

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

In the Matter of
Request for Review of a Decision of the Universal
Service Administrator by
New Lisbon Telephone Company
CC Docket No. 96-45

ORDER

Adopted: July 25, 2019

Released: July 25, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a request filed by New Lisbon Telephone Company (New Lisbon) seeking review of a decision of the Universal Service Administrative Company (USAC). We conclude that USAC properly sought recovery of the federal universal service fund (Fund) high-cost support provided to New Lisbon based on the company's failure to comply with the Commission's rules.

II. BACKGROUND

2. New Lisbon is an incumbent local exchange carrier (LEC) operating in Indiana. On May 2, 2011, as part of a Payment Quality Assurance (PQA) review, USAC asked New Lisbon for documentation supporting USAC's disbursement of \$11,893 in high-cost interstate common line support (ICLS) funding to New Lisbon on December 1, 2010. USAC requested that New Lisbon provide the documentation within 15 business days, but later extended the deadline to May 26, 2011 in response to New Lisbon's request for an extension. On May 31, 2011, New Lisbon provided some of the requested documentation but omitted documentation regarding its Subscriber Line Charge (SLC) revenue, which is necessary for the calculation of a carrier's ICLS. In June and July 2011, USAC contacted New Lisbon by phone, including speaking with New Lisbon representatives and leaving messages, and by mail, but New Lisbon still failed to provide the proper documentation.

3. On September 23, 2011, USAC notified New Lisbon that it had closed the PQA case in light of New Lisbon's failure to provide USAC with the necessary supporting documents relating to revenues reported for ICLS, pursuant to USAC's requests. USAC cited two rules with which New Lisbon was not in compliance. First, USAC stated that section 32.12(b) of the Commission's rules requires that a company's financial records be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts, and that the detailed records be filed in such a manner as to be

1 New Lisbon Telephone Company Request for Review, CC Docket No. 96-45 (Nov. 30, 2011) (New Lisbon Request or Request).

2 New Lisbon Request, Attach. Email from USAC to R. Elliott, New Lisbon (dated May 2, 2010).

3 New Lisbon Request, Attach. Email from USAC to R. Elliott, New Lisbon (dated Sept. 23, 2011).

readily accessible for examination by representatives of the Commission.⁴ Second, USAC explained that section 54.202(e) requires that all eligible telecommunications carriers retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost rules, and that such documentation must be maintained for at least five years from the receipt of funding.⁵ On October 4, 2011, USAC sent New Lisbon a letter noting the previous September 23 notification and offsetting \$85,853 against future universal service support from SAC 32076.⁶ USAC also stated that New Lisbon had the right to appeal the decision directly to the Commission within 60 days of the date of that letter, pursuant to section 54.719 of the Commission's rules.⁷

4. On November 30, 2011, New Lisbon filed its Request, along with accompanying documentation that it says includes "all of the supporting documentation that was originally requested as a part of the PQA."⁸ New Lisbon asks that the Commission order USAC to reopen its PQA case, and that USAC not offset the recovery of \$85,853 until the Commission reaches a decision regarding its appeal.⁹ New Lisbon asserts that its response to the PQA was insufficient because of its former accountant's misunderstanding of what was needed by USAC, and the former accountant failed to ask USAC or others for clarification.¹⁰ New Lisbon also claims that it made staff changes to its accounting department to ensure better compliance with USAC's rules in the future.¹¹

III. DISCUSSION

5. We deny New Lisbon's appeal of USAC's decision. Based on our review of the record, we conclude that USAC's decision to seek recovery of the support due to New Lisbon's failure to provide sufficient, appropriate evidence of its SLC revenue within a reasonable period of time is proper. The Commission has stated that "funds disbursed from the high-cost . . . support mechanism[] in violation of a Commission rule that implements the statute or a substantive program goal should be recovered."¹² Here, New Lisbon failed to comply with the Commission's rules by not having supporting documentation related to the ICLS support it was receiving readily accessible for examination by USAC.¹³ Without

⁴ 47 CFR § 32.12(b).

⁵ 47 CFR § 54.202(e). Section 54.202 of the rules no longer contains paragraph (e). The *USF/ICC Transformation Order* moved that paragraph to section 54.320(b), which contains a requirement identical to the former section 54.202(e), with one exception, i.e., the new rule requires that ETCs retain documentation for ten years instead of five. See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17864, para. 621 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom.*, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014); 47 CFR § 54.320(b). Accordingly, carriers receiving high-cost support must still meet similar obligations.

⁶ New Lisbon Request, Attach. Letter from Shane Ahn, USAC, to Doris R. Hoover, New Lisbon (dated Oct. 4, 2011).

⁷ 47 CFR § 54.719.

⁸ New Lisbon Request at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007). See also 47 CFR § 54.707(a) (stating that USAC may "suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request, or if directed by the Commission to do so").

¹³ See 47 CFR §§ 32.12(b), 54.202(e) (2011). See also 47 CFR § 54.320(b).

accurate data and documentation to support its costs, USAC is unable to determine whether New Lisbon received the proper amount of universal service support related to those costs and is unable to guard against waste, fraud, and abuse in the Fund.¹⁴ Maintaining appropriate documentation to support information submitted in cost studies used to determine universal service support is critical to the Commission's ability to ensure that high-cost support is provided appropriately.¹⁵

6. New Lisbon does not dispute that the accounting records it submitted to USAC were incomplete.¹⁶ Rather, it contends that USAC should not recover the full amount of support related to this non-compliance because its former accountant misunderstood the full extent of USAC's request and failed to seek clarification.¹⁷ New Lisbon further asserts that the records it now provides contain "all of the supporting documentation that was originally requested as a part of the PQA."¹⁸

7. We do not agree that USAC's recovery of support from New Lisbon was in error. Whether New Lisbon initially understood USAC's request for documentation is irrelevant. USAC offered New Lisbon multiple opportunities to submit the necessary documentation over several months beyond the initial 15-business day deadline. Only months later, after USAC informed New Lisbon that it was closing the PQA, did New Lisbon provide what it claims is the complete documentation USAC requested. This late submission does not change the fact that New Lisbon failed to maintain its records and make them readily accessible for examination by USAC as required by sections 32.12(b) and 54.202(e) of the rules.¹⁹ Accordingly, we deny New Lisbon's request for review of USAC's decision to close the New Lisbon PQA and recover ICLS from New Lisbon.

¹⁴ This is consistent with precedent regarding recovery of support for entities that failed to maintain documentation as required by the Commission's high-cost programs. See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Nemont Telephone Cooperative, Inc.*, Order, 29 FCC Rcd 11780, 11782, para. 7 (WCB 2014) (*Nemont Order*) ("conclud[ing] that USAC's decision to seek full recovery of the support due to Nemont's lack of sufficient, appropriate evidence of its actual costs is proper"). This is likewise consistent with precedent regarding recovery of support for entities that failed to maintain documentation as required by the Commission's E-rate program. See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15825-26, para. 50 (2004) (stating that "failing to comply with an authorized audit or other investigation conducted pursuant to section 54.516 of the Commission's rules (e.g., failing to retain records or failing to make available required documentation) is a rule violation that may warrant recovery of universal service support monies that were previously disbursed for the time period for which such information is being sought"); *Request for Review of a Decision of the Universal Service Administrator by Pennsauken Township School District Pennsauken, NJ, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 6019 (WCB 2013) (denying an appeal request for an audit where USAC sought to recover a recipient's support after it failed to maintain documentation explaining its vendor selection process); *Request for Review of a Decision of the Universal Service Administrator by Bell Gardens Christian School Bell, CA, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13011 (WCB 2013) (same); *Request for Review of Decisions of the Universal Service Administrator by Gila Bend Unified School District 24 Gila Bend, Arizona, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6870 (WCB 2011) (same).

¹⁵ See *Nemont Order*, 29 FCC Rcd at 11782-83, para. 8.

¹⁶ See New Lisbon Request at 1-2 ("[I]t was determined that some key supporting documentation was inadvertently omitted.").

¹⁷ *Id.*

¹⁸ See New Lisbon Request at 2.

¹⁹ See 47 CFR §§ 54.32.12(b), 54.202(e) (2011). See also 47 CFR § 54.320(b).

IV. 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 New Lisbon Telephone Company 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

Kris Anne Monteith
Chief
Wireline Competition Bureau