

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

In the matter of
Connect America Fund
WC Docket No. 10-90

Adopted: July 22, 2014

Released: July 22, 2014

By the Acting Chief, Wireline Competition Bureau:

ORDER

1. In this Order, we grant petitions filed by FairPoint Communications Missouri, Inc. (FairPoint) and Steelville Telephone Exchange, Inc. (Steelville) for a waiver of section 54.313(h) of the Commission's rules, which requires all incumbent local exchange companies (LECs) with rates below a rate floor for residential local service to report such rates. Because both FairPoint and Steelville charged rates meeting the rate floor for the entire period the \$10 rate floor was in effect, we find that there is good cause to waive the filing deadline in this instance. Accordingly, we grant both petitions and direct USAC to refund any associated reductions in high-cost support for both carriers.

I. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission aimed to ensure that universal service funds were not being used improperly to subsidize below-average local service rates by adopting a rule to limit high-cost loop support (HCLS), frozen high-cost support, and Connect America Fund Phase I support for carriers whose end-user rates do not meet a specified local rate floor. To provide adequate time for carriers to comply with this new rule, the Commission phased in the rate floor in three steps: \$10 for the period beginning July 1, 2012 through June 30, 2013; \$14 for the period beginning July 1, 2013 through June 30, 2014; and a rate determined by an annual survey of voice rates beginning July 1, 2014, and continuing in each subsequent calendar year.

3. The Commission required all incumbent LECs receiving high-cost support to report their residential local service rates to USAC beginning April 1, 2012, in order to enable USAC to calculate reductions in support levels for carriers with rates below the specified rate floor. The rates and lines filed by carriers on April 1 would be those in effect as of each January 1 (referred to herein as the "rate

1 Petition for Waiver or Clarification to Reinstate High-Cost Support of FairPoint Communications Missouri, Inc., WC Docket No. 10-90 et al. (filed Dec. 26, 2012) (FairPoint Petition); Petition for Waiver to Reinstate High-Cost Support of Steelville Telephone Exchange, Inc., WC Docket No. 10-90 et al. (filed Dec. 31, 2012) (Steelville Petition). See 47 C.F.R. § 54.313(h).

2 See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order et al., 26 FCC 17663, 17749, para. 234-35 (2011), aff'd sub nom. In re FCC 11-161, ___ F.3d ___, 2014 WL 2142106 (10th Cir. May 23, 2014) (USF/ICC Transformation Order).

3 Id. at 17751-52, para. 239.

4 Id. at 17856, para. 594.

sampling date”). In the *Third Reconsideration Order*, the Commission extended the deadline for carriers to file their annual reports, including data required for the rate floor, from April 1 to July 1,⁵ and delayed the rate sampling date from January 1 to June 1.⁶ The Commission also clarified that carriers needed to file their residential local rates only to the extent such rates were below the effective rate floor.⁷

4. On May 17, 2012, FairPoint and Steelville filed tariff revisions with the Missouri Public Service Commission (PSC) requesting expedited approval for rates meeting the \$10 local rate floor.⁸ The Missouri PSC adopted an order on May 24, 2012, approving the carriers’ tariffs effective as of June 1.⁹ Although the PSC’s order allowed FairPoint and Steelville to comply with the June 1 effective rate deadline, neither carrier was able to put the revised rate into effect by June 1, the rate sampling date.¹⁰ As a result, both FairPoint and Steelville experienced reduced high-cost support for the six-month period beginning July 1, 2012, and ending December 31, 2012.¹¹

5. FairPoint and Steelville subsequently filed petitions for waiver of the Commission’s local voice rate data reporting rules,¹² arguing that section 54.313(h)(1) and 54.318(a) are inconsistent and caused confusion regarding the correct filing date. In addition, FairPoint and Steelville claim that the *Third Reconsideration Order* increased the burden on carriers to comply with the rate floor by changing the rate sampling date from July 1 to June 1.¹³ FairPoint also urges the Commission to clarify that it intended July 1 to be the rate sampling date.¹⁴

⁵ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5628, para. 16, 19 (2012) (*Third Order on Reconsideration*).

⁶ *Id.* at 5629, para. 19.

⁷ *Id.* at 5630, para. 21.

⁸ See *Revised Tariff Filing of FairPoint Communications Missouri, Inc. d/b/a FairPoint Communications*, File No. IT-2012-0390, Motion for Expedited Treatment (filed May 17, 2012), <https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935693745> (FairPoint Tariff); *Revised Tariff Filing of Steelville Telephone Company to Comply with the FCC’s Nov. 18, 2011 Order Establishing a Local Rate Floor*, File No. IT-2012-0388, Motion for Expedited Treatment (filed May 17, 2012), <https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935693722> (Steelville Tariff).

⁹ See *Local Exchange Rate Tariff Filing of BPS Telephone Company to Comply with the FCC’s Nov. 18, 2011 Order Establishing a Local Rate Floor et al.*, File No. IT-2012-0374 et al., Order Approving Tariffs and Granting Motions for Expedited Treatment, at 7-8 (rel. May 24, 2012), available at <http://psc.mo.gov/CMSInternetData/ON/Orders/2012/052412374.htm>.

¹⁰ FairPoint Petition at 3 (explaining that it inadvertently reported the rate billed as of the last billing cycle, which was below the local urban rate floor); Steelville Petition at 2-3 (explaining that the Missouri PSC approved the tariff revision too late to implement the new rate into its billing system).

¹¹ FairPoint Petition at 4 (stating a loss of \$88,854 in high-cost support); Steelville Petition at 4 (stating a loss of \$18,456 in high-cost support).

¹² FairPoint Petition at 1; Steelville Petition at 1.

¹³ FairPoint Petition at 2; Steelville Petition at 2.

¹⁴ FairPoint Petition at 6-7.

II. DISCUSSION

6. We conclude that the circumstances particular to this instance justify granting the petitions of both FairPoint and Steelville for good cause.¹⁵ Because the carriers reported that their rates were below the rate floor as of the June 1 effective rate deadline, they received reduced high-cost support for the period between July 2012 and December 2012. However, because the Missouri PSC approved their revised tariffs effective June 1, 2012, both FairPoint and Steelville were able to bill customers at rates that were in compliance with the rate floor for the entire period between July 1, 2012 and June 30, 2013. We conclude that under the totality of these circumstances relief is warranted. Therefore, we direct USAC to refund any reductions in the high-cost support that both FairPoint and Steelville should have received for the period beginning July 1, 2012 through June 30, 2013.

7. We also take this opportunity to clarify the reporting requirements for carriers seeking to avoid reductions in their high-cost support. As stated in section 54.313(h)(1), carriers must “report lines and rates *in effect as of* June 1,”¹⁶ to the extent those rates are below the rate floor.¹⁷ In contrast, section 54.318(a)—rather than setting a competing rate sampling date, as FairPoint and Steelville suggest—provides the date on which high-cost support reductions associated with rates below the rate floor will begin for the forthcoming year.

8. Finally, we note that the *Third Order on Reconsideration* did not shift the rate sampling date from July 1 back to June 1, as the petitioners contend.¹⁸ Instead, the Commission moved the date forward from January 1 to June 1 in order to give parties more time to take steps to avoid support reductions beginning July 1, 2012.¹⁹ As a result, the rate sampling date was delayed four months, from January 1 to June 1.²⁰

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that the petition for waiver of section 54.313(h) of the Commission’s rules, 47 C.F.R. § 54.313(h), which requires all incumbent LECs that fail to meet the rate floor for residential local service to report such rates, filed by FairPoint Communications Missouri, Inc., IS GRANTED as described herein.

11. IT IS FURTHER ORDERED that the petition for waiver of section 54.313(h) of the Commission’s rules, 47 C.F.R. § 54.313(h), which requires all incumbent LECs that fail to meet the rate floor for residential local service to report such rates, filed by Steelville Telephone Exchange, Inc., IS GRANTED as described herein.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ See 47 C.F.R. § 54.313(h)(1) (emphasis added).

¹⁷ *Third Order on Reconsideration*, 27 FCC Rcd at 5629, para. 19.

¹⁸ See FairPoint Petition at 2; Steelville Petition at 2.

¹⁹ *Third Order on Reconsideration*, 27 FCC Rcd at 5629, para. 19.

²⁰ *Id.*

12. 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
Acting Chief
Wireline Competition Bureau