

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

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

ORDER

Adopted: October 31, 2016

Released: October 31, 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 St. Paul Cooperative Telephone Association (St. Paul) 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;² and (2) the request of Hayneville Telephone Company (Hayneville) 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.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 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, 2016.⁵ The Commission also 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

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 of St. Paul, WC Docket No. 10-90 et al. (filed Oct. 12, 2016) (St. Paul Petition).

³ Emergency Request for Expedited Treatment, Petition of Hayneville Telephone Company for Waiver of Deadline to Submit Form 477 Revisions, WC Docket No. 10-90 et al. (filed Oct. 25, 2016) (Hayneville Petition). We are acting on this petition before the default comment period is over to inform the petitioner of the Bureau's decision before the A-CAM election period ends on Nov. 1, 2015. See 47 CFR § 1.45. No comments were filed regarding St. Paul's request or similar requests for waiver that have previously been denied by the Bureau.

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 *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").

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*.⁶

3. *St. Paul Petition*. St. Paul claims that, due to an inadvertent clerical error and programming problem, its June 2015 FCC Form 477 reported census blocks as served by fiber, when they were only served with copper.⁷ St. Paul filed revised data in April 2016, and argues that the error reduces the A-CAM support it should be eligible to receive by approximately \$400,000 per year.⁸

4. *Hayneville Petition*. Hayneville claims that, due to an inadvertent error caused by a lack of understanding of the FCC instructions, its June 2015 FCC Form 477 reported that it was capable of delivering 10/1 Mbps service to 100 percent of its locations. Hayneville filed revised data in September 2016, claims that only 40 percent of its subscribers can receive speeds of 10/1 Mbps, and argues that the error reduces the A-CAM support it should be eligible to receive by approximately \$279,000 per year.⁹ Absent waiver of the March 30, 2016 deadline, Hayneville is not be eligible to elect model support.

III. DISCUSSION

5. We find that neither St. Paul nor Hayneville has demonstrated good cause warranting a waiver of the deadline that the Commission adopted for filing FCC Form 477 data used in the final version of A-CAM.¹⁰ We are not persuaded by St. Paul's argument that special circumstances exist because it is "a small company" that "does not have the internal resources available that could process the information on a block by block basis without assistance."¹¹ Nor are we persuaded by St. Paul's and Hayneville's argument that they each face "challenges in providing advanced communications services to its extremely rural subscribers, and these challenges are exacerbated by environmental and seasonal conditions and the very long loops needed to reach most rural customers."¹² We also are not persuaded that the public interest would be served by including St. Paul's April 2016 Form 477 or Hayneville's September 2016 correction in the final version of A-CAM.

⁶ *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.

⁷ St. Paul Petition at 2-3. St. Paul states that it has FTTP in 23 of the 179 census blocks it serves. *Id.* at 3.

⁸ We are not persuaded by St. Paul's argument that it did not realize there was an error in the data until the spring of 2016. The Bureau released A-CAM v2.2 on April 7, 2016, when it initiated the challenge process, but it previously 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. A-CAM v2.1 calculated no support for St. Paul under either coverage option, and A-CAM v2.2 also calculated no support for St. Paul. Links to A-CAM model results are available on the Commission's web site, <https://www.fcc.gov/general/rate-return-resources>.

⁹ We are not persuaded by Hayneville's argument that it did not realize there was an error in the data until after the release of A-CAM v2.3. The Bureau previously had released illustrative reports for A-CAM v2.1 and A-CAM v2.2, which showed that no locations eligible for support in Hayneville's study area were lacking 10/1 Mbps service.

¹⁰ 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.

¹¹ St. Paul Petition at 3.

¹² *Id.* at 4; Hayneville Petition at 4.

6. We conclude that neither St. Paul nor Hayneville has demonstrated special circumstances that warrant waiver of the Commission's rules. We are not persuaded that special circumstances exist because otherwise routine reporting corrections impact the amount of model support offered to St. Paul, or impact Hayneville's ability to elect model-based support. 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.¹³ 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.¹⁴ Consistent with the Bureau's decisions in the *A-CAM Challenge Process Order*, the *A-CAM Waiver Order* released September 21, 2016, and the *A-CAM Waiver Order* released October 20, 2016, we deny St. Paul's and Hayneville's requests for waiver of the deadlines for filing FCC Form 477 data used in the final version of A-CAM.¹⁵

IV. ORDERING CLAUSES

7. 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.

8. IT IS FURTHER ORDERED that the petition for waiver of the Commission's rules, filed by St. Paul Cooperative Telephone Association, IS DENIED as discussed herein.

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

10. 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.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

¹³ *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*; see also *id.*, at 7794-94, para. 13 (denying request filed by Miles Cooperative to correct technology codes in Form 477 data submitted on April 28, 2016).

¹⁴ 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.

¹⁵ *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).