Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Review by Aventure Communication Technology, LLC, of a Decision of the Universal Service Administrator	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Federal-State Joint Board on Universal Service High-Cost Universal Service Support	)	WC Docket No. 05-337

ORDER

Adopted: August 11, 2014 **Released: August 11, 2014**

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we deny a request by Aventure Communication Technology LLC (Aventure) for review of a decision of the Universal Service Administrative Company (USAC).[1] Aventure asks that we reverse USAC's determination that Aventure incorrectly reported lines associated with calls to conference operators on the company's network as eligible for high-cost support.[2] As discussed below, we conclude that the lines in question were not eligible for universal service support under section 54.307 of the Commission's rules.[3] We therefore direct USAC to proceed with recovery of support paid for those lines, to the extent possible.

2. Aventure was a competitive local exchange carrier (LEC) and an eligible telecommunications carrier (ETC) operating in Iowa.[4] Aventure reported and collected high-cost support for a number of free conference service carrier (FCSC) lines.[5] Following an audit, USAC's Internal Audit Division (IAD)

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[1] Request for Review by Aventure Communication Technology, LLC, of a Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed May 6, 2014) (Aventure Petition). Although the subject of the petition is high-cost universal service support, it was filed in the "Universal Service Contribution Methodology" docket, WC Docket No. 06-122. We therefore placed a copy of the petition in the relevant high-cost universal service dockets, CC Docket No. 96-45 and WC Docket No. 05-337, and issue this Order in these dockets.

[2] *Id*. at 3. In this Order, we use the terms "high-cost support" and "universal service support" interchangeably.

[3] 47 C.F.R. § 54.307.

[4] Aventure has since ceased its wireline telephone operations. *Comments Invited on Application of Aventure Communication Technology, LLC to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-148, 28 FCC Rcd 11008 (Wireline Comp. Bur. 2013). In order to receive federal universal service support, a carrier must be designated as an ETC pursuant to section 214(e) of the Communications Act of 1934, as amended. 47 U.S.C. § 214(e).

[5] Aventure Petition, Attach. 3 at 1. Such lines are alternatively termed free calling service companies or free calling companies. FCSC lines provide "free" conference calling services to callers while the carrier and the FCSC operator share the intercarrier compensation revenues paid by interexchange carriers. This practice is known as access stimulation. Callers located throughout the country call in to these free services to engage in conference

(continued….)

concluded that Aventure's FCSC lines were ineligible for universal service support, and USAC sought to recover support that had been paid to Aventure between 2007 and 2011.[6] Aventure appealed IAD's conclusion, but USAC denied the appeal.[7] Aventure now requests reversal of USAC's decision, claiming that USAC acted outside the scope of its authority and that its decisions are unsupported by the evidence.[8] Aventure also claims that even if Aventure were not entitled to support, recovery of a substantial portion of the funds is barred by the one-year statute of limitations contained in 47 U.S.C. § 503(b)(6).[9]

II. DISCUSSION

3. We deny Aventure's request for review. We conclude that the FCSC lines are not eligible for high-cost support because they are not working loops, i.e., they are not used for telecommunications services, as required under the Commission's rules. Further, we find that Aventure's claim that recovery is barred by the statute of limitations is unfounded.

4. During the time period under audit, pursuant to section 54.307 of the Commission's rules, a competitive ETC, such as Aventure, was required to report the number of working loops it serves in order to receive universal service support for those loops.[10] Section 54.307 defines working loops to be reported as "the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications services."[11] Section 54.5 of the Commission's rules, in turn, defines "telecommunications services" as "the offering of telecommunications *for a fee* directly to the public."[12]

5. Based on the record, we conclude that Aventure was not offering its FCSC lines "for a fee." In its audit, USAC found that "Aventure did not provide reasonable evidence that it assessed or collected any fees related to these lines."[13] Aventure asserts that it produced "a massive amount of data and documentation . . . showing that it sent bills to its conference operators."[14] Aventure's billing records contain a number of irregularities that lead us to conclude that the bills were not issued with the intention of collecting revenues for services provided. Notably, unlike Aventure's residential customers, the FCSCs' bills have no account number, no customer phone number, and no payment history. Aventure further admitted that it had not received payment on its FCSC accounts, even though some of the accounts

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calls, thereby resulting in significant increases in switched access traffic terminated in the carrier's exchange. In this manner, an area with limited population that would otherwise have a low volume of telephone traffic (and thus more likely to receive a higher per-minute intercarrier compensation fee) can generate a great deal of incoming telephone traffic at high terminating access rates. In 2011, the Commission adopted rules to address access stimulation schemes. *Connect America et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17874-90, paras. 656-701 (2011) *aff'd* 753 F.3d 1015 (10th Cir. 2014).

[6] Aventure Petition, Attach. 3 at 1.

[7] *Id.,* Attach. 3 at 1.

[8] *Id.* at 1, 4-5; 47 C.F.R. § 54.719(c). Pursuant to Commission regulations, we conduct de novo review of such requests. 47 C.F.R. § 54.723.

[9] Aventure Petition at 5.

[10] Since the time of the audit period, the Commission has changed the reporting requirements for competitive ETCs. Most competitive ETCs are no longer required to report the number of working loops they serve. 47 C.F.R. § 54.307(e)(7).

[11] 47 C.F.R. § 54.307. C&WF is an abbreviation for cable and wire facilities. 47 C.F.R. § 36.154.

[12] 47 C.F.R. § 54.5 (emphasis added).

[13] Aventure Petition, Attach. 3 at 11.

[14] *Id.*, Attach. 4 at 12.

dated back five years or more.[15] Given these facts, we conclude that Aventure's billing documentation does not support the contention that the FCSCs were actually billed for the lines in question with any expectation of receiving payment for services rendered. In a related proceeding, the Iowa Utilities Board similarly found that "the invoices created by Aventure were never sent to the FCSCs," and that "there is no evidence that Aventure took any action to attempt to collect on the invoices."[16] The Iowa Utilities Board ultimately concluded that the invoices "were not legitimate bills for which Aventure expected to be paid."[17]

6. Aventure objects to relying on the Iowa Utilities Board Decision, arguing that the Iowa Utilities Board Decision is based on inapplicable state law.[18] That argument misses the point: even if we were to agree with Aventure's contention that the legal conclusions reached in the Iowa Utilities Board Decision are based on inapplicable state law, we can still find persuasive the findings of fact made by the Iowa Utilities Board from its investigation into Aventure's practices.[19] Based on the totality of the record before us, we conclude that Aventure was not offering its FCSC lines "for a fee." Because of this, the lines do not qualify as working loops under section 54.307 and do not qualify for universal service support.[20]

7. Consistent with our conclusions above, we direct USAC to proceed with recovering support paid for Aventure's FCSC lines, to the extent possible. We reject Aventure's claim that recovery is barred by the statute of limitations in section 503 of the Communications Act of 1934. Aventure argues that section 503(b)(6) imposes a one-year statute of limitations on actions for forfeiture or penalty.[21] Aventure contends that, as the USAC audit did not begin until November 2011, USAC should be prohibited from recovering any funds received prior to one year before the start of the audit, i.e., November 2010.[22] This interpretation misreads the ambit of section 503. Section 503 applies to forfeitures and penalties.[23] USAC is seeking to recover universal service funds improperly paid to Aventure; it is not imposing a forfeiture or penalty. Therefore, section 503 does not apply.

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[15] Letter from Wayne Scott, Vice President, Internal Audit Division – USAC, to Karen Majcher, Vice President, High Cost and Low Income Division – USAC, at 9 n.5, Attach. 4 (May 15, 2012).

[16] *Qwest Communications Corp. v. Superior Telephone Cooperative, et al.*, Docket No. FCU-07-2, Final Order, 26 (Iowa Utilities Board 2009) (Iowa Utilities Board Decision), *available at* https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mduz/~edisp/023026.pdf.

[17] *Id.* at 9.

[18] Aventure Petition, Attach. 4 at 5-6.

[19] *See AT&T v. All American Telephone Co. et al.*, File No. EB-09-MD-010, Memorandum Opinion and Order, 28 FCC Rcd 3477, 3495, para. 39 (2013) (responding to a party's contention that a state public utility commission's earlier findings were irrelevant, the Commission upheld the reliance on the state findings, noting that "[t]he Utah PSC conducted extensive proceedings into [the company's] operations, and its findings are credible and independently supported by the record"). We conclude the Iowa Utilities Board's finding that Aventure was not billing its FCSC customers is both credible and independently supported by the record.

[20] Because we find that Aventure's FCSC lines are not eligible for support on the basis that they are not working loops, it is unnecessary to address the other grounds that USAC relied on in initially determining that the Aventure's FCSC lines were ineligible for support.

[21] Aventure Petition, Attach. 4 at 5.

[22] *Id.*

[23] Specifically, section 503 outlines penalties for willfully or repeatedly failing to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission; willfully or repeatedly failing to comply with any provision of the Communications Act of 1934 or any rule, regulation, or order issued by the Commission; violating of any provision of 47 U.S.C. § 317(c) (regarding disclosure of payments) or 47 U.S.C. § 509(a) (regarding prohibited practices in contests); or violating various provisions of the criminal code. None of these matters is at issue in Aventure's petition.

III. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154, and 254, and pursuant to sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, the request for review filed by Aventure Communication Technology LLC IS DENIED.

9. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Acting Chief
Wireline Competition Bureau