

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Chillicothe Telephone Company Petition for Waiver of Section 54.304(d)(1) Deadline to File Connect America Fund Intercarrier Compensation Eligibility Support Data)	

ORDER

Adopted: October 19, 2012

Released: October 19, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a petition¹ filed by Chillicothe Telephone Company (“Chillicothe”) seeking waiver of the filing deadline for the initial funding period under section 54.304(d)(1) of the Commission’s rules.² Section 54.304(d)(1) requires eligible rate-of-return carriers to file projected Connect America Fund intercarrier compensation funding eligibility data with the Universal Service Administrative Company (USAC) no later than June 30, 2012 for the initial funding period.³ For the reasons set forth below, we conclude good cause warrants granting Chillicothe a one-time waiver of the initial filing deadline based on the specific circumstances discussed below.

II. BACKGROUND

2. On November 18, 2011, the Commission released the *USF/ICC Transformation Order*⁴ which, among other things, adopted new rules requiring incumbent local exchange carriers (ILECs) to adjust, over a period of years, many of their interstate and intrastate switched access charges effective on

¹ Chillicothe Telephone Company Petition for Expedited Waiver of Section 54.304(d)(1) Deadline for Filing of CAF ICC Support Data with USAC, WC Docket No. 10-90, CC Docket Nos. 01-92, 96-45 (filed July 31, 2012) (Petition).

² 47 C.F.R. § 54.304(d)(1).

³ See *id.* The deadline was extended until July 2, 2012. See 47 C.F.R. § 1.4(e)(1) & (j); see also, Petition at 1.

⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc’ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 8, 2011) (and consolidated cases).

July 1st of each of those years, with the ultimate goal of transitioning to a “bill-and-keep” methodology at the end of that transition.⁵ As part of these reforms, the Commission adopted a transitional recovery mechanism allowing ILECs to recover portions of intercarrier revenue reduced as part of intercarrier compensation reform through a combination of end-user charges (the Access Recovery Charge (ARC)) and Connect America Fund support.⁶

3. In the *USF/ICC Transformation Order*, the Commission also adopted new reporting requirements in section 54.304(d)(1) of the Commission’s rules, requiring eligible rate-of-return carriers electing to receive Connect America Fund intercarrier compensation support to file data with USAC, the Commission and the relevant state commissions no later than June 30, 2012, for the first year, establishing the rate-of-return carrier’s projected funding eligibility during the upcoming funding period pursuant to the Commission’s revenue recovery rules.⁷ Since the section 54.304(d)(1) deadline fell on Saturday, June 30, 2012, the actual filing deadline was Monday, July 2, 2012.⁸

4. Chillicothe failed to file its Connect America Fund intercarrier compensation support data with USAC by the July 2, 2012 deadline.⁹ Upon realizing this error, Chillicothe submitted Connect America Fund intercarrier compensation support data with USAC on July 5, 2012, which was supplemented on July 7, 2012.¹⁰ On July 31, 2012, Chillicothe filed a petition seeking waiver of the filing deadline required by section 54.304(d)(1) of the Commission’s rules.¹¹ Specifically, Chillicothe argues that good cause exists for granting a waiver because it made “substantial, material, timely and good faith” efforts to comply with the Commission’s filing deadlines. Chillicothe asserts that its revised internal procedures were “overwhelmed” by the Commission’s new reporting requirements.¹² Chillicothe further contends that it remedied its error shortly after discovering it by filing the Connect America Fund intercarrier compensation support data with USAC.¹³ Chillicothe also claims that administration of the funds will not be burdened by the missed deadline since USAC has time to complete “substantial analysis and processing” of the support data while the Wireline Competition Bureau’s (“Bureau’s”) investigation regarding ARC rates contained in the 2012 Annual Access Tariff Filings remains pending.¹⁴ Finally,

⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801 and fig. 9.

⁶ *Id.* at 17956, para. 847; 47 C.F.R. § 51.917(a).

⁷ 47 C.F.R. § 54.304(d)(1); *USF/ICC Transformation Order*, 26 FCC Rcd at 18202, app. A.

⁸ 47 C.F.R. § 54.304(d)(1) (establishing a June 30, 2012 filing deadline for rate-of-return carriers to file funding eligibility support data); 47 C.F.R. § 1.4(e)(1) (defining “holiday” to include Saturday); 47 C.F.R. § 1.4(j) (when a deadline falls on a holiday, the deadline is extended until the next business day); see also Petition at 1, note 1.

⁹ Petition at 3. Chillicothe filed its Connect America Fund intercarrier compensation support data with the Commission on June 18, 2012 with its 2012 annual access tariff filing. *Id.* at 1.

¹⁰ *Id.* at 7-8. Chillicothe states that it initially “inadvertently” filed “an incomplete data file” with USAC on July 5, 2012, supplementing this submission with “better and more complete” support data on July 7, 2012. *Id.* at 3, note 3.

¹¹ Petition at 1; see 47 C.F.R. § 54.301(d)(1). We note that on October 16, 2012 Chillicothe filed a supplement to its Petition for waiver but subsequently withdrew this supplement. See Chillicothe Telephone Company Supplement to Petition for Expedited Waiver of Section 54.304(d)(1) Deadline for Filing of CAF ICC Support Data with USAC, WC Docket No. 10-90, CC Docket Nos. 01-92, 96-45 (filed Oct. 16, 2012); see also Letter from Gerard J. Duffy, Counsel for Chillicothe Telephone Company, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, CC Docket Nos. 01-92, 96-45 (filed Oct. 16, 2012).

¹² Petition at 6-7.

¹³ *Id.* at 7-8.

Chillicothe notes that loss or significant delay of more than \$1.6 million of Connect America Fund intercarrier compensation support will “seriously and adversely” impair its finances and operations.¹⁵

5. On August 3, 2012, the Bureau sought comment on Chillicothe’s petition for waiver and no comments were filed in opposition.¹⁶ The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) filed comments urging the Bureau to grant Chillicothe’s waiver petition.¹⁷

III. DISCUSSION

6. Generally, the Commission’s rules may be waived for good cause shown.¹⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁰ Waiver of the Commission’s rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest.²¹

7. We conclude that good cause exists to grant Chillicothe’s waiver request. Chillicothe states in its petition that its internal procedures were “overwhelmed in this unique and unusual instance only by the newness and complexity of the initial [Connect America Fund intercarrier compensation] Support data filings.”²² In the *ACS Waiver Order*, the Bureau recently granted a limited waiver of certain reporting deadlines also adopted in the *USF/ICC Transformation Order*, which was “largely predicated on confusion surrounding the implementation of ... new reporting requirements.”²³ The Bureau concluded that the inexperience of carriers to make certain first-time filings, as well as other factors, justified waiver in those unique circumstances.²⁴ The Bureau finds that the circumstances presented in Chillicothe’s

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¹⁴ Petition at 8-9; see *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB/Pricing No. 12-09, Order Designating Issues for Investigation, DA 12-1430 (Pric. Pol. Div., rel. Aug. 31, 2012); *July 3, 2012 Annual Access Tariff Filings*, WCB/Pricing No. 12-09, Order on Reconsideration, DA 12-1231 (Wireline Comp. Bur., rel. Aug. 1, 2012); *July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing No. 12-09, Order, 27 FCC Rcd 7322 (Wireline Comp. Bur., rel. July 2, 2012).

¹⁵ Petition at 5, 9.

¹⁶ See *Wireline Competition Bureau Seeks Comment on Chillicothe Telephone Company Petition for Waiver of Connect America Fund Intercarrier Compensation Support Deadline*, WC Docket No. 10-90, CC Docket Nos. 01-92, 96-45, Public Notice, DA 12-1239 (Wireline Comp. Bur., rel. Aug. 3, 2012).

¹⁷ See Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), WC Docket No. 10-90, CC Docket Nos. 01-92, 96-45, at 1, 3-4 (filed Aug. 17, 2012).

¹⁸ 47 C.F.R. § 1.3; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (*NetworkIP*); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²¹ *NetworkIP*, 548 F.3d at 125-128; *Northeast Cellular*, 897 F.2d at 1166.

²² Petition at 7.

²³ See *Connect America Fund; ACS Wireless, Inc. Petition for Waiver of Section 54.313(j) of the Commission’s Rules*, WC Docket No. 10-90, Order, DA 12-1503, para. 10 (Wireline Comp. Bur., rel. Sept. 17, 2012) (*ACS Waiver Order*).

²⁴ *ACS Waiver Order*, DA 12-1503, para. 8.

waiver petition also involve new reporting requirements adopted by the *USF/ICC Transformation Order* and are sufficiently similar to those addressed in the *ACS Waiver Order*. We emphasize that this is a one-time waiver, predicated on the unique circumstances created by the new reporting requirements adopted in the *USF/ICC Transformation Order*.²⁵

8. Although the Bureau finds good cause to grant the requested waiver, we remind Chillicothe and others that carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.²⁶ USAC processes a tremendous amount of data each year so it is necessary that carriers meet the requisite filing deadlines, absent special circumstances.²⁷ Chillicothe states that it has taken additional steps to ensure that it meets future deadlines by revising its internal procedures.²⁸ Specifically, Chillicothe states that it “will continue to make all such filings by Federal Express (or comparable commercial delivery service), by hand, or via electronic mail” and in the future “Chillicothe’s consultant and counsel will engage in two additional rounds of phone calls and/or emails: (a) the first round when the files are sent to counsel to specify exactly which files go to the Commission and/or to USAC on which specific dates; and (b) the second round on or before each specific deadline, to verify that specific files have been filed with and received by the Commission and/or USAC.”²⁹ In granting previous waiver requests, we have found that carriers must comply with their commitments to revise their internal procedures to ensure that their filings will be accurately and timely submitted.³⁰ Similarly, we rely on Chillicothe to fulfill its commitments to adhere to its revised filing procedures.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that this order is ADOPTED.

10. IT IS FURTHER ORDERED that the petition for waiver of section 54.304(d)(1) of the Commission’s rules, 47 C.F.R. § 54.304(d)(1), filed by Chillicothe Telephone Company IS GRANTED.

²⁵ *Id.* at para. 10.

²⁶ See *Cedar-Wapsie Communications, Inc. et al., Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 26 FCC Rcd 11069, 11073, para. 11 (2011) (*Cedar-Wapsie Order*) (citing *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761, 16763, para. 7 (Wireline Comp. Bur. 2005) (*Citizens/Frontier Order*)).

²⁷ *Cedar-Wapsie Order*, 26 FCC Rcd at 11073, para. 11 (citing *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004) and *Citizens/Frontier Order*, 20 FCC Rcd at 16763, para. 7).

²⁸ Petition at 6-7.

²⁹ *Id.* at 7.

³⁰ See, e.g., *AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 953, 954, para. 5 (Wireline Comp. Bur. 2007); *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 560, 563, para. 9. (Wireline Comp. Bur. 2007); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, Order, 21 FCC Rcd 10155, at 10158, para. 10 (Wireline Comp. Bur. 2006); *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 10.

11. 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

Julie A. Veach
Chief, Wireline Competition Bureau