

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was provided to demonstrate that the *IUB Order* upon which the *IAD Report* and *Administrator's Decision* relies was superseded by subsequent proceedings at the IUB.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.

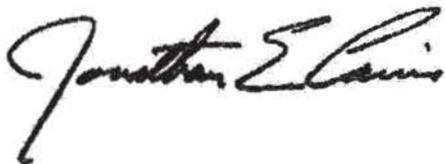
VI. CONCLUSION

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, appearing to read "Jonathan E. Canis". The signature is written in a cursive, flowing style.

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