

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

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

ORDER

Adopted: July 13, 2018

Released: July 13, 2018

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies several petitions for waiver of the deadline for submitting audited financial statements in connection with the annual FCC Form 481 reporting requirement.¹ We find that the requests fail to demonstrate special circumstances warranting deviation from the Commission’s rules.² However, on our own motion, we grant a limited waiver of our rules such that no support will be recovered from the petitioners in this instance, but clarify that the Bureau does not intend to grant similar petitions for waiver going forward. The petitioners listed in Appendix B that have not yet filed the required financial information must come into compliance within 120 days of the date of this Order; if they do not, we direct the Universal Service Administrative Company (USAC) to reduce support pursuant to section 54.313(j) of the Commission’s rules.³

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission adopted several reforms updating the annual reporting requirements for ETCs, including a requirement that privately-held rate-of-return companies must submit a “full and complete annual report of the company’s financial condition and operations as of the end of the preceding fiscal year.”⁴ The report must be audited or reviewed by an independent certified public accountant.⁵ The Commission also adopted a rule to reduce on a pro-rata

¹ See Appendix A for a list of the eligible telecommunications carriers’ (ETCs) petitions (collectively “the Petitions”) requesting limited waivers of the July 1 deadline to file their financial statements.

² See 47 CFR § 1.3.

³ 47 CFR § 54.313(j).

⁴ See 47 CFR § 54.313(f)(2); see also *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17857, para. 598-599 (2011) (*USF/ICC Transformation Order and FNPRM*), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14552, paras. 10-11 (2012) (*Fifth Order on Reconsideration*).

⁵ See *id.*

daily basis the support for ETCs that miss certification and data submission deadlines until the high-cost recipient files the required report or certification.⁶

III. DISCUSSION

3. We find that no ETC has demonstrated special circumstances that warrant deviation from the application of section 54.313(j) and therefore deny their waiver requests. Generally, the Commission's rules may be waived for good cause shown.⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ 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.¹⁰

4. The petitions here do not demonstrate any special circumstances. In 2015, the Bureau granted a limited partial waiver to an ETC because its auditing firm did not receive the necessary financial information to complete the audit from a different auditor.¹¹ Based on those facts, the Bureau concluded that the ETC had "demonstrated special circumstances beyond its control that preclude[d] it from filing a full and complete audited financial statement by the . . . deadline."¹² In contrast, the instant petitions provide little or no explanation, or special circumstances, for the cause of the delay.¹³ For instance, the Oxford County Telephone and Oxford West Telephone Companies stated in their petitions, respectively, that their own auditing firm was the cause of delay;¹⁴ but, as we previously have found "[t]he Commission . . . generally does not grant waivers based on the failure of third-parties."¹⁵ Unlike the *Comporium Waiver Order*, the delay here resulted not from an independent entity over which the Oxford companies have no control, but from the firm they chose to hire and could have required to produce audited financials in compliance with our rule. Cherokee Telephone Company explained that its fiscal year ended on June 30, which made it impossible to complete an audit by July 1.¹⁶ Yet, Cherokee provided no explanation why it could not have filed its audited financials from the prior fiscal year. Oregon Farmers Mutual Telephone Company stated in its 2015 Petition that it was engaged in a legal dispute, preventing it from finalizing its audit.¹⁷ Oregon Farmers did not provide any further details about how the court proceeding would prevent it from completing its audit, nor did it explain what led to its

⁶ See 47 CFR § 54.313(j); *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15690-93, paras. 130-38 (2014) (*December 2014 Connect America Order*).

⁷ See 47 CFR § 1.3.

⁸ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹¹ See *Connect America Fund*, Order, 30 FCC Rcd 7100, 7101, para. 4-5 (WCB 2015) (*Comporium Waiver Order*).

¹² See *id.* at 7102 para. 7.

¹³ See Cleveland 2017 Petition at 1; Decatur 2017 Petition at 1; Oklahoma 2017 Petition at 1; Oregon 2017 Petition at 1; Terral 2017 Petition at 1; Wyandotte 2017 Petition at 1; Beresford 2016 Petition at 1; Central Oklahoma 2016 Petition at 1; City of Faith 2016 Petition at 1; Conneaut 2016 Petition at 1; Oklahoma 2016 Petition at 1; Oregon 2016 Petition at 1; Pinnacles 2016 Petition at 1; Sycamore 2016 Petition at 1.

¹⁴ See Oxford 2017 Petition at 2-3; Oxford West 2017 Petition at 2-3; Oxford 2016 Petition at 2-3; Oxford West 2016 Petition at 2-3.

¹⁵ See *Federal-State Joint Board on Universal Service et al.*, Order, 21 FCC Rcd 9179, 9181, para. 7 (WCB 2006); see also *Connect America Fund*, Declaratory Ruling and Order, 33 FCC Rcd 2238 (WCB 2018).

¹⁶ See Cherokee 2017 Petition at 1; Cherokee 2016 Petition at 1.

¹⁷ See Oregon 2015 Petition at 1-2.

inability to timely file audited financials in subsequent years. Other petitioners similarly failed to provide specific facts to demonstrate the special circumstances necessary to justify a waiver. The waiver requests are therefore denied.

5. Nonetheless, on our own motion, we grant a limited waiver of our rules and decline in this instance to recover support for the late completion of the carriers' FCC Forms 481.¹⁸ We find strict compliance in this specific instance would be inconsistent with the public interest. Given that all of these ETCs timely filed their FCC Forms 481, except for this one part, and that the late compliance did not impact USAC's ability to administer the Universal Service Fund (USF), we find that the limited relief we grant here will, on balance, allow us to effectively implement an overall policy of collecting financial information without causing undue hardship by withholding support in this instance. However, we reiterate the critical nature of financial transparency in order to reassure the public that high-cost support is utilized in an efficient manner.¹⁹ We therefore strongly caution against any future filing delays. The Bureau does not intend to entertain such waivers going forward as we expect "strict adherence to filing deadlines" to ensure proper administration of the USF.²⁰ This Order also serves as notice to carriers that they must file complete FCC Forms 481, not just a portion of the form.

6. Lastly, the ETCs listed in Appendix B have not yet filed the required financial information for prior years, and must comply and file information, consistent with section 54.313(f)(2), with USAC within 120 days of the date of this Order. For any carrier that does not timely comply with this requirement, we direct USAC to reduce support pursuant to section 54.313(j) of the Commission's rules.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, the Petitions listed in Appendix A ARE DENIED.

8. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.313(j) of the Commission's rules, 47 CFR § 54.313(j), IS WAIVED to the extent described herein.

9. IT IS FURTHER ORDERED that, pursuant to the authority contained in 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
Chief
Wireline Competition Bureau

¹⁸ See, e.g., *Connect America Fund*, Declaratory Ruling and Order, 33 FCC Rcd 2238 (WCB 2018).

¹⁹ See *Fifth Order on Reconsideration*, 27 FCC Rcd at 14555, para. 16.

²⁰ See *December 2014 Connect America Fund Order*, 29 FCC Rcd 15683, para. 138.

APPENDIX A
Petitions for Waiver

2015	2016	2017
1. Oregon Farmers Mutual Telephone Company: filed June 26, 2015	2. Beresford Municipal Telephone Company: June 24, 2016	13. Central Oklahoma Telephone Company: filed July 3, 2017
	3. Central Oklahoma Telephone Company: filed July 1, 2016	14. Cherokee Telephone Company: filed June 28, 2017
	4. Cherokee Telephone Company: July 1, 2016	15. Cleveland County Telephone Company: filed June 30, 2017
	5. City of Faith Municipal Telephone Company: June 24, 2016	16. Decatur Telephone Company: filed June 30, 2017
	6. Conneaut Telephone Company: filed June 24, 2016	17. Oregon Farmers Mutual Telephone Company: filed June 26, 2017
	7. Oregon Farmers Mutual Telephone Company: filed June 29, 2016	18. Oxford Telephone Company: filed June 30, 2017
	8. Oxford Telephone Company: filed July 1, 2016	19. Oxford West Telephone Company: filed June 30, 2017
	9. Oxford West Telephone Company: filed July 1, 2016	20. Terral Telephone Company: filed June 28, 2017
	10. Pinnacles Telephone Company: filed June 27, 2016	21. Wyandotte Telephone Company: filed June 30, 2017
	11. Sycamore Telephone Company: filed June 24, 2016	
	12. Terral Telephone Company: filed July 1, 2016	

APPENDIX B
Outstanding Audited Financials

2016
<ol style="list-style-type: none">1. Central Oklahoma Telephone Company2. Terral Telephone Company

2017
<ol style="list-style-type: none">1. Central Oklahoma Telephone Company2. Cleveland County Telephone Company3. Conneaut Telephone4. Decatur Telephone Company5. Oregon Farmers Mutual Telephone Company6. Wyandotte Telephone Company