

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

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| In the Matters of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Universal Service Reform – Mobility Fund |) | WT Docket No. 10-208 |
| |) | |
| Cordova Wireless Communications, Inc. |) | |
| Petition for Waiver of Certain High-Cost |) | |
| Universal Service Rules |) | |

ORDER

Adopted: January 14, 2013

Released: January 14, 2013

By the Chief, Wireless Telecommunications Bureau:

1. In this order, we deny a petition filed by Cordova Wireless Communications, Inc. (Cordova Wireless) for a waiver of section 54.307(e)(3)(iv)(B)-(E) of the Commission’s rules, which established a phase down of high-cost universal service support for certain competitive Eligible Telecommunications Carriers (ETCs) serving remote parts of Alaska.¹ For the reasons discussed below, we deny the Petition. Cordova Wireless is free to file a new petition seeking waiver when and if the need for such a waiver is less speculative.

2. *Background.* In the *USF/ICC Transformation Order*, the Commission adopted comprehensive reforms to modernize the universal service system.² Among other things, the Commission eliminated the identical support rule, which had provided support to competitive ETCs based on the same per-line amount as the incumbent local exchange carrier serving the same area.³ The Commission found that “[t]he support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography.”⁴ Instead, the Commission determined that support for mobile service should be transitioned over time to a new, comprehensive Connect America Fund (CAF).

¹ Petition for Waiver of Cordova Wireless Communications, Inc., WC Docket No. 10-90 *et al.* (filed Oct. 1, 2012) (Petition). Cordova Wireless made subsequent filings on November 28, 2012, and December 7, 2012. *See* Reply Comments of Cordova Wireless Communications, Inc., WC Docket No. 10-90 *et al.* (filed Nov. 28, 2012) (Cordova Wireless Reply Comments); Notice of *Ex Parte*, WC Docket No. 10-90 *et al.* (filed December 7, 2012) (Cordova Wireless *Ex Parte*).

² *See Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

³ *Id.* at 17675, para. 29.

⁴ *Id.* at 17828, para. 504.

3. The Commission adopted a five-year period to phase down existing competitive ETC support and transition to the CAF. As part of the phase down, it froze existing support for competitive ETCs at the 2011 baseline, or \$3,000 per line per year, whichever was lower, and implemented a twenty percent annual reduction in support, beginning July 1, 2012, and ending July 1, 2016. The Commission adopted a slower transition path for competitive ETCs serving remote parts of Alaska, in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas.⁵ Specifically, the Commission delayed the phase down for competitive ETCs serving remote parts of Alaska by two years, so that for those carriers, the phase down will begin July 1, 2014.⁶

4. The Commission also instituted a waiver process to allow “any carrier negatively affected by the universal service reforms . . . to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.”⁷ In the *USF/ICC Transformation Order*, the Commission stated that “[w]e envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put customers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service.”⁸ This language reflected the Commission’s longstanding historical commitment to ensuring ubiquitous voice availability and a recognition that the supported service today remains voice telephony. The Commission also stated that it did not “expect to grant waiver requests routinely,” and cautioned petitioners that any requests would be subject to a “rigorous, thorough, and searching review comparable to a total company earnings review.”⁹ The Commission provided guidance on the types of information that would be relevant for such waiver requests and delegated authority to the Bureau and the Wireline Competition Bureau (WCB) to rule on all such requests.¹⁰ The Commission directed the Bureaus to prioritize review and to complete their review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing on such petitions.¹¹

5. *The Cordova Wireless Petition*. On October 1, 2012, Cordova Wireless filed a petition for waiver of section 54.307(e)(3)(iv)(B)-(E) of the Commission’s rules relating to the phase down of

⁵ *Id.* at 17835-36, para. 529.

⁶ *Id.*; 47 C.F.R. § 54.307(e)(3).

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17839, para. 539. The Commission’s intent in discussing waivers relating to reductions in USF support was not to replace the ordinary standard for granting waivers under section 1.3 of the Commission’s rules, but rather to provide guidance in advance to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver under that waiver standard to assist potential applicants in effectively formulating their waiver petitions. See *Connect America Fund*, WC Docket No 10-90 *et al.*, Fifth Order on Reconsideration, FCC 12-137, 27 FCC Rcd 14549, 14556-57, para. 19 (2012). Generally, the Commission’s rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. 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. *Northeast Cellular*, 897 F.2d at 1166.

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

⁹ *Id.*

¹⁰ *Id.* at 17840-42, paras. 542, 544.

¹¹ *Id.* at 17842, para. 544.

high-cost universal service support for certain ETCs serving remote parts of Alaska.¹² Specifically, Cordova Wireless seeks to maintain at least eighty percent of its baseline level of high-cost support in order to expand its network and continue providing mobile voice and data service to its current customers.¹³ Cordova Wireless received \$3,467,922 in high-cost universal service support in 2011.¹⁴

6. Cordova Wireless is one of three wireless providers in the Cordova area,¹⁵ which is located in Alaska RSA 2 (Bethel, CMA 316(A)).¹⁶ Cordova Wireless offers GSM service to approximately [REDACTED]¹⁷ customers in its Cordova service area and claims to be the “sole provider of mobile service in approximately [thirty percent] of its Cordova wireless service area and the sole provider of GSM service in approximately [ninety-eight percent] of its Cordova wireless service area.”¹⁸

7. In July 2012, Cordova Wireless began to serve an additional area in Yakutat, which is located in Alaska RSA 3 (Haines, CMA 317).¹⁹ Cordova Wireless is not yet designated as an ETC in Yakutat.²⁰ On October 1, 2012, Cordova Wireless filed a petition for ETC designation with the Regulatory Commission of Alaska (RCA) seeking a redefined service area that includes Yakutat.²¹ The ETC Petition is pending before the RCA. Cordova Wireless offers GSM service to approximately 200 customers in Yakutat and claims that it is the sole provider of mobile service in that area.²²

8. Cordova Wireless asserts that “[i]f the requested waiver is not granted, and [the] amount of such support is reduced and phased out pursuant to the FCC’s new rules, Cordova [Wireless] will be forced to immediately terminate service to Yakutat and will be unable to continue to provide service to any point on its network past July 1, 2016, at which point it will have to terminate all wireless operations.”²³ According to the Petition, “[t]he loss of service to Yakutat will deprive *all* residents (many of which are Native Alaskan villagers) and individuals travelling in Yakutat of wireless voice service, while the loss of all Cordova wireless service will result in the loss of all wireless service in a significant portion of Cordova’s service area and the loss of GSM service through virtually the entirety of Cordova’s service area.”²⁴ Cordova Wireless argues that it is not in the public interest for it “to simply wait for

¹² See Petition.

¹³ *Id.* at 1-2, 17.

¹⁴ See USAC High Cost Disbursement Data Search, *available at* <http://www.usac.org/hc/tools/disbursements/default.aspx>.

¹⁵ Petition at 6. The Regulatory Commission of Alaska designated Cordova Wireless as an ETC in the Cordova area on September 15, 2006. *Id.* at 3.

¹⁶ *Id.* at 3-4.

¹⁷ Certain information included in the Petition was filed pursuant to the *Third Protective Order* in this proceeding and has been redacted. See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Third Protective Order, 27 FCC Rcd 10276 (2012).

¹⁸ Petition at 4, 8; Cordova Wireless Reply Comments at 2-3.

¹⁹ Petition at 2, 5.

²⁰ *Id.* at 3-4 fn. 6, 9 fn. 14.

²¹ See Verified Petition of Cordova Wireless Communications, Inc., for Designation as an Eligible Telecommunications Carrier in a Redefined Service Area at Yakutat, Alaska, RCA Docket No. U-12-135 (filed Oct. 1, 2012) (ETC Petition).

²² Petition at 6, 8; ETC Petition at 29.

²³ Petition at 9.

²⁴ *Id.* at 9-10 (emphasis in original).

Mobility Fund Phase II given the vital nature of mobile services in Alaska, the speculative nature of such support, and the critical need for lead time to complete the planned network expansion.”²⁵ Cordova Wireless further argues that it “cannot reasonably be expected to make decisions as to whether to make substantial investment in its network without knowing the extent of available high cost support.”²⁶

9. *Comments.* The Bureau placed the Petition on public notice for comment on October 11, 2012.²⁷ Copper Valley Wireless (Copper Valley) and General Communication, Inc. (GCI), the other two wireless providers in Cordova Wireless’s service area, filed comments in opposition to the Petition.²⁸ Specifically, Copper Valley filed comments and reply comments opposing the waiver request on the grounds that the filing is premature and Cordova Wireless is not the sole provider in a significant portion of its service area.²⁹ Copper Valley further stated that it would also seek a waiver of the Commission’s universal service rules if the Bureau grants the Petition.³⁰

10. Like Copper Valley, GCI opposes the Petition as premature.³¹ GCI argues that Cordova Wireless’s claimed potential harms are largely hypothetical at this time and asserts that there is little cause for alarm in Cordova Wireless’s service area.³² GCI also argues that Cordova Wireless is circumventing the “competitive bidding process” by seeking to lock in a guaranteed level of high-cost support.³³

11. Alaska Communications Systems (ACS) and Alexicon Telecommunications Consulting (Alexicon) filed comments in general support of the waiver, noting the special needs of Alaskan

²⁵ *Id.* at 12.

²⁶ *Id.* at 16.

²⁷ See *Wireless Telecommunications Bureau Seeks Comment on Cordova Wireless Communications, Inc. Petition for Waiver of Universal Service Rules*, Public Notice, DA 12-1627 (Oct. 11, 2012) (seeking comments by November 13, 2012, and reply comments by November 28, 2012) (modified by Erratum (rel. Oct. 12, 2012)).

²⁸ See Initial Comments of Copper Valley Wireless on Cordova Wireless Petition for Waiver Request, WC Docket No. 10-90 *et al.* (filed Nov. 13, 2012) (Copper Valley Comments); Reply Comments of Copper Valley Wireless on Cordova Wireless Petition or Waiver Request, WC Docket No. 10-90 *et al.* (filed Nov. 26, 2012) (Copper Valley Reply Comments); Opposition of General Communication, Inc., WC Docket No. 10-90 *et al.* (filed Nov. 13, 2012) (GCI Comments).

²⁹ Copper Valley Comments at 6; Copper Valley Reply Comments at 3, 5-6. In addition, Copper Valley argued that: (1) Cordova Wireless’s coverage maps are not precise and are inaccurate; (2) “Cordova [Wireless] attempts to establish a special status with respect to being a public safety communications provider;” (3) the data provided by Cordova Wireless misstates the competitive situation in Yakutat; (4) there may be inaccuracies in the data that Cordova Wireless redacted in this proceeding; and (5) Cordova Wireless is not unique – it is one of several Alaska wireless companies that operates in the harsh environment of Prince William Sound and serves rural customers. Copper Valley Comments at 3-10; Copper Valley Reply Comments at 7.

³⁰ Copper Valley Reply Comments at 8.

³¹ GCI Comments at 1, 3-6.

³² *Id.* at 4-5. GCI further states that Cordova Wireless cannot argue that the lack of certainty in future funding “will force it to shutter its operations” because Cordova Wireless made the business decision to serve Yakutat “with full knowledge of the coming regulatory changes.” *Id.* at 6.

³³ *Id.* at 6-8 (“Instead of participating in the competitive bidding process, or whatever other mechanisms may result from the Commission’s implementation of Mobility Fund Phase 2 and Tribal Mobility Fund Phase 2, [Cordova Wireless] seeks to lock in a guaranteed support level for itself now, irrespective of all other changes in the marketplace.”).

carriers.³⁴ ACS speculates that competitive ETCs in Alaska facing similar circumstances as Cordova Wireless will likely file petitions for waiver and urges the Commission to grant “all such meritorious petitions in order to advance its fundamental universal service goals.”³⁵ Alexicon argues that Cordova Wireless has demonstrated the need for support above the amount allowed by section 54.307(e)(3)(iv), claims that the Petition is timely, and warns that service provided to Native Alaskans is at risk.³⁶

12. Cordova Wireless filed reply comments responding to Copper Valley and GCI’s arguments and agreeing with ACS and Alexicon’s comments.³⁷ In particular, Cordova Wireless argues that its waiver request is not premature, that its harms are “quite real,” and that it is the sole provider of wireless service in a significant portion of its Cordova service area.³⁸ In addition, Cordova Wireless emphasized that “[a]bsent a ruling from the FCC, Cordova [Wireless] is unable to determine whether it currently makes financial sense to implement planned improvements to its network and make additional investments in that network.”³⁹

13. Bureau staff met with Cordova Wireless’s Chief Executive Officer (CEO) and outside legal counsel on December 5, 2012, to discuss the Petition, the status of Cordova Wireless’s ETC application in Alaska, and the challenges of serving rural wilderness and water-based areas.⁴⁰ On December 10, 2012, Bureau and WCB staff met with Copper Valley’s CEO and discussed the Petition, Copper Valley’s operations, and the Commission’s recently released public notice seeking additional comment on Mobility Fund Phase II.⁴¹

14. *Discussion.* Based upon a thorough review of the information in the record, we conclude that Cordova Wireless has not demonstrated good cause for the requested waiver at this time. As a result, we deny the Petition. Cordova Wireless may submit another petition if in the future it is better able to demonstrate good cause for a waiver.

15. Cordova Wireless’s request for relief from section 54.307(e)(3)(iv)(B)-(E) of the Commission’s rules is premature because Cordova Wireless admits that it is financially sound right now and does not claim to need additional funding at this time in order to continue providing wireless service to its customers.⁴² We note that the phase down of universal service support for Alaskan carriers,

³⁴ See Comments of Alaska Communications Systems, WC Docket No. 10-90 *et al.*, at 4 (filed Nov. 13, 2012) (noting that “[t]he need is particularly acute in Alaska.”) (ACS Comments); Comments of Alexicon Telecommunications Consulting, WC Docket No. 10-90 *et al.* (filed Nov. 13, 2012) (Alexicon Comments).

³⁵ ACS Comments at 3-4, 6 (“One opportunity for the Commission to ameliorate the impending crisis in Alaska is to grant waivers wherever possible to enable additional support to flow to Alaska under the Commission’s existing transition mechanisms or, at a minimum, to prevent decreases in such support.”).

³⁶ Alexicon Comments at 3-5. Alexicon also argues that “absent the waiver requested, [Cordova Wireless’s] support would not be sufficient to achieve the purposes of section 254 of the 1996 Act.” *Id.* at 4.

³⁷ See Cordova Wireless Reply Comments.

³⁸ *Id.* at 2-4.

³⁹ *Id.* at 4 (“Obtaining a decision on the amount of support that Cordova [Wireless] will be entitled to going forward is essential to [Cordova Wireless’s] planning for the next five years (and beyond) of providing services.”).

⁴⁰ See Cordova Wireless *Ex Parte*.

⁴¹ See Notice of *Ex Parte*, WC Docket No. 10-90 (filed Dec. 12, 2012). See also *Further Inquiry into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice, DA 12-1853 (rel. Nov. 27, 2012).

⁴² As a result, Cordova Wireless’s circumstances are distinguishable from Allband Communications Cooperative’s circumstances. See *Allband Communications Cooperative*, Order, 27 FCC Rcd 8310, 8311, para. 5 (WCB 2012), *recon. pending*; Petition of Allband Communications Cooperative for Waiver of Part 54.302 and the Framework to

including Cordova Wireless, is not scheduled to begin until July 1, 2014.⁴³ Moreover, Cordova Wireless is specifically concerned with the level of reduction that is not scheduled to occur until July 1, 2015.⁴⁴ As a result, Cordova Wireless's request for waiver of the phase down rules is fundamentally speculative and does not demonstrate good cause for waiver on this record.

16. Cordova Wireless's claim that it is difficult to continue to invest in its Cordova and Yakutat networks "without the certainty of a sufficient level of support going forward" does not justify a waiver of the future phase down of universal service support.⁴⁵ Cordova Wireless has not demonstrated that it is subject to any greater level of financial uncertainty than any other ETC, including its competitors in Alaska.⁴⁶ The Commission is in the process of implementing the recently adopted universal service reforms and developing dedicated mechanisms to support mobility and ensure that funding is cost-effective and targeted to areas of need.⁴⁷ Consistent with the Commission's universal service reforms, Cordova Wireless may be eligible to seek one-time or ongoing universal service support through the Tribal Mobility Fund Phase I and the Mobility Fund and Tribal Mobility Fund Phase II support mechanisms. Until the Commission implements Mobility Fund Phase II, it is unclear whether, or how, the universal service reforms, especially the phase down rules, will affect Cordova Wireless in the future.⁴⁸ As a result, it is premature to grant such a waiver request at this time based on the speculative concerns raised here, which we find do not demonstrate good cause.⁴⁹

17. *Conclusion.* For the reasons discussed above, the Bureau hereby denies Cordova Wireless's request for waiver of section 54.307(e)(3)(iv)(B)-(E) of the Commission's rules.

Limit Reimbursable Capital and Operating Costs, WC Docket No. 10-90 *et al.*, at 1 (filed Feb. 3, 2012) (claiming that absent grant of the requested waivers, the implementation of the high-cost support cap would "irreparably and immediately harm Allband by providing insufficient revenues to: [c]ontinue to provide voice service to any of its customers and, [p]ay the principal and interest on its RUS loan and, [c]ontinue operations as a telecommunications carrier.") (emphasis added). *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540 ("a carrier seeking [a] waiver must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative.").

⁴³ *See* 47 C.F.R. § 54.307(e)(3).

⁴⁴ *See* Petition at 17.

⁴⁵ Cordova Wireless Reply Comments at 4. *See also* Petition at 12, 13 fn. 18, 16. As noted above, Cordova Wireless is not yet designated as an ETC in the Yakutat area. *See id.* at 3-4 fn. 6, 9 fn. 14.

⁴⁶ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 541 (warning carriers that "[c]onclusory assertions that reductions in support will . . . make it difficult to invest in the future will not be sufficient.").

⁴⁷ *See id.* at 17669, para. 8.

⁴⁸ *See Duane Morris, LLP Request for Clarification*, Order, 20 FCC Rcd 8897, 8898, para. 4 (2005) ("Petitioner asks us to speculate on the effects of [Automated Maritime Telecommunication System] rules that have not been adopted and conditions that have not occurred. Without knowing what, if any, rule changes will be adopted in the pending proceeding referenced earlier, it would be premature to address the concerns raised by Petitioner at this time."). *See also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System*, Order, 20 FCC Rcd 7709, 7757, para. 129 (2005) (denying petitioners' requests for relief from the accuracy requirements as premature because "the accuracy of their planned systems cannot be known until they are installed and activated," and inviting carriers to "submit a more specific request for relief in the future should they determine, after installation, that such a waiver is needed.").

⁴⁹ *See, e.g., Provision of Access for 800 Service*, Order, 7 FCC Rcd 5042, 5044, para. 19 (1992) ("We deny, without prejudice, [Petitioner's] request for a waiver of the 1995 access time standard. While [Petitioner] might be able to demonstrate in the future that good cause exists for a waiver of the 1995 requirements, it is premature to consider such a waiver request at this time.").

18. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 254, and sections 0.131, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, and 1.3, and paragraph 544 of the *USF/ICC Transformation Order* that this order IS ADOPTED.

19. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(e)(3)(iv)(B)-(E) of the Commission's rules, 47 C.F.R. § 54.307(e)(3)(iv)(B)-(E), filed by Cordova Wireless Communications, Inc., IS DENIED as described herein.

20. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief
Wireless Telecommunications Bureau