

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 Board on Universal Service)	CC Docket No. 96-45
)	
Federal-State Board on Universal Service)	WC Docket No. 05-337
High-Cost Universal Service Support)	
_____)	

**APPLICATION FOR REVIEW
OF AVENTURE COMMUNICATION TECHNOLOGY, L.L.C.**

Aventure Communication Technology, L.L.C. (“Aventure”) by its undersigned counsel and pursuant to Commission Rule 1.115¹ hereby submits this Application for Review of an order released by the Acting Chief, Wireline Competition Bureau (WCB) on August 11, 2014, in the above-captioned proceedings (*Order*).² That *Order* denied Aventure’s request to review and reverse a decision by the Universal Service Administrative Company (USAC), that Aventure is obligated to refund certain amounts of high-cost universal service support.

I. BACKGROUND

Aventure is an Iowa corporation that formerly provided the full range of local and long-distance telephone services to business and residential customers in rural communities in Iowa. It was designated as an Eligible Telecommunications Carrier by the Iowa Utilities Board, and for some time applied for, and was awarded high-cost universal service support

¹ 47 C.F.R. § 1.115.

² *Request for Review by Aventure Communication Technology, LLC, of a Decision of the Universal Service Administrator*, DA 14-1145, rel. August 11, 2014.

for a number of its lines, including lines used to transmit access stimulation service.

Aventure found it necessary to terminate its provision of telephone services, and ceased its operations in, August, 2013.

On May 16, 2014, Aventure filed with the Commission a Request for Review of a USAC decision adverse to the company. The USAC decision at issue found that Aventure's lines did not meet the definition of "working loops" under the Commission's rules, and so were not eligible for high-cost support. Aventure's Request for Review asked the Commission to reverse the USAC decision on a number of grounds. The Request for Review and the letters to USAC appended to it, contain literally dozens of arguments demonstrating that the USAC decision is unprecedented, ultra vires, and inconsistent with Commission precedent.

On August 11, 2014, the Wireline Competition Bureau released its *Order* denying Aventure's Request for Review. The *Order* made a single finding – that to the extent that Aventure's lines provided service to free conference service carriers ("FCSCs"), they did not constitute "working loops" as defined by Section 54.307 of the Commission's Rules, and so were ineligible for high-cost support. *Order* at ¶ 6.

The WCB *Order* was based on a single finding – that Aventure did not provide service to its FCSC customers "for a fee." The *Order* states: "we conclude that Aventure was not offering its FCSC lines 'for a fee' 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." *Order* at ¶ 5.

The WCB found that this single finding was adequate to deny Aventure's requested review of the USAC decision: "Because we find that Aventure's FCSC lines are not eligible for support on the bases 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 [sic] FCSC lines were ineligible for support.” *Order* at n.20. By so restricting its finding, the WCB *Order* did not respond to any of the other arguments raised by Aventure in support of its request for review.

II. STANDARD FOR REVIEW

The standard for granting review is set forth in 47 U.S.C. §1.115(2). The standards include whether the action on delegated authority is consistent with relevant precedent and Commission policy, and whether the authority committed prejudicial procedural error. The WCB *Order* – and the USAC decision it upholds – merit reversal on review on both these grounds.

III. THE ORDER, AND THE UNDERLYING USAC DECISION, MERIT REVERSAL ON REVIEW

A. The WCB Order is in Conflict with FCC Case Precedent and Established Commission Policy

As noted above, the *Order* is based on a single factual finding – that the bills Aventure submitted contained “irregularities” and so do “not support the contention that the FCSCs were actually billed for the lines in question with any expectation of receiving payment for the services rendered.” *Order* at ¶ 5.

From this factual finding, WCB reaches the following legal conclusion:

- Section 54.307 of the Commission’s rules, which define what services are eligible for high-cost USF support, defines “Working Loops” as “the number of working Exchange Line C&WF [cable and wire facilities] loops used jointly for exchange and message telecommunications services.” *Order* at ¶ 4.
- “Telecommunications Service” is defined by the Communications Act as the provision of service “for a fee.” *Id.*
- Because of Aventure’s billing irregularities, it was not providing service “for a fee;” therefore the service it provided to its FCSC customers was not “telecommunications service;” therefore it does not meet the definition of “Working Loops.”

- Therefore, because Aventure’s service does not meet the definition of “Working Loops” under 47 C.F.R. § 54.307, those lines are not eligible for high-cost USF support.

The problem with this analysis is that the Commission has never found that terminating calls to FCSCs, which the Commission has defined as access stimulation service, does not constitute Telecommunications Service.³ In fact, it has expressly found to the contrary – the Commission has ordered providers of access stimulation service to file tariffs for the service, and has prescribed rates for that service. In doing so, the Commission has not only found that access stimulation is Telecommunications Service, but that it is interstate access service, for which interstate access charges must be paid.

The Commission made these findings in its “*Connect America Order*”⁴ which, among many other things, defined “access stimulation traffic,” confirmed that it was an access service, subject to interstate access charges, and prescribed charges for access stimulation traffic on a going-forward basis. Moreover, in defining access stimulation service, the Commission found that the quality or nature of bills is irrelevant. Rather, the definition of “access stimulation service” focused on whether net payment of any sort was involved in the agreement between the local exchange carrier and the FCSC as a result of the generation of access charges, during the course of the agreement.

The Commission first stated this rule in the Notice of Proposed Rulemaking (NPRM) that led to the *Connect America Order*. In the NPRM, the Commission stated:

To address access stimulation, we propose to adopt a trigger based on the existence of revenue sharing arrangements
Consequently, we propose that if a rate-of-return LEC or a competitive LEC is a party to an existing access revenue sharing agreement or enters into a new access revenue sharing agreement, the revised rules outlined below for interstate switched access charges would become applicable. More specifically, we propose to focus on revenue sharing arrangements between the LEC

³ Prior to its termination of service, Aventure complied with both directives, and had its access stimulation tariff approved by the Commission, over the opposition of several interexchange carriers.

⁴ *Connect America Fund*, 26 FCC Rcd 17663 (2011).

charging the access charges at issue and another entity that results in a net payment to that other entity over the course of the agreement.⁵

This proposal was widely supported by commenting parties, and was finally adopted by the Commission in the *Connect America Order*:

After reviewing the record, we clarify the scope of the access revenue sharing agreement condition of the new access stimulation definition. The access revenue sharing condition of the access stimulation definition we adopt herein is met when a rate-of-return LEC or a competitive LEC: “has an 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 (including affiliates) to the agreement, in which payment by the rate-of-return LEC or competitive LEC is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return LEC or competitive LEC to the other party to the agreement shall be taken into account.”⁶

The USAC decision, and the WCB *Order* affirming it, contradict this Commission precedent, by focusing on specific “irregularities” in Aventure’s bills for local service to its FCSC customers, rather than considering whether there is a net payment in Aventure’s agreement with its FCSC customers, based on the recovery of access charges from interexchange carriers, “regardless of form” and “over the course of the agreement.” Had USAC and WCB applied the *Connect America Order* standard, they could not have reached any conclusion other than confirming that Aventure had a “net payment” agreement, based on recovery of access charges, with its USAC customers. The application of this explicit Commission rule requires reversal of the USAC decision, and the WTB *Order*.

⁵ *Connect America Fund, NPRM*, 26 FCC Rcd 4554, 4765 ¶ 659 (2011).

⁶ *Connect America Fund*, 26 FCC Rcd at 17878 ¶ 669.

B. The WCB and USAC Committed Prejudicial Procedural Error by Ignoring Adventure's Freedom of Information Act Request and Refusing to Address Precedent Cited by Adventure in Support of Its Position

By addressing only a single issue – USAC's finding that Adventure's invoices to its FCSC customers contained "irregularities" – WCB ignored Adventure's arguments demonstrating that the USAC decision is directly contrary to Commission precedent, and so commits prejudicial procedural error that merits reversal. Adventure's appeals to USAC discuss at length that the USAC decision that lines providing service to FCSCs do not constitute "working loops" is directly contrary to Commission precedent and established industry practice.⁷ Indeed, Adventure submitted a Freedom of Information Act (FOIA) request to USAC, asking USAC to produce any Commission decisions that supported its finding, and USAC never responded.⁸ The *WCB Order* simply ignores these arguments, and in fact repeats the offense of the USAC decision – the *Order* does not cite a single precedent in support of its ruling. WCB's failure to consider Adventure's arguments constitutes reversible prejudicial procedural error.

Moreover, the USAC decision and the *WCB Order* establish an unprecedented per se rule – that if Adventure did not correctly bill and collect from its FCSC customers, its service cannot be defined as "Telecommunications Service" under the Communications Act. This is a broad statement of law that could apply to any similarly situated carrier, and establishes a per se rule. As such, it is not only unsupported by precedent, it directly contradicts the *Connect America Order*, which expressly declined to establish any per se rule of law regarding access stimulation service.⁹ The broad and unprecedented statement of law established by USAC, and affirmed in the *WCB Order* is in direct opposition to the *Connect America Order*.

⁷ Adventure Request for Review at 4-5.

⁸ Adventure Request for Review at Attachment Attachment 2: Adventure Letter of Appeal, submitted to USAC on February 18, 2013, at 4-5; and Attachment 4: Adventure Letter Requesting Board Review, submitted to USAC on December 24, 2013, at 4 & 13.

⁹ Adventure Request for Review at 4-5, citing Attachment 4: Adventure Letter Requesting Board Review, submitted to USAC on December 24, 2013, at 7-8.

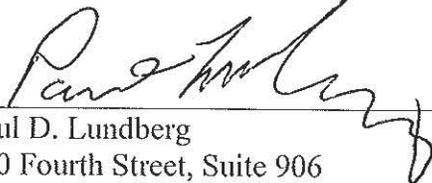
The WCB *Order* and the underlying USAC decision it affirms are demonstrably unprecedented and unsupported, and ignore Aventure's arguments based on Commission precedent to the contrary. This lack of support is further demonstrated by the fact that USAC ignored Aventure's FOIA request to produce any precedent to support its findings. For these reasons, the WCB *Order* and the USAC decision reflect prejudicial procedural error and so must be reversed.

IV. CONCLUSION

For the reasons discussed above, the Commission should grant Aventure's Application for Review, and should reverse the WCB *Order* and the underlying USAC decision.

Respectfully submitted:

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