

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

In the Matter of
Connect America Fund
Allband Communications Cooperative
Petition for Waiver of Certain High-Cost
Universal Service Rules
WC Docket No. 10-90

ORDER

Adopted: June 29, 2015

Released: June 29, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) directs the Universal Service Administrative Company (USAC) to undertake certain factual inquiries and on an interim basis extends a waiver previously granted to Allband Communications Cooperative (Allband or company or ACC) until the earlier of either December 31, 2015 or the date on which further action is taken on the pending waiver request, without prejudice to the ultimate determination as to whether relief is warranted.

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission comprehensively reformed federal universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband-capable networks while ensuring fairness for consumers and businesses that ultimately pay into the universal service fund. The Commission adopted new section 54.302, establishing a presumptive per line cap of \$250 per month on total high-cost universal service support for all ETCs, including incumbent local exchange carriers (LECs), to be phased in over three years. The Commission concluded that support in excess of that amount should not be provided without further justification.

3. The USF/ICC Transformation Order noted that "any carrier negatively affected by the universal service reforms . . . [may] 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." The Commission

1 Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011) (USF/ICC Transformation Order), aff'd sub nom In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

2 See id. at 17670, para. 11.

3 47 C.F.R. § 54.302.

4 USF/ICC Transformation Order, 26 FCC Red at 17765, para. 274.

5 Id. at 17839-40, paras. 539-40. The Commission's intent in discussing waivers relating to reductions in federal universal service fund (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

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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 consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service.”⁶ In delegating to the Wireline Competition Bureau the authority to approve or deny requests for waiver,⁷ the Commission indicated that it did not anticipate granting waiver requests routinely or for “undefined duration[s]”⁸ and provided guidance on the types of information that would be relevant for such requests.⁹ In the *Fifth Order on Reconsideration*, the Commission further clarified that “we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband.”¹⁰

4. On July 25, 2012, the Bureau granted Allband a three-year waiver of section 54.302 of the Commission’s rules so that Allband could receive the lesser of high-cost universal service support based on its actual costs or the annualized total high-cost support that it received for the period January 1, 2012 through June 30, 2012.¹¹ In that order, the Bureau stated that if Allband determined that additional support above the \$250 cap was necessary after June 30, 2015, “Allband should file with the Bureau the financial and operational information necessary for the Bureau to determine what further relief is appropriate based on the specific circumstances present at that time.”¹²

5. On December 31, 2014, Allband filed a petition for further waiver of section 54.302 and included its 2012 and 2013 audited financial statements.¹³ In this Further Waiver Petition, Allband requests that the Commission extend Allband’s current waiver for an additional 12 years.¹⁴ Allband states that a waiver is necessary to allow Allband to continue to provide voice services, repay its Rural Utilities

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applicants in effectively formulating their waiver petitions. See *Connect America Fund et al.*, WC Docket No 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14556-57, para. 19 (2012) (*Fifth Order on Reconsideration*). 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. 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. *WALT 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.

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

⁷ *Id.* at 17840, 17842, paras. 540, 544.

⁸ *Id.* at 17766, para. 278.

⁹ *Id.* at 17840-42, paras. 542, 544.

¹⁰ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 21.

¹¹ See *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 27 FCC Rcd 8310 (Wireline Comp. Bur. 2012).

¹² *Id.* at 8315, para. 16.

¹³ Petition of Allband Communications Cooperative (Allband) for Further Waiver of Part 54.302, WC Docket No. 10-90, et al. (filed Dec. 31, 2014) (Further Waiver Petition).

¹⁴ *Id.* at 1.

Service loan, and continue operations.¹⁵ Subsequently, on May 18, 2015, Allband filed its 2014 audited financial statements.¹⁶

III. DISCUSSION

6. The Bureau has reviewed the materials submitted and identified certain accounting issues that require further review.¹⁷ The Bureau is unable to determine based on the information submitted the extent to which relief may be appropriate. The Bureau directs USAC to undertake the necessary inquiry and report its findings to the Bureau as outlined below.

7. First, the Bureau directs USAC to review Allband's cost allocations between regulated and non-regulated activities, with a particular focus on the allocation of general and administrative expenses recorded in Account 6720 between regulated and non-regulated services pursuant to sections 64.901 - 64.903 of the Commission's rules per Allband's financial records for the period from January 1, 2012 through December 31, 2014, the years included within the term of the existing waiver. The Bureau notes certain incongruities between the financial results reported by the incumbent telephone company, ACC, compared with those reported by ACC's wholly-owned, unregulated subsidiary Allband Multimedia (AMM). As shown in the table below, while AMM earned 77 percent of the cooperative's customer revenues in 2014 and has between 500-600 customers (in contrast to ACC's 170 access lines),¹⁸ it was allocated only 32 percent of the cooperative's operating expense, even when depreciation expense, which is incurred entirely by ACC, is excluded.

Year Ending December 31, 2014 ¹⁹				
	\$	%	\$	%
OPERATING REVENUES				
Total operating revenues	1,598,112		509,387	
USF revenues	1,448,594		0	
Total operating revenues (excluding USF)	149,518	23%	509,387	77%
OPERATING EXPENSES				
Plant specific operations	187,016	56%	149,103	44%
Plant nonspecific operations	105,520	56%	82,376	44%
Customer operations	72,877	49%	77,085	51%
Total operating expenses (excluding depreciation & amortization)	675,837	68%	316,697	32%
Depreciation and amortization	374,439	100%	0	0%

¹⁵ *Id.*

¹⁶ See Letter from Don L. Keskey, Counsel for Allband Communications Cooperative, to Marlene H. Dortch, Federal Communications Commission Secretary, Attach. B (filed May 18, 2015) (May 18, 2015 Ex Parte).

¹⁷ In 2011, the Commission concluded that "any company that seeks additional funding will be subject to a thorough total earnings review." *USF/ICC Transformation Order*, 26 FCC Rcd at 17739, para. 202.

¹⁸ ASR Analytics Broadband Technology Opportunities Program Evaluation Study, Case Study Report Merit Network, Inc., National Telecommunications and Information Administration, Order No. D10PD18645 (submitted Mar. 4, 2014), http://www2.ntia.doc.gov/files/merit_case_study_report_order_number_d10pd18645.pdf (stating AMM has between 500 and 600 subscribers); Further Waiver Petition at 14 (stating that ACC has a total of 170 access lines).

¹⁹ May 18, 2015 Ex Parte, Attach. B.

Total operating expenses (including depreciation & amortization)	1,050,276	77%	316,697	23%
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8. USAC should examine the company's cost allocation procedures and report any instances in which the allocation procedures were not consistent with the carrier's allocation methodology or Commission rules and the resulting effect on support calculations. For the years 2012-2014, for allocations made on the basis of direct factors, such as labor hours spent on an activity, Allband must provide USAC with those factors and provide supporting documentation for them such as quarterly time sheet summaries in electronic spreadsheet format. For allocations made on the basis of indirect factors, such as those developed in Allband's annual jurisdictional cost process or from vendor invoices, Allband must provide USAC with those factors and provide appropriate summary documentation for them, in electronic spreadsheet format when possible.²⁰ USAC shall provide a report with both direct and indirect factors to the Commission, as well as a summary of USAC's conclusions regarding the appropriateness of those factors.

9. Second, as the table above shows, ACC incurs 77 percent of total operating expenses yet receives only 23 percent of non-USF revenue. Further, ACC provides and maintains the loops, transport network, and Internet Service Provider (ISP) interconnections that AMM uses to service its customers.²¹ We direct USAC to conduct an inquiry and obtain supporting documentation from Allband to determine why ACC's share of the non-USF revenues is not greater than 23 percent when ACC provides and maintains the underlying facilities and services used by AMM. In particular, what were the specific monthly rates ACC charged for provisioning and maintaining the lines it provides to AMM? On average during 2014, what was the number of lines per month for which ACC invoiced AMM, and what was the average rate per line charged by ACC to AMM during 2014? When services are provided from a carrier to an affiliate pursuant to a tariff, under the Commission's rules those services are recorded in the appropriate revenue account at the tariffed rate. The Commission's rules further establish a floor, the higher of fair market value or fully distributed cost, below which a transaction may not be recorded.²² Was the floor determined consistent with the section 32.27? Besides provisioning and maintenance services that ACC provided for AMM's end-user customer lines, what other facilities and services did ACC provide to AMM during 2014? What were the rates ACC charged for those services, and was the floor determined consistent with section 32.27? Allband must provide USAC with the documentation necessary to make these determinations.

10. Third, we note that the amount of money owed by AMM, the unregulated subsidiary, to ACC, the regulated telephone company, has varied significantly between 2010 and 2013.²³

²⁰ Allband describes its cost allocation processes in its recent ex parte. See May 18, 2015 Ex Parte, Attach. C. See also Allband Communications Cooperative Petition for Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs, WC Docket No. 10-90, WT Docket No. 10-208, Appx. 2, Attach. 1 (filed Feb. 3, 2012) (Allband 2012 Waiver Petition).

²¹ Allband 2012 Waiver Petition at Appx. 2, Attach. 1, Exh. 1.

²² See 47 C.F.R. § 32.27(c)(1).

²³ The Commission recently stated that unpaid balances among regulated and unregulated affiliates are inconsistent with section 32.27 of the Commission's rules. See Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Petitions for Waiver of Certain High-Cost Universal Service Rules, WC Docket No. 10-90, WT Docket No. 10-208, FCC 15-51, para. 9 (rel. May 7, 2015).

	2014 ²⁴	2013 ²⁵	2012 ²⁶	2011 ²⁷	2010 ²⁸
Net Accounts Receivable (Amounts owed to ACC by AMM)	\$19,670	\$146,449	\$132,800	\$67,402	\$19,815

In 2010, AMM owed ACC just under \$20,000, whereas by 2013 that amount had grown to over \$145,000. The amount AMM owed to ACC decreased again to just under \$20,000 in 2014. USAC should conduct an inquiry and obtain Allband's supporting documentation to determine why the amount owed to the regulated affiliate increased from 2010 to 2013, and the age of those accounts payable owed by AMM to ACC. USAC also should examine the amounts owed from December 31, 2010 through December 31, 2014, and report the extent to which amounts were more than 30 days past due. Allband must provide USAC with the documentation necessary to make these determinations.

11. Fourth, Allband's 2014 financials show that ACC borrowed \$300,000 from the company's founder and President, John Reigle, at an annual interest rate of 12 percent.²⁹ We direct USAC to conduct an inquiry and obtain Allband's supporting documentation to determine how the ceiling for the interest rate for this loan, as defined in 47 C.F.R. § 32.27(c)(2), was calculated. Further, USAC shall report on the specific uses the \$300,000 in loan funds were put by ACC. Allband must provide USAC with the documentation necessary to make these determinations.

12. Fifth, USAC should conduct an inquiry and obtain Allband's supporting documentation to determine if Allband currently or in the past owned a residential rental property, and if so, how Allband has accounted for the costs and rental revenues for the property. On line 19(h) of its 2010 IRS Form 990 (the latest year this form is publically available for Allband), the cooperative listed a depreciation recovery period of 27.5 years for a "Residential Rental Property." However, there has been no mention of a "residential rental property" in the other materials Allband has submitted with its waiver petitions. Allband must provide USAC with the documentation necessary to make these determinations.

13. We direct USAC to submit the results of its inquiry in a memorandum to the Bureau by September 30, 2015.³⁰ However, if USAC anticipates that it needs additional time to complete its work, it should inform the Bureau of how much longer it requires no later than September 1, 2015.

14. As the Bureau is unable to make a determination as to the necessity of the waiver filed by Allband, we extend Allband's current waiver until the earlier of either December 31, 2015 or the date on which further action is taken on the pending waiver request. As such, USAC can continue to provide to Allband of the lesser of high-cost universal service support based on Allband's actual costs or the annualized total high-cost support that it received for the period January 1, 2012 through June 30, 2012. This will maintain the status quo while USAC conducts its review and reports back to the Bureau, without prejudging whether Allband is in compliance with the Commission's rules.³¹

²⁴ *Id.*

²⁵ Allband Petition for Further Waiver, Appx. 2, Schedule 3 – 2013 Audited Financial Statements.

²⁶ *Id.* at Appx. 2, Schedule 2.

²⁷ *Id.*

²⁸ Allband 2012 Waiver Petition, Appx. 2, Attach. 2C – 2010 Audited Financial Statements.

²⁹ May 18, 2015 Ex Parte, Attach. B.

³⁰ We note that such results will likely contain confidential information and will need to be filed in accordance with the Commission's procedures to protect such information.

³¹ We note that universal service support amounts may be adjusted retroactively, if it is determined that Allband has received support amounts in the past to which it was not entitled. Universal service support may be used "only for

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IV. ORDERING CLAUSES

15. IT IS ORDERED, pursuant to the authority contained in 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, sections 0.91, 0.131, 0.291, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.291, 0.331, and 1.3, and paragraph 544 of the *USF/ICC Transformation Order*,³² FCC 11-161, that the Universal Service Administrative Company SHALL MAKE payment to Allband Communications Cooperative in accordance with the amount, terms, and conditions described herein and CONDUCT the inquiries outlined herein.

16. 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

Matthew DelNero
Chief
Wireline Competition Bureau

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the provision, maintenance and upgrading of facilities and services for which the support is intended." 47 C.F.R. § 54.7.

³² *USF/ICC Transformation Order*, 26 FCC Rcd at 17842, para. 544.