

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

In the Matter of)
)
Universal Service Contribution Methodology) WC Docket No. 06-122
)
Request for Review of the Decision of the)
Universal Service Administrator by)
Grande Communications)

ORDER

Adopted: January 31, 2014

Released: January 31, 2014

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request by Grande Communications Networks, LLC (formerly, Grande Communications Networks, Inc.), Grande Communications ClearSource, Inc., and Denton Telecom Partners 1, LP (collectively, Grande) to reverse a portion of a 2009 audit decision of Grande’s 2005, 2006, and 2007 FCC Forms 499-A by the Universal Service Administrative Company (USAC), that found Grande had failed to properly allocate a portion of its revenues to the interstate jurisdiction for universal service fund (USF) contribution purposes.¹ In light of a recent decision by the Wireline Competition Bureau (Bureau),² Grande requests that we act promptly to decide the portion of its request for review pertaining to USAC’s reclassification of revenues derived from Grande’s “customer line charge.”³

2. We grant Grande’s request to the extent described herein.⁴ Consistent with our decision in the *RICA/Blackfoot Order*, we direct USAC to review Grande’s 2005, 2006, and 2007 FCC Forms 499-A and supporting documentation, including information explaining how Grande records revenues in its books of accounts and records, and to adjust invoices and issue refunds as appropriate.

¹ Grande Communications Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Dec. 28, 2009) (portions confidential) (Request for Review). See also Letter from Steven A. Augustino, Counsel for Grande, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Dec. 9, 2013) (Grande *Ex Parte* Letter).

² *Universal Service Contribution Methodology; Petition for Declaratory Ruling by the Rural Independent Competitive Alliance; Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, WC Docket No. 06-122, Declaratory Ruling and Order, 28 FCC Rcd 16037, 16042-43, para. 13 (Wireline Comp. Bur. 2013) (*RICA/Blackfoot Order*).

³ See Grande *Ex Parte* Letter at 1-4 (requesting that the Commission act promptly to grant Grande’s entire Request for Review or, in the alternative, the portion of the Request for Review that pertains to the classification of revenues derived from Grande’s “customer line charge”). Grande states that because it already paid the additional USF contributions assessed in the USAC audit, it expects to receive a refund of USF charges upon grant of its appeal. *Id.* at 4.

⁴ We address only the portion of Grande’s Request for Review that pertains to the classification of the customer line charge. We will address the other issues raised in Grande’s Request for Review in a separate order.

II. BACKGROUND

3. Grande is a competitive local exchange carrier (CLEC) operating in Texas.⁵ Through its subsidiaries, Grande offers telephone, cable, Internet access, and security services to retail end users, and wholesale telecommunications services to other carriers and information service providers.⁶

4. On October 27, 2009, USAC completed an audit of Grande's 2005, 2006, and 2007 FCC Forms 499-A for calendar years 2004, 2005, and 2006, respectively.⁷ Among other findings, USAC determined that Grande had failed to allocate a portion of its local exchange revenues as jurisdictionally interstate, and it reclassified Grande's "customer line charge" as 100% interstate.⁸ On December 28, 2009, Grande filed a request for review.⁹ Grande argues that as a CLEC, it is not required to structure its interstate access charges to include a federal subscriber line charge (SLC).¹⁰ Grande asserts that during the audit period it did not tariff a federal SLC or collect from its end-user customers a fee to recover the cost of providing interstate access.¹¹ Grande argues that USAC erred in reclassifying as interstate the revenue Grande derived from its customer line charge.¹² Grande states that its customer line charge is a component of its local exchange service that it collects monthly from its end-user customers for the provision of dialtone services.¹³ Grande asserts that it treated the revenue from this charge as intrastate for all purposes and properly reported the revenue from its customer line charge as local exchange revenue on the FCC Form 499.¹⁴

5. On November 25, 2013, the Bureau released an order addressing similar issues raised in a request for review of another USAC audit decision filed by Blackfoot Communications, Inc. and a petition for declaratory ruling filed by the Rural Independent Competitive Alliance. That order concluded that neither the Commission's formal separation process nor the rules that govern how incumbent local exchange carriers (ILECs) recover costs assigned to the interstate jurisdiction apply to CLECs.¹⁵ In particular, the Bureau stated that unlike ILECs, CLECs are not required to collect a SLC and are free to

⁵ Request for Review at 2.

⁶ *Id.* at 2. For the 2005 and 2006 FCC Forms 499-A, each of the Grande companies operated separately and filed separate revenue reports with USAC. For the 2007 FCC Form 499-A, the companies had merged, with Grande Communications Networks, Inc. as the surviving reporting entity. *Id.* at n.5.

⁷ *Id.* at 3.

⁸ *Id.* at 8-9, 13; Grande *Ex Parte* Letter at 3.

⁹ *See supra* n.1.

¹⁰ SLCs are flat, non-traffic sensitive charges assessed on end users to recover LECs' interstate-allocated common line costs. *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., Notice of Proposed Rulemaking, 16 FCC Rcd 460, 462, para. 7 & n.12 (2000).

¹¹ Request for Review at 7-8; Grande *Ex Parte* Letter at 2.

¹² Request for Review at 9, 13.

¹³ *Id.* at 7. Grande states that, in some markets, it described this fee as a "subscriber line charge." *Id.* at Exh. 4, para. 5.

¹⁴ *Id.* at 11-12. Grande also argues that USAC improperly relied upon informal discussions with the Texas Public Utilities Commission. *Id.* at 14-16. Based on our findings, we need not address that issue here.

¹⁵ *RICA/Blackfoot Order*, 28 FCC Rcd at 16041-42, paras. 11-12. The Commission's jurisdictional separation rules require ILECs to allocate to the interstate jurisdiction 25 percent of the costs assigned to the subscriber or common lines that are used jointly for local exchange and exchange access services. *Id.* at para. 11; 47 C.F.R. § 36.154(c).

recover the non-traffic sensitive costs of providing interstate access in whatever manner they deem appropriate, within the limitations of section 61.26 of the Commission's rules.¹⁶

III. DISCUSSION

6. As we stated in the *RICA/Blackfoot Order*, no Commission rule or order requires CLECs to allocate and report to the interstate jurisdiction a portion of the revenues derived from their fixed local exchange service.¹⁷ Unless a CLEC chooses to recover the non-traffic-sensitive costs of providing interstate or interstate exchange access service from its end-user customers, and records such revenue as such in its supporting books and records, CLECs do not have an obligation to allocate those revenues as interstate for contribution purposes.¹⁸

7. Consistent with the *RICA/Blackfoot Order*, we grant Grande's request to the extent described herein. Because CLECs are not subject to the Commission's jurisdictional separation rules or cost recovery rules, Grande may recover its interstate costs in whatever manner it deems appropriate, within the limitations of section 61.26 of the Commission's rules. To the extent Grande bills its end-user customers a separately-stated line item for a service not contained in an interstate tariff and records the revenues derived from that service as "fixed local exchange" revenues in its general ledger, it is not required to report those revenues as interstate for contribution purposes.¹⁹ We direct USAC to review Grande's 2005, 2006, and 2007 FCC Forms 499-A and supporting documentation, including any relevant information regarding how Grande records revenues in its books of accounts and records, and to adjust invoices and issue refunds as appropriate, consistent with the declaratory ruling in the *RICA/Blackfoot Order*.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and 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 Grande is GRANTED IN PART to the extent provided herein.²⁰

¹⁶ *RICA/Blackfoot Order* 28 FCC Rcd at 16042, para. 12; see 47 C.F.R. § 61.26 (governing the tariffing requirements of competitive interstate switched exchange access services).

¹⁷ *RICA/Blackfoot Order*, 28 FCC Rcd at 16041-43, paras. 10-13.

¹⁸ *Id.* at 16041, para. 10.

¹⁹ *RICA/Blackfoot Order*, 28 FCC Rcd at 16043, para. 13. To the extent, however, Grande recovers from its end-user customers a non-traffic-sensitive charge for the costs of providing interstate or interstate exchange access service, it must allocate and report those revenues as interstate end-user revenues for USF contribution reporting purposes, in a manner that is consistent with its supporting books of accounts and records, or the Commission's good faith estimate requirement. *Id.* at 16039, 16042, paras. 5, 13.

²⁰ See *supra* n.4.

9. IT IS FURTHER ORDERED that, pursuant to section 1.102 of the Commission's rules, 47 C.F.R. § 1.102, this Order SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau