

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

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

ORDER

Adopted: October 20, 2016

Released: October 20, 2016

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies two requests for waiver of the deadlines that the Commission adopted in the *Rate-of-Return Reform Order* for filing FCC Form 477 data used in the final version of A-CAM.¹ Consistent with Bureau precedent, we deny (1) the request of Steelville Telephone Exchange, Inc. (Steelville) for waiver of the Commission's March 30, 2016 deadline for submitting FCC Form 477 data used to determine a rate-of-return carrier's percentage of broadband deployment,² and (2) the request of Grand River Mutual Telephone Corporation (Grand River) for waiver of the Commission's deadline for submitting FCC Form 477 data used to identify census blocks served by fiber-to-the-premises (FTTP) or cable technologies.³

II. BACKGROUND

2. In the *Rate-of-Return Reform Order*, the Commission adopted a voluntary path for rate-of-return carriers to elect to receive model-based support in exchange for extending broadband service to a pre-determined number of eligible locations.⁴ For purposes of making the offer of A-CAM support, the Commission determined that any carrier that had deployed 10/1 Mbps or better broadband to 90 percent or more of its eligible locations in a state would not be eligible for A-CAM support, and provided that this determination would be based on June 2015 FCC Form 477 data that had been submitted as of the date of release of the *Rate-of-Return Reform Order*.⁵ The Commission also determined that it would exclude from support calculations those census blocks where an incumbent or any affiliated entity is providing 10/1 Mbps or better broadband using either FTTP or cable technologies, based on FCC Form 477 data that had been submitted prior to March 30, 2016.⁶

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC 3087, 3109, para. 56, 3113, para. 66 (2016) (*Rate-of-Return Reform Order*).

² Petition for Waiver of Steelville, WC Docket No. 10-90 et al. (filed Sept. 15, 2016) (Steelville Petition).

³ Petition of Grand River, WC Docket No. 10-90 et al. (filed Sept. 23, 2016) (Grand River Petition).

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC 3087, 3094-3117, paras. 17-79 (2016) (*Rate-of-Return Reform Order*).

⁵ *Id.* at 3113, para. 66 ("This will preserve the benefits of the model for those companies that have more significant work to do to extend broadband to unserved consumers in high-cost areas, and will prevent companies from electing model-based support merely to lock in existing support amounts."). The *Rate-of-Return Reform Order* was released on March 30, 2016. *Id.* at 3109, para. 56.

⁶ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56 (concluding that "it is appropriate to make this adjustment to the model in order to advance our policy objective of advancing broadband deployment to unserved customers").

3. *Steelville Petition.* Steelville claims that, due to circumstances beyond its control, it was unable to provide accurate 10/1 Mbps broadband deployment information as of the June 2015 filing deadline, and that it required more than nine months to compile accurate information.⁷ Based on the data it had submitted at the time of the Commission's deadline, the final A-CAM results indicate that Steelville had deployed 10/1 Mbps or better broadband to more than 90 percent of its eligible locations. Steelville subsequently filed revised data on August 17, 2016, and claims that rather than being broadband-capable in more than 90 percent of the eligible locations in its service area, it is closer to 34 percent broadband capable.⁸ Absent waiver of the March 30, 2016 deadline, Steelville is not be eligible to elect model support.

4. *Grand River Petition.* Grand River claims that, due to an inadvertent clerical error, its June 2015 FCC Form 477 reported census blocks as served by both fiber and copper, when they were only served with copper.⁹ Grand River filed revised data on September 21, 2016, and argues that its error reduces the A-CAM support it should be eligible to receive by over \$1.4 million.¹⁰

III. DISCUSSION

5. We find that neither Steelville nor Grand River has demonstrated good cause warranting a waiver of the Commission's deadlines that the Commission adopted for filing FCC Form 477 data used in the final version of A-CAM.¹¹ We are not persuaded by Steelville's argument that special circumstances exist because it is "a small company with limited resources" and determining its broadband deployment "required an extraordinary effort and expense" and was "burdensome and time consuming."¹² Nor are we persuaded by Grand River's argument that special circumstances exist because, "as a small company [it] did not have internal resources that could calculate what facilities were deployed in each of the over 4200 census blocks in its service territory," and it "faces challenges in providing advanced communications services to its extremely rural subscribers, and these challenges are exacerbated by environmental and seasonal conditions and very long loops needed to reach most rural customers."¹³ There are over 1,000 rural telephone companies, most are small and serve rural areas, and many rely on outside firms to help them determine their broadband deployment and prepare their FCC Form 477 data.

⁷ Steelville Petition at 3. FCC Form 477 data as of June 30, 2015, was due September 1, 2015.

⁸ *Id.* at 4. We note that the 34 percent deployment figure is erroneous because it is based on total locations, not eligible locations, and includes locations that are served by an unsubsidized competitor and locations that are below the \$52.50 funding benchmark. See Steelville Petition, Declaration of David C. Blessing, at ii-iii, attach.

⁹ Grand River Petition at 2-4.

¹⁰ We are not persuaded by Grand River's argument that it was not aware that its Form 477 data had an error until after the release of A-CAM v.2.3. The Bureau released A-CAM v2.1 illustrative reports on December 17, 2015 and February 17, 2016, both showing model support under two coverage options, one of which excluded from support calculations census blocks served with either FTTP or cable. The amount of Grand River's offer of A-CAM support in Missouri is approximately the same as the support shown in the illustrative results under the coverage option that excluded Grand River's FTTP from support calculations. Links to A-CAM model results are available on the Commission's web site, <https://www.fcc.gov/general/rate-return-resources>.

¹¹ Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 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. *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 if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹² Steelville Petition at 3, 5.

¹³ Grand River Petition at 3-4.

We conclude that neither Steelville nor Grand River has demonstrated special circumstances.

6. We also are not persuaded by Steelville's argument that enforcing the deadline in its case "would not further any Commission purpose" and will permit more effective implementation of the Commission's policies.¹⁴ Precluding Steelville from receiving model support will not prevent it from deploying better services to unserved portions of its study area, because it will continue to receive support under the embedded cost mechanisms, as reformed by the Commission, and will have associated broadband deployment obligations. Nor are we persuaded that the public interest would be served by including Grand River's September 2016 Form 477 correction in the final version of A-CAM, which Grand River argues "will allow individuals in rural areas in Missouri to receive scalable high-speed broadband as envisioned by the FCC for those carriers electing A-CAM."¹⁵ Whether Grand River elects model-based support or continues to receive support under the embedded cost mechanisms, it will have broadband deployment obligations.

7. To conclude, we are not persuaded that special circumstances exist because otherwise routine reporting corrections impact Steelville's ability to elect model-based support or the amount of model support offered to Grand River. Consistent with the Bureau's decision in the *A-CAM Challenge Process Order*, we find that the fact a routine correction could well have affected support amounts for some carriers had they been recognized earlier is not grounds for a waiver.¹⁶ The purpose of the deadlines adopted by the Commission was to impose administrative closure on the data set for incumbent study areas at a specific moment in time for the efficient implementation of the overall reform effort.¹⁷ Consistent with the Bureau's decisions in the *A-CAM Challenge Process Order* and the *A-CAM Waiver Order* released September 21, 2016, we deny Steelville's and Grand River's requests for waiver of the deadlines filing FCC Form 477 data used in the final version of A-CAM.¹⁸

IV. ORDERING CLAUSES

8. 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 CFR §§ 0.91, 0.291, and 1.3, that this Order IS ADOPTED.

9. IT IS FURTHER ORDERED that the petition for waiver of the Commission's rules, filed by Steelville Telephone Exchange, Inc., IS DENIED as discussed herein.

10. IT IS FURTHER ORDERED that the petition for waiver of the Commission's rules, filed by Grand River Mutual Telephone Corporation, IS DENIED as discussed herein.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

¹⁴ Steelville Petition at 6-7.

¹⁵ Grand River Petition at 5.

¹⁶ *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 7790, at 7795 para. 16 (WCB 2016) (*A-CAM Challenge Process Order*) (denying request filed by Valley/Copper Valley to use Form 477 data filed after March 30, 2016), *application for review pending*.

¹⁷ In the *Rate-of-Return Reform Order*, the Commission stated that "carriers may not resubmit their previously filed data to reduce their reported FTTP or cable coverage." *Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56.

¹⁸ *Id.* at 7794-95, paras. 13-16 (WCB 2016) (*A-CAM Challenge Process Order*) (denying requests to use Form 477 data filed after the deadlines in A-CAM); *Connect America Fund*, WC Docket No. 10-90, Order, DA 16-842, paras.10-11 (WCB 2016) (denying requests to use Form 477 data filed after the deadlines in A-CAM).

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau