventure Audit Report*, at 3 (explaining that Aventure's switch is capable of providing all the designated services so Aventure is providing "access to" these services); *see also Aventure Appeal Letter*, at 4 (reiterating that its switch is able to provide all required services and that Aventure is required to only offer the required services instead of actually providing all of the required services).

<sup>24</sup> *See Aventure Audit Report*, at 71.

In its appeal, Aventure specifically argues that it is required only to offer the necessary services, but that it does not have to actually “provide all the enumerated services.”<sup>25</sup> Aventure explains that USAC “conflate[d] the terms ‘offering’ and ‘providing.’ Section 54.101(b) states that ‘An eligible telecommunications carrier must offer voice telephone service as set forth in paragraph (a) of this section to receive federal universal support. But IAD reads this provision as requiring an ETC to provide all enumerated services.’”<sup>26</sup> USAC disagrees with Aventure’s assertion that eligible telecommunications carriers are not required to provide all enumerated services pursuant to 47 C.F.R. § 54.101(a) to receive High Cost Program support. In the *1997 Universal Service Order*, the Commission adopted the Joint Board’s recommendation and required that “eligible carriers must provide each of the designated services in order to receive universal service support.”<sup>27</sup> In this Order, the FCC also granted eligible carriers a reasonable time period to “complete network upgrades required for them to begin offering certain services that they are currently incapable of providing.”<sup>28</sup> Aventure has not proffered any reason as to why its FCSC customers were not provided with single-party service, access to emergency services, access to operator services and access to directory assistance.<sup>29</sup> Indeed, Aventure affirms in its appeal letter that “Aventure does not provide these services to its conference operator customers because they cannot use such services.”<sup>30</sup> As a result, because Aventure does not provide all of the designated services as required by 47 C.F.R. § 54.101 for its FCSC lines, these lines are not eligible to receive universal service support.

### III. Aventure’s FCSC Lines are Special Access Dedicated Circuits and Are Not Eligible for High Cost Support

Aventure’s appeal further asserts the FCSC DS3 facilities are not special access service but are switched-access service eligible for High Cost Program support.<sup>31</sup> Aventure bases this contention on its understanding that these lines are switched access because they are conveying communications from a tandem switch over a high capacity DS3 circuit to a conference call company, thereby making these lines eligible to receive High Cost Program support.<sup>32</sup>

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<sup>25</sup> *Aventure Appeal Letter*, at 4.

<sup>26</sup> *Id.*

<sup>27</sup> *In the Matter of Fed.-State Joint Bd. on Universal Service*, CC Docket No. 96-45, Report & Order, FCC 97-157, 12 FCC Rcd 8776, ¶ 89 (1997) (*1997 Universal Service Order*).

<sup>28</sup> *See id.* at ¶¶ 89-91 (allowing carriers time to build out their networks to provide single-party service and access to E911 service only if “exceptional circumstances” warranted the granting of universal service support during the build out period). Aventure has provided no support for its argument that it only needed to merely offer all designated services in order to receive universal service support.

<sup>29</sup> *See Aventure Audit Report*, at 8. Instead, Aventure argues that its switch is able to provide these services and thus, Aventure is able to “provide access” to these services. Aventure also asserts that every support line is not required to provide all of the designated services, although it offers no support for this statement. *See Aventure Audit Report*, at 14.

<sup>30</sup> *Aventure Appeal Letter*, at 5.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 8. *See also Aventure Audit Report*, at 72.

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Arent Fox LLP  
October 29, 2013  
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Aventure's assertion that its FCSC DD3 service is "switched service" conflicts with the requirements of Parts 36 and 54 of the FCC's rules. 47 C.F.R. § 54.307(b)<sup>33</sup> and §36.611(h)<sup>34</sup> require ILECs to only report the number of working Exchange Line C&WF loops (or Category 1 loops) to receive High Cost Program support. These Category 1 Loops are defined by 47 C.F.R. § 36.152(a)(1)<sup>35</sup> as a discrete end user facilities between local central offices and subscriber premises. Therefore, USAC cannot accept Aventure's reporting of 672 voice grade channels associated with its FCSC DS3 service because 47 C.F.R. Part 36, Subpart G<sup>36</sup> would classify the FCSC DS3 service as a wideband service. 47 C.F.R. §§ 54.307<sup>37</sup> and 36.152<sup>38</sup> specifically exclude wideband circuits from receiving High Cost Program support. Therefore, the FCSC DS3 service does not meet the definition of a Category 1 C&WF, and is correctly classified as Category 2 C&WF (wideband), which is not eligible for High Cost Program support.<sup>39</sup>

In addition, Aventure cites the FCC's 2007 decision from *Qwest v. Farmers and Merchants*<sup>40</sup> as support that its FCSC service qualifies for High Cost Program support.<sup>41</sup>

<sup>33</sup> 47 CFR § 54.307(b) ("In order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in § 54.5, the carrier must report, by customer class, the number of working loops it serves in the service area, disaggregated by cost zone if disaggregation zones have been established within the service area pursuant to § 54.315. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area, by customer class if the non-rural telephone company receives Interstate Common Line Support pursuant to § 54.901 and by disaggregation zone if disaggregation zones have been established within the service area pursuant to § 54.315 of this subpart, and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined 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. Competitive eligible telecommunications carriers providing mobile wireless service in an incumbent LEC's service area shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area.").

<sup>34</sup> 47 CFR § 36.611(h) ("For rural telephone companies, as that term is defined in § 51.5 of this chapter, the number of working loops for each study area. For non-rural telephone companies, the number of working loops for each study area and for each wire center. For universal service support purposes, working loops are defined 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. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.").

<sup>35</sup> 47 CFR § 36.152(a)(1) ("Exchange Line C&WF *Excluding Wideband*—Category 1—This category includes C&W facilities between local central offices and subscriber premises used for message telephone, private line, local channels, and for circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.").

<sup>36</sup> 47 CFR § 36 Subpart G ("Wideband Channel – A communications channel of a bandwidth equivalent to twelve or more voice grade channels.").

<sup>37</sup> See *supra* n.35.

<sup>38</sup> See *supra* n.37.

<sup>39</sup> *Aventure Audit Report*, at 73.

<sup>40</sup> *In the Matter of Qwest Communications Corp. v. Farmers & Merchants Mutual Telephone Co.*, File No. EB-07-MD-001, Mem. Op. and Order, FCC 07-175, 22 FCC Rcd 17973, 17985-88, ¶¶ 30-38 (2007)

Specifically, Aventure asserts that the FCC found that Farmers and Merchants could collect access charges for terminating calls to conference operators.<sup>42</sup> Aventure further explains that although the FCC reconsidered its initial decision,<sup>43</sup> the FCC never reversed its decision as to whether switched access charges may be collected from conference operators' calls.<sup>44</sup> However, the FCC in fact found that Farmers and Merchants was not entitled to charge switched access rates for calls from conference operators. In the *2009 Qwest Reconsideration Order*, the FCC reversed its earlier decision and found that Farmers and Merchants were not entitled to charge switched access charges for calls made by conference operators because the conference operators were not "end users" who were purchasing services through Farmers and Merchants' tariff.<sup>45</sup> The Commission explained that the services Farmers and Merchants were providing to the conference operators were not the services that were offered through Farmers and Merchants' tariff.<sup>46</sup> The Commission stated that "because the conference calling companies did not subscribe to services offered under Farmer's filed tariff, they were not 'customers' or 'end users.' In turn, the service Farmers provided to Qwest for calls of the conference calling companies was not 'switched access service' as defined in the tariff."<sup>47</sup> Thus, Qwest was not required to pay Farmers and Merchants' charges for terminating the conference calling companies' calls and the FCC directed Qwest to file a complaint for damages.<sup>48</sup>

In its appeal, Aventure also cites to an older line of FCC cases where the Commission found that AT&T failed to meet its burden to show that the rural LECs violated FCC rules by entering into revenue sharing agreements with conference call operators.<sup>49</sup> Aventure concludes that because the FCC found that AT&T did not meet its burden to show these carriers violated FCC rules, the FCC also concluded the carriers were entitled to collect switched access charges for conference operators' calls.<sup>50</sup> However, this specific issue was not discussed in the orders cited by Aventure. In addition, the FCC

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(finding that Farmers and Merchants did not violate Commission rules when it imposed terminating access charges for calls from conference operators because the Commission found that the conference operators were purchasing services through the company's tariff).

<sup>41</sup> *Aventure Appeal Letter*, at 8.

<sup>42</sup> *See id.*

<sup>43</sup> *In the Matter of Qwest Communications Corp. v. Farmers & Merchants Mutual Telephone Co.*, File No. EB-07-MD-001, Second Order on Reconsideration, FCC 09-103, 24 FCC Rcd 14801 (2009) (*2009 Qwest Reconsideration Order*) (reversing its original order and finding conference calling companies were not end users under Farmers and Merchants' tariff and that Farmers and Merchants was not entitled to charge the Qwest tariffed switch access rates).

<sup>44</sup> *See Aventure Appeal Letter*, at 8.

<sup>45</sup> *2009 Qwest Reconsideration Order*, 24 FCC Rcd at 14813, ¶ 26.

<sup>46</sup> *See id.* at 14810, ¶ 22.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 14801, ¶ 1 ("Qwest may file a supplemental complaint for damages within sixty days of the release of this order.")

<sup>49</sup> *See Aventure Appeal Letter*, at 8 (citing to *In the Matter of AT&T Corp. v. Jefferson Telephone Co.*, File No. E-97-07, Mem. Op. and Order, FCC 01-243, 16 FCC Rcd 16130 (2001), *In the Matter of AT&T Corp. v. Frontier Communications of Mt. Pulaski, Inc., et al.*, File No. E-96-36, Mem. Op. and Order, 17 FCC Rcd 4041 (2002); *In the Matter of AT&T Corp. v. Beehive Telephone Co. et al.*, File No. E-97-04, Mem. Op. and Order, FCC 02-186, 17 FCC Rcd 11641 (2002)).

<sup>50</sup> *See Aventure Appeal Letter*, at 8.

issued a series of recent orders in 2011 and 2013 holding that the carriers were not entitled to switched access charges for conference operators' calls because the carriers were not providing the conference operator customers tariffed services.<sup>51</sup> As USAC will discuss further below, Aventure was not providing its FCSC customers with tariffed services. Thus, Aventure's FCSC customers were not "end users" under Aventure's tariff and Aventure was not entitled to charge access charges for the conference operators' calls.

IV. Aventure's FCSC Customers were not "End Users" and Did Not Subscribe to Aventure's Tariffed Services

Aventure disputes the Iowa Utilities Board's (IUB's) 2009 decision that FCSC service does not have any "end users."<sup>52</sup> Aventure asserts that the FCC found that conference call operators are end users and that the calls "terminate" at the location of the conference call bridge equipment.<sup>53</sup> Further, Aventure believes the IUB's findings in the 2009 decision violate FCC's precedent and cannot be relied upon for this audit.<sup>54</sup>

In 2009, the IUB issued an order regarding Aventure and the services provided to its FCSC customers.<sup>55</sup> Specifically, the IUB found that the "FCSCs are not end users of the Respondents [including Aventure] for purposes of their intrastate tariffs. The FCSCs did not subscribe to the Respondent's access or local service tariffs and the FCSC did not expect to pay for and did not pay for any of the Respondents' local exchange service offerings."<sup>56</sup> In addition, the IUB also found that the Respondents' calls did not terminate at end users' premises.<sup>57</sup> The IUB found that the FCSCs' conference bridge equipment was located at the Respondents' premises and that the premises were under the control of the Respondents and not the end users.<sup>58</sup> Thus, the IUB concluded that the FCSC lines terminated at the Respondents' premises and not the premises of the end users.<sup>59</sup> The IUB further found that certain FCSC calls were delivered to a router at

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<sup>51</sup> See, e.g., *In the Matter of Qwest Communications Co. v. Northern Valley Communications*, File No. EB-11-MD-001, Mem. Op. and Order, FCC 11-87, 26 FCC Rcd 8332, 8338, ¶ 11 (2011) (finding that CLECs may not impose switched access charges pursuant to a tariff unless it is offering the tariffed services to its end users); *In the Matter of Qwest Communications Co. v. Sancom, Inc.*, File No. EB-10-MD-004, Mem. Op. and Order, FCC 13-321, 28 FCC Rcd 1982, 1994, ¶ 28 (2013) ("We find that the Free Calling Companies were not 'end users' under Sancom's Tariff and, therefore, that Sancom was not entitled to charge Qwest for switched access under the Tariff. By charging Qwest nonetheless, Sancom violated sections 201(b) and 203(c) of the Act."); *In the Matter of AT&T Corp. v. All American Telephone Co., et al.*, File No. EB-09-MD-010, Mem. Op. and Order, FCC 13-38, 28 FCC Rcd 3477, 3494-95, ¶ 38 (2013) (*All American Order*) (holding that the carriers did not terminate calls to 'end users' within the meaning of their tariffs and thus, they could not properly bill for access services under the terms of their tariffs.).

<sup>52</sup> *Id.* at 12.

<sup>53</sup> See *Aventure Appeal Letter*, at 12 (citing to the FCC's first *Qwest Order* that was subsequently reversed).

<sup>54</sup> *Id.*

<sup>55</sup> See *In the Matter of Qwest Communications Corp. v. Superior Telephone Cooperative, et al.*, Docket No. FCU-07-2, Final Order (Iowa Utilities Board 2009) (*2009 IUB Order*).

<sup>56</sup> *Id.* at 34.

<sup>57</sup> See *id.* at 39.

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

Aventure's central office and then forwarded to its ultimate destination.<sup>60</sup> The IUB concluded that "the called party was not the FCSC, it is a person or business located somewhere other than the Respondents' exchanges. Therefore these calls are not subject to intrastate terminating switching access charges in Iowa."<sup>61</sup> The IUB concluded that "none of the FSCS associated with the Respondents were end users for purposes of the Respondents' intrastate exchange access tariffs, none of the intrastate toll traffic associated with the FCSCs terminated at an end user's premises, and much of the intrastate toll traffic associated with the FCSCs did not terminate in the Respondents' certificated local exchange area. For each of these reasons, intrastate access charges did not apply to calls to the FCSCs and should not have been billed to the IXCs for calls to numbers assigned to the FCSCs."<sup>62</sup>

USAC concurs with the findings made by the IUB in 2009 regarding Aventure because during the audit Aventure was unable to provide documentation to show that: (1) the FCSC customers were end users and were subscribing to services from Aventure's tariff;<sup>63</sup> and (2) that the FCSC customers were located in Aventure's designated service area.<sup>64</sup> Specifically, Aventure has not provided documentation to show that the FSCS companies were in fact subscribing to Aventure's tariffed services.<sup>65</sup> USAC does not agree that the documentation provided by Aventure during the audit demonstrates that Aventure assessed and billed its FCSC customers any fees related to these FCSC lines including the end user common line charges required for MLB lines per the FCC Form 555 instructions.<sup>66</sup> In addition, USAC further notes that the IUB also determined during its investigation that Aventure did not assess any fees to its FCSC customers and that Aventure, like Farmer and Merchants above, entered into untariffed agreements with its FCSC customers.<sup>67</sup> Aventure has not provided USAC with sufficient documentation to demonstrate that it provided FCSC customers with tariffed services and that Aventure

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<sup>60</sup> See *id.* at 42.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 53-54.

<sup>63</sup> See *Aventure Audit Report*, at 9-10, 63-66, 75-76.

<sup>64</sup> See *id.* at 9, 61-63, 74-75.

<sup>65</sup> See *id.* at 9-10.

<sup>66</sup> See *id.* at 64.

<sup>67</sup> See *2009 IUB Order*, at 26-27 (addressing Aventure's claims that it invoiced its FCSC customer \$5 per a line, per month fee, and agreeing with Qwest's evidence that the invoices were never issued to the FCSC customers and were instead issued to an intermediary broker). The IUB concluded that although it "is not clear when Aventure sent the invoices for this untariffed rate, [that] they were not legitimate bills for which Aventure expected to be paid." *Id.* In addition, the IUB concluded that "the FCSCs did not subscribe to the services in the Respondents' access and local exchange tariffs and therefore were not end users of the Respondents' .... The Board finds the lack of timely, legitimate billing for tariffed services by the respondents demonstrates that the FCSCs did not actually subscribe to a billable tariffed service. Moreover, there is convincing evidence that the Respondents did not intend to bill the FCSCs for any services under their tariffs, as required in order for intrastate access charges to apply. Specifically, the Respondents did not comply with the billing requirements of their tariffs when they did not send the FCSCs monthly local exchanges invoices, they did not bill the FCSCs the EUCL on any invoices, they did not bill the FCSCs a federal USF charge on any invoices, and they did not bill the FCSC for ISDN Line Ports, ISDN BRI arrangements, or ISDN PRI arrangements on any invoices." *Id.* at 24-25. Aventure's billing documentation given to USAC provides that Aventure billed its FCSC customer \$5 per line, but there is no indication on the invoice that any of the requested fees were accessed. *Aventure Audit Report*, at 44.

billed the FCSC customers monthly access fees and services.<sup>68</sup> Thus, USAC determined that the FCSC customers were not end users and that the FCSC lines were not eligible for High Cost Program support.<sup>69</sup> In addition, the documentation provided by Aventure showed that its FCSC customers were not located in its designated service area and that the calls terminated outside of Aventure's service area.<sup>70</sup>

Aventure argues that USAC may not rely on the findings by IUB or the IUB's September 2009 order.<sup>71</sup> However, as discussed above, USAC concurs with the IUB's findings. In addition, USAC further notes that the Commission rejected a similar argument by a rural ILEC who alleged the findings from the Utah Public Service Commission should not be relied upon by the Commission. The Commission responded with "[w]e disagree with Defendants' contention that the Utah PSC's findings are irrelevant to our analysis. The Utah PSC conducted extensive proceedings into All American's operations, and its findings are credible and independently supported by the record."<sup>72</sup>

Aventure further contends the IAD report improperly dismisses the FCC's *Connect America Fund Order* as controlling precedent.<sup>73</sup> Aventure asserts that the *Connect America Fund Order* confirms that calls to conference operators and chat lines should be deemed regulated, switched access services.<sup>74</sup> USAC disagrees that the *Connect America Fund Order* supports Aventure's assertion that its FCSC lines are eligible switched access services. As explained above, USAC determined that Aventure provided special access services that are not eligible for High Cost Program support.<sup>75</sup> In addition, USAC also determined that Aventure's FCSC customers were not end users.<sup>76</sup> Further, the *Connect America Fund Order's* revised rules regarding simulated call traffic were not in effect during the time period audited and cannot be applied retroactively.<sup>77</sup> For these reasons, USAC finds that Aventure's reliance on the *Connect America Fund Order* does not render its FCSC lines eligible for High Cost Program support.

V. Aventure's FCSC Lines Were Not "Revenue-Producing" And Were Not Eligible for High Cost Program Support

Aventure asserts that the FCSC lines reported should be considered revenue producing because: (1) Aventure's relationships with its conference operator customers is a form of "access sharing;" (2) Aventure has billed for interstate switched access charges and is pursuing collection actions against the long distance carriers to recover them; and (3)

<sup>68</sup> See *Adventure Audit Report*, at 9-10, 67, 75.

<sup>69</sup> See *id.*

<sup>70</sup> See *Adventure Audit Report*, at 9, 62-64, 74.

<sup>71</sup> See *Adventure Appeal Letter*, at 12.

<sup>72</sup> *All American Order*, 28 FCC Rcd at 3495, ¶ 39.

<sup>73</sup> *Adventure Appeal Letter*, at 13.

<sup>74</sup> *Id.* at 14.

<sup>75</sup> See *supra* at Section III.

<sup>76</sup> See *supra* at Section IV.

<sup>77</sup> See *Adventure Audit Report*, at 75.

NECA has stated in their presentations that a carrier does not have to bill or collect any amount in order to report a “revenue producing loop.”<sup>78</sup>

Aventure’s reference to access sharing based on verbiage from the FCC’s *Connect America Fund Order* is unavailing. First, as previously discussed, the determinations of that Order are only effective prospectively and were not in place for the period in question.<sup>79</sup> Second, Aventure’s arrangements with its conference operator customers in revenue sharing agreements which convey the benefit of FCSC’s traffic resultant terminating access stimulation do not supplant the requirement to charge its FCSC customers for the tariffed DS3 service.

IAD determined that Aventure did not provide adequate billing documentation to support that any payments were made by any of its FCSC customers in compliance with the requirements of 47 C.F.R. § 54.202(e).<sup>80</sup> Aventure did not provide reasonable evidence that it assessed or collected any fees related to these lines, including the end user common line charge required for MLB lines per the Form 525 instructions. Without sufficient evidence to conclude otherwise, the auditors were not able to find that these lines were revenue producing working loops. As such, the FCSC lines could not be reported as such for High Cost Program support purposes.<sup>81</sup>

USAC further notes that Aventure’s arguments for collecting service access charges are aimed at the long distance IXCs. Aventure has not provided any evidence that it has also billed its FCSC customers and is pursuing collection actions against its FCSC customers for non-payment of services.<sup>82</sup>

USAC also finds that the cited NECA’s presentations are unpersuasive and do not modify the audit findings. Although, NECA may include a broad definition for “revenue producing” in its presentation, the fact remains that Aventure did not provide all the designated services set forth at 47 C.F.R. § 54.101 to its FCSC customers. As explained above, the FCSC lines do not meet the criteria required by 47 C.F.R. § 54.101 and therefore the lines reported are ineligible to receive High Cost Program support.<sup>83</sup>

VI. USAC’s Audit Findings Are Not Novel and Are Not Being Applied Retroactively Towards Aventure’s Audited FCSC Lines

<sup>78</sup> See *Aventure Appeal Letter*, at 15.

<sup>79</sup> See *Aventure Audit Report*, at 75.

<sup>80</sup> 47 C.F.R. § 54.202(e) (“All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. These records should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding.”).

<sup>81</sup> *Aventure Audit Report*, at 9.

<sup>82</sup> See *Aventure Audit Report*, at 18-10. See also *Aventure Appeal Letter*, at 15.

<sup>83</sup> See *supra* at Section II.

Aventure asserts that the Aventure Audit Report includes novel findings that are not supported by FCC rules or orders and that USAC is retroactively applying new rules towards Aventure's audited line counts.<sup>84</sup> Specifically, Aventure argues that there is no precedent to conclude that voice grade services terminated over a high-capacity circuit do not qualify for High Cost Program support.<sup>85</sup> Aventure also asserts that USAC has never made a determination on whether High Cost Program support can be provided for calls provided to conference call operators.<sup>86</sup> Thus, Aventure argues that USAC issued novel findings and is retroactively applying new rules to the audited FCSC lines.

USAC does not concur that it has issued novel findings or is retroactively applying new rules towards Aventure's audited FCSC lines. As explained above, even though Aventure's high-capacity circuit may be used to provide all the enumerated voice services pursuant to 47 C.F.R. § 54.101, Aventure concedes that it is not providing all the required voice services to its FCSC customers.<sup>87</sup> The issue has never been whether Aventure's high-capacity circuit is able to provide all the required voice services, but rather Aventure is not providing all required voice services to its FCSC customers.<sup>88</sup> Aventure is not eligible to receive federal universal service High Cost Program support if it is not providing all of the required voice services set forth at 47 C.F.R. § 54.101.<sup>89</sup> Further, the Commission's *1997 Universal Service Order* set forth this precedent and it is not a new rule that is being applied retroactively to Aventure's audited FCSC lines.<sup>90</sup>

USAC is not required to address the general question of whether any calls to conference operators may be eligible for federal universal High Cost Program support. USAC determined through the audit of Aventure's FCSC lines that these specific FCSC lines are not eligible for High Cost Program support for the reasons discussed above.

## VII. Conclusion

USAC has reviewed and considered the documentation and arguments proffered by Aventure in regards to the Aventure Audit Report's findings. USAC is not persuaded to reverse the auditor's findings for the following reasons. First, Aventure failed to provide all the required services at 47 C.F.R. § 54.101 to its FCSC customers.<sup>91</sup> To receive High Cost Program support, ETCs are required to provide all of the required services.<sup>92</sup> Second, Aventure's services to FCSC customers were ineligible special access services

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<sup>84</sup> See *Aventure Appeal Letter*, at 19.

<sup>85</sup> See *id.*

<sup>86</sup> See *id.*

<sup>87</sup> See *Aventure Appeal Letter*, at 5 ("Aventure does not provide [emergency calling, operator, or directory assistance] services to its conference operator customers because they cannot use such services.")

<sup>88</sup> See *supra* at Section II.

<sup>89</sup> See *id.*

<sup>90</sup> See *1997 Universal Service Order*, 12 FCC Rcd 8776, ¶ 89 ("Consistent with the Joint Board's recommendation, we conclude that eligible carriers must provide each of the designated services in order to receive universal service support.")

<sup>91</sup> See *supra* at section II.

<sup>92</sup> See *1997 Universal Service Order*, 12 FCC Rcd at ¶ 89.

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Arent Fox LLP  
October 29, 2013  
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and not eligible switched access services.<sup>93</sup> Third, Aventure's FCSC customers were not end users and the FCSC customers were not located in Aventure's designated service area.<sup>94</sup> Finally, because Aventure did not invoice or bill access charges to its FCSC customers, USAC determined that the FCSC lines were not working loops eligible for federal universal support.<sup>95</sup> Therefore, as discussed above, Aventure's appeal is hereby denied.

#### Aventure Appeal Rights

If you wish to further 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

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<sup>93</sup> See *supra* at Section III.

<sup>94</sup> See *supra* at Section IV.

<sup>95</sup> See *supra* at Section V.

# **ATTACHMENT 4**

**CONFIDENTIAL  
PROPRIETARY**

December 24, 2013

**VIA E-MAIL**

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Re: **LETTER REQUESTING BOARD REVIEW: Administrator's Decision on High Cost Program Beneficiary Appeal; (USAC Audit No. HC2011BE011)**

To the High Cost and Low Income Committee of the Board of Directors:

This Request for Review is submitted by Aventure Communication Technology, L.L.C. ("Aventure"), by its undersigned counsel, in response to the Administrator's Decision on High Cost Program Beneficiary Appeal, dated October 29, 2013 ("*Administrator's Decision*"), and pursuant to the rules of the Universal Service Administrative Company (USAC) and Sections 54.719-54.725 of the rules of the Federal Communications Commission (FCC), 47 C.F.R. §§ 54.719-54.725.

This letter asks the High Cost and Low Income Committee of the USAC Board of Directors ("the Committee"), or if the Committee deems it appropriate, the full USAC Board of Directors, to review the *Administrator's Decision*. The *Administrator's Decision* denies Aventure's appeal seeking reversal of conclusions of the Internal Audit Division (IAD) made in an Independent Auditor's Report dated May 15, 2012 ("*IAD Report*"). A copy of the Administrator's Decision is appended to this letter at Attachment 1.

As discussed below, the *Administrator's Decision*, and the underlying *IAD Report* are characterized by a fundamental misreading of the Commission's rules and policies. As Aventure has demonstrated, the *Administrator's Decision* and *IAD Report* are not supported by precedent, and constitute novel statements of policy and interpretation of the Commission's rules. As such, they are *ultra vires* and merit reversal.

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**I. REVIEW BY THE COMMITTEE OR THE BOARD IS APPROPRIATE**

Aventure has chosen to seek review by the High Cost and Low Income Committee of the Board of Directors, rather than an immediate appeal to the FCC's Wireline Competition Bureau because the findings of the IAD are so fundamentally flawed that even a cursory review by the experts on the Committee should be able to verify the legitimacy of Aventure's challenges.

The FCC has recognized that review by a Committee or the full Board can be an efficient means of seeking redress while minimizing the burden on FCC Staff:

We also agree with USAC . . . that affected parties should be encouraged to bring issues to the attention of the division head or the USAC CEO to determine whether the matter can be handled without a formal appeal to the Commission. We anticipate that, under certain circumstances, a party may prefer to seek redress initially from the appropriate Committee of the Board or the full USAC Board. Accordingly, we conclude that affected parties should have the option of seeking redress from a Committee of the Board or, if the matter concerns a billing, collection, or disbursement matter that falls outside of the jurisdiction of a particular committee, from the full USAC Board. We encourage parties to seek redress in the first instance from Committees of the Board for matters that involve straightforward application of the Commission's rules. To the extent that affected parties can obtain prompt resolution of such disputes, support mechanism participants will be better served and limited Commission resources will be conserved.<sup>1</sup>

Aventure believes that this request for review falls squarely within the jurisdiction of the High Cost and Low Income Committee, which among other things, is tasked with "making decisions concerning: . . . (iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; [and] (iv) Performance of audits of beneficiaries under the high cost, low income, interstate access universal service and interstate common line support mechanisms . . . ."<sup>2</sup>

**II. BACKGROUND AND OVERVIEW**

This letter asks the Committee to reverse the conclusions set forth in the *IAD Report*, which consists of an Independent Auditor Report, issued by USAC and the Internal Audit

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<sup>1</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, 13 FCC Red. 25058, 25092 ¶ 67 (1998). Submitting this request for Committee review tolls the time period for filing an appeal with the Commission. *Id.* at 25093 ¶ 70.

<sup>2</sup> 47 U.S.C. § 54.705(c)(1).

Division, dated May 15, 2012, and the USAC Management Response appended to that same document at pages 71-82. Because of the size of that document, Aventure will not append it to this letter, but rather refers to the *IAD Report* by reference.

In November 2011, IAD initiated an audit of Aventure. On May 8, 2012, IAD provided Aventure with a draft Detail Exception Worksheet (DEW) and conducted an Exit Conference with representatives of Aventure and their counsel. On May 15, 2012, Aventure, through counsel, submitted its Opposition to Internal Audit Division Draft Detail Exception Worksheet ("*DEW Opposition*"). That *Opposition* is appended to this letter at Attachment 2 (because its attachments are voluminous, Aventure does not append them, but will provide copies upon request). The *DEW Opposition* made the following points:

- The DEW conclusions are not supported by any precedent, and fail to comport with long-established industry practices. *DEW Opposition* at 2-4, 12-13.
- The DEW conclusions that Aventure's lines are not "working loops" and are special access lines are wrong as a matter of law and fact. *DEW Opposition* at 4-6.
- The DEW conclusions that the calls to Aventure's conference operators do not "terminate" in Aventure's service territory, and do not terminate to "end users" are unsupported and ignore relevant precedent. *DEW Opposition* at 7-9.
- The DEW relies on an order by the Iowa Utilities Board that is based on state law, and is inconsistent with FCC rules. *DEW Opposition* at 10-12.
- The DEW refuses to consider factors that mitigate the damages it asserts. Imposing a retroactive refund obligation on Aventure would cause irreparable harm. *DEW Opposition* at 13-14.

Also on May 15, 2012, the IAD issued its *IAD Report*. The *Report* concludes that Aventure incorrectly reported lines associated with calls to conference operators on the Aventure network as USF-eligible lines. The *Report* bases this conclusion on five findings:

1. The Aventure lines do not carry supported services.
2. The Aventure lines are not "revenue producing."
3. The Aventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Aventure service area, because the conference bridge locations cannot be defined as "end user" premises.
5. Aventure's designation as an Eligible Telecommunications Carrier ("ETC") is in doubt.

May 15, 2012 was also the day Aventure initiated a Freedom of Information Act (FOIA) request to USAC, asking that USAC produce any USAC or FCC decisions that it used as precedent to support any of the conclusions of the *IAD Report*. This initiated a series of correspondence between USAC and Aventure's counsel, clarifying the FOIA Request and reaching agreement on the amounts that Aventure would pay to cover the cost of USAC's research into the issue. The final letter in that stream of correspondence reflects the final agreement between Aventure and USAC. That letter is dated September 19, 2012, and is appended to this letter at Attachment 3. To date, USAC has not produced any of the materials requested in the FOIA request, or otherwise responded to it.

On December 18, 2012, the USAC High Cost and Low Income Division sent a letter to Aventure, asserting a claim for [REDACTED] for virtually all high cost funds received by Aventure between 2007 and 2011. On February 18, 2013, Aventure filed with USAC a *Letter of Appeal*, asking the High Cost and Low Income Division to reverse the findings of the *IAD Report*. A copy of the *Letter of Appeal* is appended at Attachment 4. The *Administrator's Decision* denied the Aventure appeal, and affirmed the conclusions of the *IAD Report* without modification. In doing so, it provided no new precedent or arguments, but simply reiterated the conclusions of the *IAD Report*.

As Aventure demonstrated in its *DEW Opposition* and *Letter of Appeal*, and further demonstrates in this letter, the *IAD Report* and *Administrator's Decision* are premised on a fundamental misunderstanding of the FCC's rules and policies and reach conclusions that are demonstrably inconsistent with the FCC's rules and orders. Moreover, they largely ignore the showings made by Aventure.

Also, as will be discussed in detail below, USAC has failed for over a year to respond to the Aventure FOIA request, which was expressly designed to identify any precedent that supported the *IAD Report's* conclusions. USAC's failure – or inability – to provide the most basic support for its conclusions demonstrates that the *IAD Report* is not, and cannot be, supported by precedent, and is *ultra vires* the enumerated powers designated to USAC by the FCC.

**III. THE IAD REPORT AND ADMINISTRATOR'S DECISION ARE ULTRA VIRES THE AUTHORITY GRANTED USAC BY THE FCC**

Section 54.702(c) of the FCC's rules restricts USAC to applying established FCC precedent, and prohibits USAC from making new policy or interpreting unclear policies:

The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.<sup>3</sup>

In the discussions of specific decisions in the *IAD Report* and the *Administrator's Decision* below, Aventure will identify numerous instances in which USAC has made new policy decisions, and made decisions in areas where the law clearly has not been settled by the Commission. In these instances, the *IAD Report* and the *Administrator's Decision* are *ultra vires* USAC's delegated authority, and must be reversed.

**IV. THE IAD REPORT AND ADMINISTRATOR'S DECISION DISREGARD THE FCC'S STATEMENT OF THE LAW, AND INSTEAD RELY ON A RULING BY THE IOWA UTILITIES BOARD THAT IS DEMONSTRABLY INAPPOSITE**

The bulk of the findings in the *IAD Report* and the *Administrator's Decision* are taken from an order issued by the Iowa Utilities Board (IUB).<sup>4</sup> Specifically, they take the *IUB Order* as controlling precedent for the findings that: Calls to Aventure's conference bridge did not "terminate" within Aventure's service area (*Administrator's Decision* at 3, 8); Aventure's conference customers were not "end users" (*id.* at 4, 8-10); that failure to receive payment from the conference operators disqualifies the service as access service (*id.* at 8-9); that Aventure entered into non-tariffed agreements with its conference operators, and that this somehow affects the eligibility of its lines as switched access (*id.* at 9); that Aventure did not provide the IUB with sufficient documentation to show that it billed its conference customers for end user common line charges or other charges (*id.* at 9-10). The *Administrator's Decision* repeatedly states that it "concur[s]" with the *IUB Order*. *Id.* at 9-10.

Aventure has shown that the *IUB Order* was limited to an analysis of Aventure's intrastate tariff, using Iowa state law; that the *IUB Order* was expressly rejected as precedent by the FCC in the *Connect America Order*; that the *IUB Order* is otherwise inconsistent with FCC

<sup>3</sup> 47 C.F.R. § 54.702(c).

<sup>4</sup> *Iowa Utilities Board, Qwest Comms. Corp. v. Superior Tel. Coop. et al.*, Docket No. FCU-07-2, Final Order (issued September 21, 2009) ("*IUB Order*").  
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rulings; and that the *IUB Order* has been superseded by subsequent proceedings at the IUB. *DEW Opposition* at 10-12; *Letter of Appeal* at 12-13, Attachment 1.

The *Administrator's Decision* does not address these arguments, other than to say that inconsistencies between the *IUB Order* and the *Connect America Order* will not be taken into account because the *Connect America Order's* new rules had prospective effect. Aventure has demonstrated that the *IUB Order* is fundamentally inconsistent with established FCC precedent from 2000 to the present, and cannot be used as controlling, or even indicative authority by USAC.

V. **THE SPECIFIC FINDINGS OF THE IAD REPORT AND THE ADMINISTRATOR'S DECISION ARE NOT SUPPORTED BY EVIDENCE OR PRECEDENT AND ARE UNSUSTAINABLE**

A. **The Finding That Aventure's Calls Do Not Terminate Within Its Service Area Ape An Argument That Has Been Expressly Rejected By The FCC**

The *IAD Report* and the *Administrator's Decision* hold that calls to Aventure's conference customers do not "terminate" in Aventure's service area. *IAD Report* at 62-63; *Administrator's Decision* at 3-4. Their argument is that the location of the "customer" is not the conference bridge, but either the locations of the users of the conference bridge, or the headquarters of the conferencing company. As Aventure has demonstrated in its *DEW Opposition* (at 6-7) and *Letter of Appeal* (at 10-12), this finding has been expressly rejected by the FCC. In its *Connect America Order*, the FCC addressed and rejected the same argument made by Qwest:

Qwest argues that calls to the conference calling companies are ultimately connected to -- and terminate with -- users in disparate locations. According to Qwest, when a caller dials one of the conference calling companies' telephone numbers, the communication that he or she initiates is not with the conference calling company, but with other people who have also dialed in to the conference calling company's number. Qwest argues that such calls terminate at the locations of those other callers, and that Farmers is providing a transiting service, not termination. Farmers' view of the calls, however, is that users of the conference calling services make calls that terminate at the conference bridge, and are connected together at that point. We find Farmers' characterization of the conference calling services to be more persuasive than Qwest's.

\* \* \*

Qwest's view of how to treat a conference call leads to anomalous results. For instance, suppose parties A, B, C, and D dial in to a conference bridge. According to Qwest, A has made three calls, one terminating with B, one with C, and one with D. But in fact, B, C, and D have actually initiated calls of their own in order to communicate with A. What Qwest calls the termination points are actually call initiation points. Moreover, under Qwest's theory, the exchange carriers serving B, C, and D would all be entitled to charge terminating access. In fact, each of those carriers would be entitled to charge terminating access three times -- B's carrier could charge for terminating calls from A, C, and D, and so forth. This conference call with four participants would incur terminating access charges twelve times. Qwest has not addressed this logical consequence of its theory, nor has it offered any evidence that conference calls are treated as terminating with the individual callers for any purpose beyond the circumstances of this case.<sup>5</sup>

The *Connect America Order* both confirms that calls to conference operators are switched access services, and disposes of the IAD's findings regarding the locus of the terminating calls.

**B. The Finding That Adventure's Conference Operators Are Not "End Users" Is Wrong As A Matter Of Law And Is Ultra Vires**

The *IAD Report* and *Administrator's Decision* hold that Adventure's conference operators cannot be defined as "end users" and so the switched access calls to them do not "terminate," and so the calls do not constitute "supported services." *IAD Report* at 62-63; *Administrator's Decision* at 7-8. In so finding, they cite the *IUB Order*, which as discussed above, cannot be used as precedent by USAC because it is inconsistent with established FCC precedent. The *Administrator's Decision* also relies on several recent decisions issued by the FCC over the past four years: Decisions in formal complaints in *Qwest v. Farmers and Merchants*, *Qwest v. Northern Valley*, *Qwest v. Sancom* and *AT&T v. All American*. *Administrator's Decision* at 6-8. The Administrator attempts to take the rulings from these four party-specific adjudications and create a per se rule of law that conference and chat operators cannot be end users.

The *Connect America Order* expressly refused to establish a per se rule against sending traffic to high volume conference and chat operators:

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<sup>5</sup> *Connect America Fund*, 26 FCC Rcd 17663, 17985-86, ¶¶ 32-33 (footnotes omitted) (emphasis in original).

As proposed in the USF/ICC Transformation NPRM, we do not declare revenue sharing to be a per se violation of section 201(b) of the Act. A ban on all revenue sharing arrangements could be overly broad, and no party has suggested a way to overcome this shortcoming. Nor do we find that parties have demonstrated that traffic directed to access stimulators should not be subject to tariffed access charges in all cases.<sup>6</sup>

Moreover, each of the fact-specific and party-specific formal complaint rulings cited in the *Administrator's Decision* emphasizes that the rulings are limited to the facts of that specific case. In each case, the FCC conducted an analysis of the language of specific tariffs and the conduct of the individual carrier, and confined its decision to the party-specific facts of the case. *E.g.*: “Accordingly, based upon the totality of the circumstances and facts of this case, we conclude that the conference calling companies do not constitute ‘end users’ within the meaning of the tariff provisions at issue.”<sup>7</sup> “As discussed above, based on our interpretation of Sancom’s filed Tariff, and Sancom’s relationship with the Free Calling Companies, we find that Sancom’s interstate access charges are unlawful because Sancom was not providing service under the Tariff.”<sup>8</sup>

No review of the language of the Aventure tariff, in the context of its relationship with its conference operator customers has been undertaken by USAC or the FCC. The establishment of a per se rule of law by USAC, based on these clearly inapposite FCC decisions, is impermissible and *ultra vires*, and must be reversed.<sup>9</sup>

C. **The Conclusion That Access Stimulation Service Is Special Access Is Wrong As A Matter Of Law, And Demonstrates A Lack Of Understanding Of Basic Network Design**

The *IAD Report* and *Administrator's Decision* find that the services at issue are wideband Special Access services, which are not eligible for USF support. *IAD Report* at 7, 61; *Administrator's Decision* at 5-8. This finding reflects a profound lack of understanding of basic telephone network design, and directly conflicts with multiple FCC decisions, and as such must be reversed.

<sup>6</sup> *Id.*, 26 FCC Rcd at 17879 ¶ 672.

<sup>7</sup> *Qwest Comms. Corp. v. Farmers and Merchants Mut. Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801, 14813, ¶ 25 (2009).

<sup>8</sup> *Qwest Comms. Co. v. Sancom Inc.*, 28 FCC Rcd 1982, 1993 ¶ 25 (2013).

<sup>9</sup> This is particularly the case because Aventure has provided cites to several cases in which the FCC expressly found that calls to conference and chat operators were subject to access charges. The *Administrator's Decision* has no reply, other than to dismiss these cases because “this specific issue was not discussed” in those cases. *Administrator's Decision* at 7 & n. 49.

Aventure informed IAD that it used interoffice DS3 trunks to transfer the voice grade calls from the tandem switch to the Aventure end office where the conference bridges were located. This is, of course, standard industry practice, given the volumes of calls delivered to the bridges. Aventure explained at length that the conference bridges were analogous to Centrex switches and remote switches used to carry voice traffic, and were fully consistent with USAC's filing instructions and the NECA Loop Count Guide (*DEW Opposition* at 4-6; *Letter of Appeal* at 10), but these arguments were completely ignored in the *IAD Report* and *Administrator's Decision*.

Moreover, Aventure briefed three FCC decisions that found that local exchange carriers that delivered very high volumes of voice traffic to chat and conference operators were providing switched access service, subject to tariffed switched access rates. *Letter of Appeal* at 9-10. The *Administrator's Decision* ignores this precedent, saying only that those cases because "this specific issue was not discussed" in them. *Administrator's Decision* at 7 & n.49.

IAD and the Administrator ignore evidence to the contrary, in favor of their interpretation of service definitions. Yet, they provide no precedent showing that such determinations have been made by USAC or the FCC in the past (as confirmed by their inability to respond to Aventure's FOIA request). These findings by the *IAD Report* and *Administrator's Decision* are novel and unprecedented – and so are *ultra vires*. They are also nonsensical – the majority of voice traffic is transported to end offices over high capacity links, without changing the traffic's character as switched access service. These conclusions of the *IAD Report* and *Administrator's Decision* must be reversed.

**D. The Finding That Aventure's Lines Are Not "Revenue Producing" Is Wrong As A Matter Of Law, And Is Ultra Vires**

The *IAD Report* and *Administrator's Decision* find that the circuits used to deliver voice calls to conference bridges located in Aventure's end office are not "revenue producing" and so do not qualify for High Cost support. *IAD Report* at 62-63, 76; *Administrator's Decision* at 10-11. IAD and the Administrator base this conclusion on a finding that Aventure has not yet collected fees from its conference operator customers, and on their assertion that Aventure is unable to collect access fees from its interexchange carrier customers.

Aventure has demonstrated in detail that several FCC decisions from 2000 and 2001, and the *Connect America Order* of 2011, hold that calls to chat and conference operators constitute switched access service, billable at tariffed access rates, regardless of whether the chat/conference operator pays a fee to the local exchange carrier. Aventure also demonstrated that the treatment of such calls as supportable switched access service is supported by NECA

materials and industry practice. *DEW Opposition* at 8-9; *Letter of Appeal* at 16-17 and Attachment 1, slide 11.

**E. The IAD's Stated "Lack Of Confidence" That Aventure Billed Its Customers Ignores Record Evidence And Sets An Unprecedented Standard Of Review**

As stated in the *DEW Opposition*, the *IAD Report* and *Administrator's Decision* ignore massive amounts of documentation showing that Aventure billed all of its conference operator customers for services, including the end user common line charge. *DEW Opposition* at 7-8. This shortcoming was never cured. Rather, the *IAD Report* simply states that IAD "does not have reasonable confidence that [Aventure] assessed . . . any fees related to these lines." *Id.*, citing DEW at 5. This appears to be a legal conclusion – IAD does not even attempt to show that the actual bills and customer lists provided by Aventure were inaccurate. In any event, the IAD Report's assertion of a lack of "reasonable confidence" is unexplained, and no standard of review for reaching this conclusion is stated. As such, the finding is unsupported and must be reversed.

**F. The Conclusion That USF Recipients Must Actually Provide Every Supported Service To Every Customer Is Unprecedented And Impractical**

The *IAD Report* and *Administrator's Decision* establish a new per se rule – no service is eligible for High Cost USF support unless the carrier actually provides each and every supported service to the customer. *Administrator's Decision* at 4-5 & nn. 22, 24, citing *IAD Report* at 71. Aventure made the point that IAD was conflating the "offering" of the supported services with the "provision" of those services, and demonstrated that the Commission's rules required only that the supported services be offered. *DEW Opposition* at 2-4; *Letter of Appeal* at 3-5.

As Aventure stated in those pleadings, Aventure is a full-service carrier that provides long distance and local voice calling to residential and business customers, as well as access termination service to conference operators. As such it operates a full-function Class 4-5 Taqua switch that is capable of providing all supported services listed in 47 C.F.R. § 54.101. But its access termination circuits to conference operators are one-way, inbound circuits – the conference operators have no need of outbound emergency calling or other outbound services, and choose not to pay for such services. But under the new rule adopted in the *IAD Report* and *Administrator's Decision*, no inbound-only circuit can ever qualify for USF. Indeed, under IAD's new ruling, a carrier cannot receive USF support unless it provides (as opposed to offer) toll blocking (one of the enumerated supported services) to every customer.

This has never been the position of the FCC, and USAC has produced no precedent to support such a ruling. Because this is either an unprecedented new ruling, or the clarification of

unclear rules, USAC may not make such findings without guidance from the FCC, and its rulings are *ultra vires*. Moreover, as Aventure has demonstrated, the IAD/Administrator conclusions are patently inconsistent with NECA instructions and standard industry practice.

**G. The IAD Report and Administrator's Decision Ignore Or Summarily Dismiss Evidence Demonstrating The Veracity Of Aventure's Arguments**

In supporting the conclusion that calls to conference operators on Aventure's network are switched access calls, fully eligible for High Cost support. Aventure cites to the FCC's *Connect America Order*.<sup>10</sup> That order adopted new rules governing "access stimulation" – *i.e.* the provision of voice access service to high-volume conference operators, which is a significant amount of the Aventure service at issue in this case. The *Connect America Order* confirmed that access stimulation services are – and always have been – access services, subject to the same tariff and "benchmark rate" regulatory structure that the FCC established in 2001:

We maintain the benchmarking approach to the regulation of the rates of competitive LECs. . . . There is insufficient evidence in the record that abandoning the benchmarking approach for competitive LEC tariffs . . . . Instead, we believe it is more appropriate to retain the benchmarking rule but revise it to ensure that the competitive LEC benchmarks to the price cap LEC with the lowest rate in the state, a rate which is likely most consistent with the volume of traffic of an access stimulating LEC.<sup>11</sup>

As this *Connect America Order* language makes clear, this recent FCC statement of the law is diametrically opposed to the IUB decision that IAD accepts as controlling authority. *DEW Opposition* at 9; *Letter of Appeal* at 13-16, 18. The *IAD Report and Administrator's Decision* simply dismiss this argument by stating that the *Connect America Order's* new rules had prospective effect, and so did not apply during the audit period. *Administrator's Decision* at 2. But as Aventure has shown, only the new rates prescribed in the *Connect America Order* have prospective effect – the language quoted above on its face confirms that calls to conference operators have at all times been classified as switched access service.

Similarly, Aventure has cited numerous FCC decisions that ruled in favor of the collection of access charges for calls to conference and chat operators. *Letter of Appeal* at 15-16. Indeed, the FCC has even prescribed switched access rates for calls terminating to a chat/conference operator.

<sup>10</sup> *Connect America Fund*, 26 FCC Rcd 17663 (2011).

<sup>11</sup> *Id.* at 17887-88 ¶ 694 (emphasis added).

The *Administrator's Decision* also completely ignores an order by the IUB that initiates a proceeding for the express purpose of prescribing intrastate switched access rates for calls terminating to conference and chat operators. *Letter of Appeal* at 16-17 & Attachment 2. Indeed the full order is appended to the *Letter of Appeal*. The IUB prescription order was provided to demonstrate that the *IUB Order* upon which the *IAD Report* and *Administrator's Decision* relies was superseded by subsequent proceedings at the IUB. It also demonstrates that, at all times relevant to the audit, Aventure was designated by the IUB as an eligible telecommunications carrier, another fact that the *IAD Report* and *Administrator's Decision* have chosen to ignore.

The evidence cited above demonstrates that: 1) Aventure's conference operator customers are "end users," 2) that the access lines are "revenue producing;" and 3) that they are switched access lines; 4) that the calls "terminate" at the conference bridge.

In its *Letter of Appeal*, Aventure proffers a copy of a NECA presentation that demonstrates that voice grade services carried over high capacity interoffice trunks are fully eligible for USF support. *Letter of Appeal* at 7-8 and Attachment 1. This evidence also supports the conclusion that Aventure's lines are "revenue producing" switched access lines. The *Administrator's Decision* summarily dismisses this showing as "unpersuasive" without any further discussion. *Administrator's Decision* at 11.

In its *DEW Opposition*, Aventure details a massive amount of data and documentation provided by Aventure showing that it sent bills to its conference operator customers for local service and the end user common line charge. *DEW Opposition* at 7-8. This evidence is wholly ignored by both the *IAD Report* and the *Administrator's Decision*.

The *IAD Report* and *Administrator's Decision* find that the traffic in question does not terminate at the location of the conference bridge within Aventure's end office. In its *DEW Opposition*, Aventure cites to rules of the Iowa Public Utilities Commission that the location of facilities determine where calls terminate, and argues that this rule contravenes USAC's findings. USAC does not respond to this showing.

Aventure testified that it asked for, and obtained advice from USAC Staff regarding the appropriate way to account for access lines to conference bridges, and identified the Staffer who provided the advice. *DEW Opposition* at 12. This argument has been ignored by IAD and USAC.

H. The Failure Of USAC To Respond To Aventure's FOIA Request Demonstrates That No Precedent Exists To Support It's Findings

As noted in the Background section above, early in the audit process Aventure, through its counsel, submitted a FOIA request to USAC in an attempt to determine if the *IAD Report's* conclusions were novel findings, or if they applied established precedent. The final letter to USAC, which states the request following several rounds of clarification, requested the following:

1. Search for USAC decisions related to the classification of voice-grade circuits carried over high-capacity facilities to terminating or originating equipment, how they should be reported in the line count sections of the FCC Form 525 and whether voice-grade circuits delivered over high-capacity facilities are eligible to receive High Cost support. . . .
2. Search for records reflecting USAC Staff communications with members of the industry on how to report such circuits of the FCC Form 525  
....

Attachment 3, at 1-2. To date, 15 months after the scope of research and estimated costs were agreed upon by Aventure and USAC, USAC has not responded to these very basic requests. Aventure posits that this lack of response reflects the fact that there is no operative precedent, and that the *IAD Report's* findings are in fact novel and unprecedented. Aventure has not been able to find FCC, USAC or NECA precedent to support IAD's conclusions, and neither the *IAD Report* nor the *Administrator's Decision* provides any such precedent.

Because the findings of the *IAD Report* are new rulings or interpretations of unclear FCC rules and orders, they are *ultra vires* – USAC may not make such findings absent guidance from the FCC. Because these rulings are novel and unprecedented, they may not be given retroactive effect.

VI. CONCLUSION

For the reasons stated herein, Aventure requests that the High Cost and Lifeline Committee, or the full Board, reverse the findings of the *IAD Report*, and to withdraw its assertion that Aventure is liable for refund of USF support amounts received between 2007 and 2011.

Because the record of this audit demonstrates that the *IAD Report* is a case of first impression, there is no basis for determining that Aventure should have acted differently than it

did in the past. Indeed, Aventure has demonstrated that it did everything possible to determine the correct way to report its lines – including talking to NECA Staff and USAC Staff. Retroactive application of this novel determination would violate the notice and comment provisions of the Administrative Procedures Act, would result in a discriminatory application of a new rule retroactively, would be arbitrary, capricious and biased, and would impose irreparable harm on Aventure. For these reasons, Aventure requests that the Committee or the Board reverse the IAD decision, and make its application prospective only.

Respectfully submitted,

A handwritten signature in black ink, reading "Jonathan E. Canis". The signature is written in a cursive style with a large, prominent initial "J".

Jonathan E. Canis

# ATTACHMENT 5

*By Certified Mail, Return Receipt Requested*

March 4, 2014

Jonathan E. Canis, Esq.  
Arent Fox LLP  
1717 K Street, NW  
Washington, DC 20036-5342

Re: Action to be Taken Resulting from High Cost Audit of Aventure Communication  
(SAC 359094) Audit Report No. HC2011BE011

Dear Jonathan E. Canis:

An audit of Aventure Communication for Study Area Code (SAC) 442153 was conducted by USAC Internal Audit Division. The final report from that audit was sent to the company in November of 2012.

Subsequent to the denial of Aventure's appeal, dated December 24, 2013, requesting Board review as outlined in the letter from USAC dated January 21, 2014, USAC will recover [REDACTED] High Cost Program support previously disbursed to Aventure for SAC 359094. Please refer to the audit report for details on the funds being recovered. USAC will recover these funds in the April 2014 High Cost support month, which will be disbursed at the end of May 2014.

Consistent with current administrative practice, if the recovery amount exceeds the company's disbursement for that month, USAC will continue to offset the remaining recovery amount balance against subsequent High Cost support disbursements until such time as the full amount is recovered. If necessary, USAC reserves the right to invoice and collect any remaining amounts owed.

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. The appeal must be filed within 60 days of the date of the date of this letter as required by 47 C.F.R. § 54.720(a). Detailed instructions for filing appeals are available at:

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

Sincerely,

//s// Universal Service Administrative Company