

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

In the Matter of
Federal-State Joint Board on
Universal Service
Appeal of Decision of the Universal Service
Administrative Company Regarding Results of
2007 Improper Payment Improvement Act (IPIA)
of the High Cost Program of Thumb Cellular
Limited Partnership or, alternatively, Petition for
Declaratory Ruling
CC Docket No. 96-45

Adopted: April 16, 2015

Released: April 16, 2015

ORDER

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request filed by Thumb Cellular, LLC (Thumb Cellular) seeking review of a decision of the Universal Service Administrative Company (USAC) to recalculate high-cost support if Thumb Cellular failed to provide records in electronic format within 60 days. We find that Thumb Cellular provided adequate verification to the auditors to permit them to complete an audit and verify the number of working loops.

II. BACKGROUND

2. In February 2007, USAC performed an Improper Payment Improvement Act (IPIA) audit of Thumb Cellular to determine compliance with applicable Commission rules regarding receipt of high-cost support. The audit covered the time period of October 1, 2004 through September 30, 2005. During this period, Thumb Cellular received \$834,545 in high-cost support. The Auditor's Report determined that Thumb Cellular had failed to provide sufficient information to determine the number of working loops reported on FCC Form 507. Prior to the 2011 USF/ICC Transformation Order, competitive

1 Appeal of USAC's Denial of USF Funding or, alternatively, Motion for Declaratory Ruling by Thumb Cellular, LLC, CC Docket No. 96-45 (filed Nov. 7, 2007) (Thumb Cellular Petition).

2 See 47 CFR 54.707 (providing for Administrator audits of contributors and carriers).

3 Independent Accountant's Report for Thumb Cellular Limited Partnership (Mar. 15, 2007) (attached to Thumb Cellular Petition) (Auditor's Report).

4 Id. Specifically, the auditors determined that Thumb Cellular had not provided "auditable line count data/subscriber listings," and therefore they were "unable to perform key audit procedures to obtain sufficient and

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eligible telecommunications carriers (CETCs) such as Thumb Cellular received support based on their reported line counts.⁵

3. Prior to the initiation of the audit, on September 1, 2006, Thumb Cellular changed billing vendors. As a result, Thumb Cellular was unable to retrieve electronic data as requested by the auditors. Thumb Cellular states that it provided paper documentation and offered to make the information available in PDF format.

4. On March 15, 2007, the auditors issued a report determining that they were unable to perform key audit functions using only paper documentation and therefore were unable to audit properly the number of line counts claimed by Thumb Cellular. On June 1, 2007, USAC issued a response to the audit report, which summarized the auditor's findings.⁶ On September 10, 2007, USAC sent a letter to Thumb Cellular in response to the audit informing Thumb Cellular that it had 60 days from the date of the letter to update its filings, and if Thumb Cellular did not update its filings within the 60 days, support would be subject to recalculation.⁷

5. Following receipt of the September 10, 2007 letter, Thumb Cellular sought review of USAC's decision, arguing generally that recipients of high-cost support at the time of the audit were not required to maintain the information in electronic format, and that the information supplied to auditors was auditable as provided. In the alternative, Thumb Cellular requests a declaratory ruling that would instruct USAC to complete the audit using the information already provided by Thumb Cellular or terminate the audit without adverse findings against Thumb Cellular. Given the filing of Thumb Cellular's appeal, USAC did not determine the recalculation amount using the documentation Thumb Cellular had provided.

III. DISCUSSION

6. We grant Thumb Cellular's appeal.⁸ Based on our review of the record and circumstances before us, we find that Thumb Cellular provided adequate verification as requested by the auditors. Furthermore, there is no indication of waste, fraud or abuse in the record before us, nor is there any indication that Thumb Cellular failed to respond to the auditor requests in a timely fashion.

7. Commission rules require carriers to provide "adequate verification" of support amounts upon reasonable request.⁹ Audits are an essential tool for the Commission and USAC to protect the fund

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reliable audit evidence to express an opinion whether Thumb Cellular's compliance with the FCC requirements relative to the \$835,545 support received from the Universal Service Fund High Cost Program" for the relevant time period.

⁵ 47 C.F.R. § 54.307(a). See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17825, para. 498 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). Under the reforms contained in the *USF/ICC Transformation Order*, the identical support rule and the requirement to report line counts were eliminated for most CETCs. See *id.* at 17663, 17825-30, paras. 498-511. Most CETCs stopped reporting line counts at that time. CETC support generally is now frozen on a study area basis and subject to a phase down, with the exception of support for CETCs serving the remote areas of Alaska. *Id.* at 17830-32, paras. 513-19; 47 C.F.R. § 54.307(e)(3).

⁶ See USAC Management Response to Audit Report (June 1, 2007) (attached to Thumb Cellular Petition).

⁷ *Id.*

⁸ Thumb Cellular set forth four specific questions in its appeal. At this time, given our decision to grant the appeal, it is not necessary to specifically examine each of the questions raised. See Thumb Cellular Petition at 1.

⁹ See 47 C.F.R. 54.707. This rule existed during the time period under audit, and remains in place today.

from waste, fraud and abuse, ensure program integrity and deter rule violations. As always, we are dedicated to protecting the fund from waste, fraud, and abuse. In this instance, due to the change in billing vendors, Thumb Cellular was unable to provide electronic records, as requested by the auditors. Thumb Cellular was able to provide hard copies of the documentation, including schedules detailing subscriber information, and offered to convert the paper copies into searchable PDF format.¹⁰ We find that, in this instance, the documentation provided to the auditors was adequate as required by our rules. However, we remind carriers and other USF auditees to ensure that all records necessary to respond to an audit request remain in their possession, not the possession of third-party vendors.

8. USAC had completed the other procedures in the audit, and it should move forward with its audit follow-up on any other findings identified in that audit. To complete the line count procedures in the audit with the documentation provided, USAC would need to manually enter the line count data. Given the passage of time since the initiation of this audit, we do not think it would be a prudent use of USF resources to direct USAC to manually input and review line count data that is more than 10 years old. Instead, we direct USAC to compare the subscriber line count data submitted by Thumb Cellular in this audit to that submitted in the previous and subsequent years to identify any anomalies in the data trends. These actions will ensure that USAC can complete the audit assessing Thumb Cellular's compliance with Commission rules.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to authority contained in sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, the request for review filed by Thumb Cellular, LLC is GRANTED and REMANDED to USAC for further action consistent with this Order.

10. 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. Matthey
Deputy Chief
Wireline Competition Bureau

¹⁰ Thumb Cellular Petition at 4.