



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON
EMERY TELCOM PETITION FOR LIMITED WAIVER OF THE
COMMISSION'S INTERCARRIER COMPENSATION REVENUE RECOVERY RULES FOR
RATE-OF-RETURN CARRIERS**

**CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90;
WT Docket No. 10-208**

Comment Date: December 10, 2012

Reply Comment Date: December 26, 2012

The Wireline Competition Bureau (Bureau) seeks comment on a petition filed on October 26, 2012 by Emery Telcom (Emery).¹ In its Petition, Emery seeks “A waiver ... to permit [it] to include within its Base Period Revenues amounts received after March 31, 2012.”² Emery also seeks “waiver of the Commission’s *USF/ICC Order* at footnote 1745, as necessary, which allows carriers to seek a waiver of the March 31, 2012 cut-off date if revenues are recovered after that date as a result of ‘the decision of a court or regulatory agency of competent jurisdiction.’”³ Emery contends that the requested waivers are warranted because, as a result of a “billing system configuration error,” a “significant portion” of its Fiscal Year 2011 intrastate access revenue was received after March 31, 2012, therefore its Fiscal Year 2011 Base Period Revenue is “significantly and unrealistically low,” limiting its eligible Connect America Fund intercarrier compensation recovery.⁴

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.⁵ All pleadings are to reference **CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WC Docket Nos. 03-**

¹ Emery Telcom Petition for Limited Waiver of 47 C.F.R. 51.917(c)(ii), CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WC Docket Nos. 03-109, 05-337, 07-135, 10-90, WT Docket No. 10-208 (filed Oct. 26, 2012) (Petition). In its Petition, Emery seeks waiver of section 51.917(c)(ii) of the Commission’s rules. Petition at 1. This rule section was adopted in the *USF/ICC Transformation Order* as 47 C.F.R. § 51.917(c)(ii), but, due to a clerical error, was codified in the Code of Federal Regulations as 47 C.F.R. § 51.917(b)(7)(ii). See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, 18191-92, app. A (2011) (*USF/ICC Transformation Order*); compare 47 C.F.R. § 51.917(b)(7)(ii). The Bureau is taking steps to address this error.

² Petition at 1.

³ *Id.* at 1-2.

⁴ *Id.* at 2, 5.

⁵ 47 C.F.R. §§ 1.415, 1.419.

109, 05-337, 07-135, 10-90, WT Docket No. 10-208. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (tty).

In addition, one copy of each pleading must be sent to Christopher S. Koves, Federal Communications Commission, Wireline Competition Bureau, Pricing Policy Division, 445 12th Street, SW, Room 6-A236, Washington, D.C. 20554, or *via* email at Christopher.Koves@fcc.gov.

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or

⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

⁷ 47 C.F.R. §§ 1.1200 *et seq.*

other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Christopher S. Koves, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-1520 or *via* email at Christopher.Koves@fcc.gov.

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