

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

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

ORDER

Adopted: February 24, 2017

Released: February 24, 2017

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant, with slight modifications, petitions filed by NTCA–The Rural Broadband Association (NTCA) and WTA–Advocates for Rural Broadband (WTA), seeking a short term waiver of the March 1, 2017 deadline for certain Connect America Fund recipients to report their first set of geo-located broadband information and related certifications (collectively, “broadband information”) through the High Cost Universal Service Broadband (HUBB) Portal.¹ We also provide further clarification regarding the obligation of Connect America Fund-Alternative Connect America Model (CAF-ACAM) recipients to file “pre-existing” broadband information.

2. Subject to Paperwork Reduction Act approval by the Office of Management and Budget (PRA approval) of the information collection at issue, we extend the deadline for recipients of CAF Phase II support to file their first set of broadband information until July 1, 2017.² In addition, Connect America Fund-Broadband Loop Support (CAF-BLS) recipients with a defined deployment obligation must submit their first set of broadband information no later than March 1, 2018. We find that granting this waiver is in the public interest and necessary to (1) align HUBB portal reporting deadlines with approval of the relevant information collection requirements, and (2) ensure that high-cost recipients, particularly those preparing to file this information for the first time, have sufficient time to collect and submit their broadband information in the required format.

II. BACKGROUND

3. In the 2016 *Rate-of-Reform Return Order*, the Commission directed USAC to develop an online system (later named the HUBB portal) to accept high-cost carriers’ broadband information.³ The HUBB portal will track carriers’ progress towards their broadband deployment milestones and provide a means for USAC to collect broadband information for later public distribution.⁴ On December 8, 2016,

¹ See NTCA, Petition for Temporary Limited Waiver/Extension of Time, WC Docket No. 10-90 (filed Feb. 2, 2017) (NTCA Petition); WTA, Petition for Temporary Waiver or Extension of March 1, 2017 High Cost Universal Service Broadband Portal Filings, WC Docket No. 10-90 (filed Feb. 17, 2017) (WTA Petition).

² For purposes of this obligation, the Commission determined that it will treat ACS as if it elected Phase II model-based support. *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12102, n.130 (2016) (*ACS Phase II Obligations Order*).

³ *Connect America Fund et al.*, Report and Order *et al.*, 31 FCC Rcd at 3166, para. 214 (2016) (*Rate-of-Reform Return Order*) (directing the Bureau to work with USAC to develop an online portal).

⁴ For example, the collected data will be displayed on a public-facing map. *See id.*, at 3168, para. 221.

we provided carriers with detailed guidance regarding their HUBB portal filing obligations.⁵ USAC has provided additional HUBB filing guidance through webinars and responses to frequently asked questions posted on the USAC website.⁶ Notwithstanding, Section 54.316 of the Commission's rules, requiring carriers to file information with USAC through the HUBB portal, is not yet effective because the Commission has not yet received PRA approval for the information collection related thereto.⁷

4. In their petitions, NTCA and WTA seek a waiver of the March 1, 2017 HUBB portal filing deadline for CAF Phase II recipients, CAF-BLS, and CAF-ACAM recipients until December 31, 2017.⁸ Absent relief, by March 1, 2017, subject to PRA approval and publication of notice of such approval in the Federal Register, CAF Phase II carriers must file broadband information regarding locations deployed in 2016, and CAF-BLS recipients must file broadband information regarding locations deployed between May 25, 2016 (the effective date of the *Rate-of-Return Reform Order*) and December 31, 2016.⁹

5. In their petitions, NTCA and WTA argue that a filing deadline extension for all carriers with a March 1, 2017 HUBB filing obligation is in the public interest because, among other things, (1) high-cost recipients, particularly smaller rate-of-return carriers, need additional time to collect broadband data; (2) OMB has not yet approved the HUBB portal information collection requirements and carriers need at least several weeks following approval and prior to the March 1 deadline to assemble, check and file the broadband data; (3) smaller companies in particular have a special need to be able to complete geocoding and reporting outside of the 2017 construction season; and (4) any delay will not undermine the ability of the Commission to accurately track carriers' progress towards their broadband deployment milestones because carriers' first deployment milestones do not occur until after the requested revised filing deadline.¹⁰

III. DISCUSSION

6. With some modifications, we grant, on a prospective basis, NTCA's and WTA's requests for a limited waiver of the March 1, 2017 filing deadline. We find that the petitioners have demonstrated good cause that justifies granting the requested waivers, and that doing so is consistent with the public interest.¹¹ We continue to encourage carriers to begin filing geo-location information as soon as practical,

⁵ See *Wireline Competition Bureau Provides Guidance To Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*HUBB Public Notice*).

⁶ See, e.g., Universal Service Administrative Company, Filing Geolocated Broadband Deployment data, <https://usac.org/hc/tools/hubb.aspx>.

⁷ See *Rate-of-Return Order*, 31 FCC Rcd at 3167, para. 219 ("Specifically, upon the relevant Paperwork Reduction Act approvals, price cap ETCs will be required to submit the requisite information to USAC no later than March 1 of each year..."); *id.*, para. 217 (same for rate-of-return carriers).

⁸ See NTCA Petition at 2 (seeking relief for CAF Phase II, CAF-BLS and CAF-ACAM providers); WTA Petition at 1 (seeking relief for CAF-BLS and CAF-ACAM providers).

⁹ As clarified below, CAF-ACAM recipients' first location filing deadline is March 1, 2018.

¹⁰ See generally, NTCA Petition; WTA Petition.

¹¹ Generally, the Commission's rules may be waived under section 1.3 of our rules for "good cause shown." 47 CFR § 1.3; *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest, which may be demonstrated by showing that (a) special circumstances warrant a deviation from the general rule; and (b) such deviation will serve the public interest. *Ne. Cellular*, 897 F.2d at 1166. In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Ne. Cellular*, 897 F.2d at 1166. We are granting this waiver on a prospective basis because we find good cause to extend this deadline even though the requirement is not yet in effect. As the Commission said in the *Rate-of-Return Reform Order*, section 54.316 is

(continued...)

after the effective date of the rule, and we will hold carriers to the filing deadlines as described below. We also clarify the HUBB filing and deployment obligations of CAF-ACAM recipients.

7. *Extension of HUBB Filing Deadline.* We find good cause to waive, until July 1, 2017, or two weeks after announcement in the Federal Register of PRA approval (whichever is later), the obligation of CAF Phase II recipients to file in the HUBB portal broadband information regarding locations deployed in 2016.¹² We also find good cause to waive, until March 1, 2018, the obligation of CAF-BLS recipients to file, in the HUBB portal, or two weeks after announcement in the Federal Register of PRA approval (whichever is later), broadband information regarding locations deployed from May 25, 2016, to December 31, 2016.

8. We find that special circumstances justify providing the type of relief sought by the petitioners. No parties publicly opposed the NTCA or WTA petitions, and we conclude that granting a prospective waiver in this instance is consistent with the public interest. This limited waiver puts CAF Phase II recipients in the same position as they were prior to the *Rate-of-Return Reform Order*, when the Commission directed USAC to collect such information via an online portal.¹³ Moreover, because the Commission has not yet received PRA approval of the information collection requirements, absent a waiver, carriers would be left to prepare for an uncertain filing deadline with short notice of the required deadline. For the sake of certainty, we find that it would serve the public interest to announce here that the first HUBB portal filing deadline will not be earlier than July 1, 2017.

9. Extending the deadline until at least July 1, 2017 for CAF Phase II recipients and until March 1, 2018 for CAF-BLS recipients will ensure that the affected carriers have sufficient time following OMB approval to effectively comply with their obligation prior to the revised filing deadlines. A limited waiver will also allow carriers, particularly those rate-of-return carriers newly collecting and reporting such information, additional time to gather, analyze for errors, file and finalize, and certify their broadband information. We are also persuaded that smaller carriers should not, on balance, need to devote resources to geocoding and prepare these initial reports during the construction season, when many of the same personnel will be initiating work to meet their buildout obligations.¹⁴

10. We recognize that NTCA and WTA requested an extension only until December 31, 2017 for CAF-BLS recipients. We nevertheless find it advantageous to stagger the filing deadlines to July 1, 2017 and March 1, 2018 as described above. CAF Phase II recipients are larger carriers with more resources, are already are obligated to file FCC Form 481 by July 1, 2017, and have their first deployment milestone in 2017.¹⁵ CAF-BLS recipients are smaller and have no deployment milestones until 2020. Staggering the HUBB portal filing deadlines in this manner thus allows us to (1) align, for administrative efficiency, the initial HUBB portal filing deadlines with carriers' other deadlines;¹⁶ (2) limit the burden on USAC to simultaneously process all carriers' first HUBB portal submission; and (3) limit the burden on

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not yet in effect and will not become effective until announcement in the Federal Register of OMB approval. *See supra* note 7; *Rate-of-Return Reform Order*, 31 FCC Rcd at 3232, para. 404 (noting that rules subject to PRA approval shall become effective following publication of OMB approval in the Federal Register).

¹² These carriers filed broadband data for locations deployed in 2015 and earlier in their FCC Form 481 due by July 1, 2016. *See Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15688, para. 125 (2014).

¹³ *See* 47 CFR § 54.313(e)(2)(iii) (2015).

¹⁴ *See* NTCA Petition at 3-4.

¹⁵ 47 CFR § 54.313(j)(1) (requiring high-cost carriers to file FCC Form 481 by July 1 "of each year"); *id.* § 54.310(c) (setting first CAF Phase II deployment milestone at 40 percent of supported locations by Dec. 31, 2017).

¹⁶ CAF Phase II carriers must also file their FCC Form 481 by July 1, 2017 and CAF-BLS' recipients' second HUBB reporting deadline is Mar. 1, 2018. *See* 47 CFR §§ 54.313, 54.316.

carriers to collect, submit and, as necessary, correct and refile broadband data during the end-of-year holiday period.

11. We also find that, on balance, any public interest harm from this waiver is limited. A key purpose of the HUBB portal is to track carriers' progress towards their deployment milestones.¹⁷ We find that little harm will result from delay in the public's access to this data by a few months, and any such harm is outweighed by the public interest benefit of allowing carriers sufficient time to collect and file correct and accurate data. This Order only affects the timing, not the substance, of the reporting obligations. The Commission will collect all the same information it would absent this extension and nothing in this Order alters carriers' respective interim or final deployment deadlines. The harm of a short delay in the initial filing deadline is particularly limited, because the revised deadline predates the affected carriers' first deployment deadlines. CAF-BLS recipients do not have their first deployment obligations until 2020 and, CAF Phase II recipients' first deployment deadline is at the end of 2017.¹⁸ States will still be able to determine whether carriers are on-track to meet their deployment milestones and that universal service funding in their respective jurisdictions is being and will be used as intended.¹⁹

12. In light of the additional time provided here, we expect carriers will have filed data, received back from the HUBB portal any feedback and errors, and, in response, addressed any issues with their data in advance of the revised deadlines. In the *Rate-of-Return Reform Order*, the Commission recommended as a best practice that carriers file locations in the HUBB portal within 30 days of deployment, and we reiterate that guidance here.²⁰ Filing data well in advance of the filing deadline will reduce the number of errors carriers need to remediate as the deadline approaches. This practice may be particularly helpful for CAF-BLS recipients who, under this extension, must file broadband data regarding 19 months of deployment (May 25, 2016 through December 31, 2017) no later than March 1, 2018.

13. As explained in the *HUBB Public Notice*,²¹ we again remind carriers that they have an obligation under section 54.316 of the rules to file, in good faith and to the best of their knowledge, complete and accurate information in the HUBB portal.²² This duty includes the obligation to report *all* locations to which a carrier has made service available in accordance with its specific obligations for the reporting period, not just a subset of those locations.²³ Carriers also have a duty to correct or amend submitted information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data are inaccurate, incomplete, or contain errors or anomalies.²⁴ This duty to correct

¹⁷ See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3166, para. 214.

¹⁸ See 47 CFR § 54.310(c).

¹⁹ See 47 CFR § 54.314(d). While USAC may not be able to provide all location data to states and Tribal governments by July 1, 2017 as the Bureau originally directed USAC in the *HUBB Public Notice* (see *HUBB Public Notice*, 31 FCC Rcd at 13908-909), we find that this limited waiver will not harm states' and Tribal governments' ability to make the required certifications under the Commission's rules.

²⁰ See *Rate of Return Reform Order*, 31 FCC Rcd at 3164, para. 211.

²¹ See *HUBB Public Notice*, 31 FCC Rcd at 12909-11.

²² See, e.g., Form 481 Officer Certification ("I certify that I am an officer of the reporting carrier; my responsibilities include ensuring the accuracy of the annual reporting requirements for universal service support recipients; and, to the best of my knowledge, the information reported on this form and in any attachments is accurate."). See also 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.").

²³ See *HUBB Public Notice*, 31 FCC Rcd at 12910.

²⁴ See *id.*

or amend applies both before and after the carrier has certified as complete its filing for each reporting period.²⁵

14. *Clarification of CAF-ACAM Recipients' "Pre-Existing" Location HUBB Filing Obligation.* We now provide further clarification on the scope of CAF-ACAM carriers' obligation to file "pre-existing" broadband information in the HUBB portal. CAF-ACAM recipients have until March 1, 2019 to submit "pre-existing" qualifying locations to the HUBB portal.²⁶ We clarify that, pursuant to the *Rate-of-Return Reform Order*, CAF-ACAM carriers' "pre-existing" locations are all locations deployed in 2016 and earlier, **not** all locations deployed in 2015 and earlier as indicated in the *HUBB Public Notice*.²⁷ As is the case for the relief we provide to CAF-BLS recipients and CAF Phase II carriers, this clarification only affects the timing, not the substance, of CAF-ACAM recipients' reporting obligations.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 201-202, 251, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-202, 251, and 254, and sections 0.91, 0.201(d), 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.201(d), 0.291 and 1.3, the Petition for Limited Waiver filed by NTCA and the Petition for Temporary Waiver or Extension of March 1, 2017 High Cost Universal Service Broadband Portal Filings filed by WTA ARE GRANTED to the extent specified herein.

16. 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

Kris Anne Monteith
Acting Chief
Wireline Competition Bureau

²⁵ See *id.*

²⁶ See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3165, para. 213.

²⁷ See *id.* at 3162, 3165, paras. 205, 213 (giving A-CAM providers until 2019 to submit broadband locations deployed prior to the beginning of model-based support payments).