

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

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

ORDER

Adopted: March 24, 2017

Released: March 24, 2017

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies requests by IAMO Telephone Company, Inc. (IAMO) and Montrose Mutual Telephone Company (Montrose) for waiver of the November 1, 2016 deadline for submitting letters electing to receive Alternative Connect America Cost Model (A-CAM) support.¹ We find that IAMO and Montrose have not demonstrated good cause warranting grant of the requested waivers.

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.² At that time, the Commission made all necessary decisions to finalize the A-CAM, and directed the Bureau to release a Public Notice showing the offers of model-based support and the associated deployment obligations.³ The Commission required that carriers indicate within 90 days whether they were interested in electing model-based support and that electing carriers submit their acceptance letters to the Bureau at ConnectAmerica@fcc.gov.⁴ The Commission specified that “if a carrier fails to submit any final election letter by the close of the 90-day election period, it will be deemed to have declined model-based support.”⁵ On August 3, 2016, the Bureau announced the offers of model-based Connect America support amounts and the November 1, 2016 deadline for carriers to indicate whether they elected to receive model-based support.⁶ On November 2,

¹ Petition for Waiver of IAMO, WC Docket No. 10-90 (filed Nov. 4, 2016); Petition of Montrose for Waiver, WC Docket No. 10-90 (filed Nov. 14, 2016); see also *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8641 (WCB 2016) (*A-CAM Offer Public Notice*).

² *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*). It directed the Bureau to “take all necessary steps to release the adopted version of the model for purposes of calculating support amounts for rate-of-return carriers electing to receive model support.” *Id.* at 3102, para. 37.

³ *Id.* at 3113, para. 64.

⁴ *Id.* at 3112-14, paras. 62, 67.

⁵ *Id.* at 3114, para. 67.

⁶ *A-CAM Offer Public Notice*, 31 FCC Rcd 8641.

2016, the Bureau released a Public Notice announcing the rate-of-return companies that had submitted timely letters electing offers of A-CAM support.⁷

3. The overall annual budget for A-CAM consists of the amount of legacy support received by electing carriers in 2015 plus additional funding the Commission allocated from existing high-cost funds to facilitate the voluntary path to the model.⁸ After receiving the initial election letters, the Bureau totaled the amount of model-based support for electing carriers and determined that model-based support and transition payments would exceed the overall 10-year budget set by the Commission.⁹ Because A-CAM was oversubscribed, the Commission adopted an Order allocating an additional \$50 million annually and providing a methodology for the Bureau to use in making revised offers of A-CAM support within the available expanded budget.¹⁰

4. *IAMO Petition.* According to IAMO, it submitted letters via email electing to receive model-based support in Iowa and Missouri on October 31, 2016, but due to an inadvertent typographical error in the email address, it submitted both letters to ConnectAmerican@fcc.gov instead of ConnectAmerica@fcc.gov.¹¹ According to IAMO, it did not receive a bounce back message and did not realize there was a problem until November 3, 2016, when it noticed that it was not included in the *A-CAM Election Results Public Notice*. IAMO argues that had its emails bounced back promptly, IAMO could have resubmitted its election letters to the correct email address in timely fashion.¹²

5. *Montrose Petition.* According to Montrose, it submitted its election letter via email on Friday, October 28, 2016, but it inadvertently submitted the letter to ConnectAmerica@fcc.org, and received no error message or bounce back message informing it that the letter could not be delivered. Montrose argues that it believed that it had timely submitted the election letter and was not aware of its inadvertent misfiling until after the Bureau released its *A-CAM Election Results Public Notice* on November 2, 2016.¹³ Montrose sought to resubmit the election letter to the proper e-mail address on November 3, 2016, but was informed that the letter could not be accepted as timely filed since it was past the due date.¹⁴

III. DISCUSSION

6. We find that neither IAMO nor Montrose has demonstrated good cause warranting a waiver of the deadline for carriers to elect the voluntary path to receive model-based support, and therefore deny their waiver requests. Generally, the Commission's rules may be waived for good cause shown.¹⁵ The Commission may exercise its discretion to waive a rule where the particular facts make

⁷ *Wireline Competition Bureau Announces Results of Rate-of-Return Carriers that Accepted Offer of Model Support*, WC Docket No. 10-90, 31 FCC Rcd 11966 (WCB 2016) (*A-CAM Election Results Public Notice*).

⁸ In the *Rate-of-Return Order*, the Commission provided that up to \$150 million annually in additional funding would be available for carriers electing the model path, and indicated that if demand for the model exceeded the budget, it may consider whether circumstances warrant an additional allocation of up to \$50 million annually. *Rate-of-Return Reform Order*, 31 FCC at 3111-13, paras. 60, 62.

⁹ *A-CAM Election Results Public Notice*, 31 FCC Rcd 11966. With an allocation of an additional \$150 million annually, demand exceeded the budget by more than \$160 million annually.

¹⁰ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775 (2016) (*A-CAM Revised Offer Order*).

¹¹ IAMO Petition at 1-2, 5.

¹² *Id.* at 5.

¹³ Montrose Petition at 1-3.

¹⁴ *Id.* at 3.

¹⁵ 47 CFR § 1.3.

strict compliance inconsistent with the public interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷ 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.¹⁸ A party seeking waiver of the Commission's rules bears the burden of demonstrating good cause.¹⁹

7. As an initial matter, IAMO's argument that inadvertent typographical or clerical errors like typing "ConnectAmerican" rather than "ConnectAmerica" are routinely permitted to be corrected in judicial and regulatory proceedings, including proceedings at the Commission, is misplaced.²⁰ The Bureau has generally denied waivers where claims of good cause rest on negligent errors by the petitioner or other circumstances that rest squarely within the petitioner's control.²¹ With respect to A-CAM more specifically, the Commission has consistently upheld Bureau denials of requests for waiver of the filing deadlines for submitting FCC Form 477 data used in the final version of A-CAM even where the impact is to preclude a carrier from seeking model-based support.²²

8. For example, in denying Valley Telephone Cooperative, Inc. and Copper Valley Telephone, Inc.'s (collectively, Valley/Copper Valley's) request for waiver of the filing deadline, the Bureau concluded that "[t]he fact that a routine correction in the future may well have affected support amounts for some carriers had they been recognized earlier is not grounds for a waiver."²³ Upon review, the Commission agreed and rejected Valley/Copper Valley's argument that the Bureau acted in a manner inconsistent with established Commission policy.²⁴ The Commission recognized that "Valley/Copper

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983)

²⁰ IAMO cites a state court criminal case, a government contracts case, and Commission decisions involving cellular applications when licenses were awarded through a lottery, the schools and libraries universal service support program, and wireless auction rules regarding bid withdrawal penalties. See IAMO Petition at 3-4. IAMO argues that the case involving waiver of the auction rules is particularly apposite here because the Commission decision relied in significant part upon a design flaw in the remote bidding system. *Id.* at 4. In that case, the Commission determined it was in the public interest to reconsider decisions to require the parties to pay bid withdrawal penalties. *Atlanta Trucking Associates, Inc. et al.*, 12 FCC Rcd 6382 (1997).

²¹ See, e.g., *Universal Service Contribution Methodology*, Order, 25 FCC Rcd 10861 (WCB 2010) (denying deadline waivers where claims of good cause amount to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control).

²² See *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration and Memorandum Opinion and Order, 31 FCC Rcd 12232, 12236, para. 13 (2016) (*A-CAM Waiver Order on Recon and MO&O*); see also *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 7790, at 7794-95 paras. 13-16 (WCB 2016) (*A-CAM Challenge Process Order*) (denying requests for waiver filed by Miles Cooperative, Sharon Telephone, and Valley/Copper Valley); *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 10664, 10667-68, paras. 10-11 (WCB 2016) (denying requests for waiver filed by Baraga and Clarity) (*A-CAM Waiver Sept. 21, 2016 Order*); *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 11743, 11744-45, paras. 5-7 (WCB 2016) (denying requests for waiver filed by Steelville and Grand Mutual); *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 11930, 11931-32, paras. 5-6 (WCB 2016) (denying requests for waiver filed by St. Paul Cooperative and Hayneville).

²³ *A-CAM Challenge Process Order*, 31 FCC Rcd at 7795, para. 16.

²⁴ *A-CAM Waiver Order on Recon and MO&O*, 31 FCC Rcd 12232, 12236, para. 13 (2016). Valley/Copper Valley argued that "the Commission has routinely recognized economic harm resulting from the provision of corrected data after an applicable cutoff deadline to be grounds for a waiver." *Id.* The Commission explained that, although the Bureau in the past has considered the impact of reductions in high-cost support among other factors that helped establish good cause to grant certain waiver petitions, more recently it has recognized that "[h]olding that the public

(continued...)

Valley may not have the opportunity to elect model support, but that is different from any of its cited precedent on missed filing deadlines that impacted an individual carrier's continued receipt of ongoing support.²⁵ Valley/Copper Valley will continue to receive support under the embedded cost mechanisms.

9. Similarly, in denying Baraga Telephone Company's (Baraga's) request for waiver of the filing deadline, the Bureau found no special circumstances warranting a waiver "because an otherwise routine reporting correction impacts Baraga's ability to elect model-based support to which it otherwise would be entitled."²⁶ Baraga was not included in the offers of model-based support because its own data on file as of the March 30, 2016 deadline indicated that Baraga had deployed at least 10/1 Mbps to more than 90 percent of eligible locations.²⁷ Baraga will continue to receive support under the embedded cost mechanisms. The Commission agreed that waiver was not warranted, and declined to reconsider the deadline for submitting FCC Form 477 data used to determine a rate-of-return carrier's percentage of broadband deployment.²⁸

10. Nor are we persuaded that granting these waivers would serve the public interest. IAMO and Montrose argue that they have expended significant effort to evaluate model-based support and the associated deployment obligations.²⁹ They both acknowledge that A-CAM was over-subscribed, but argue that including them would not significantly impact other companies that elected model-based support.³⁰ However, because A-CAM was oversubscribed, the Commission needed to adopt a methodology to make revised offers to electing carriers for whom the original offer of model-based support was more than the legacy support they received in 2015, and as a result they had to be offered less support.³¹ All of the available funding under the Commission's budget has now been allocated to carriers

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interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support." *Id.* (citations omitted).

²⁵ *Id.* at 12237, para. 14.

²⁶ *A-CAM Waiver Sept. 21, 2016 Order*, 31 FCC Rcd at 10667, para. 10. The Bureau noted that "[o]ther carriers are precluded from electing model-based support due to their own reporting errors and omissions." *Id.*

²⁷ The Commission had concluded that any carrier that has deployed 10/1 Mbps or better broadband to 90 percent or more of its eligible locations in a state, 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*, would not be eligible for A-CAM support. *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 66.

²⁸ *A-CAM Waiver Order on Recon and MO&O*, 31 FCC Rcd at 12234, paras. 6, 8 n.17.

²⁹ IAMO Petition at 6 (arguing that strict compliance with the deadline is inconsistent with the public interest), Montrose petition at 4 (arguing that allowing Montrose to elect model-based support would serve the public interest).

³⁰ On November 2, 2016, the Bureau announced that 216 rate-of-return companies had submitted letters electing 274 separate offers of A-CAM support in 43 states, and that model-based support and transition payments would exceed the overall 10-year budget set by the Commission by more than \$160 million annually. *A-CAM Election Results Public Notice*, 31 FCC Rcd 11966.

³¹ *A-CAM Revised Offer Order*, 31 FCC Rcd 13775 (2016). On Dec. 20, 2016, the Bureau announced 228 revised offers of model-based support for 191 rate-of-return carriers with a deadline of Jan. 19, 2017 for those carriers to indicate, on a state-by-state basis, whether they elect to receive the revised amount of model-based support. *Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More than \$51 Million Annually in Alternative Connect America Cost Model Support and Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 13328 (WCB 2016) (*A-CAM First Authorization and Revised Offer PN*); see also *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive More than \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 17-99 (WCB rel. Jan. 24, 2017).

that followed the correct procedures, and none is available to move IAMO and Montrose to model-based support. To grant these waivers now would require adding funds to the A-CAM budget or reallocating funds that have now been committed to other carriers who timely filed their A-CAM election letters. The Bureau has no authority to take either of those steps; moreover, we cannot conclude that the public interest supports granting these waivers where the claims of good cause rest on negligent errors by the petitioners or were otherwise within the petitioners' control.³² However, as was the case with carriers precluded from electing A-CAM support because their requests for waiver of the FCC Form 477 filing deadline were denied, IAMO and Montrose will continue to receive support under the embedded cost mechanisms.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(j), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 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.

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

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

14. 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

³² See also *Mary V. Harris Foundation v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015) ("An agency does not abuse its discretion by applying a bright-line rule consistently in order both to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve.").