

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

In the Matter of)
)
Connect America Fund—Alaska Plan) WC Docket No. 16-271

ORDER

Adopted: March 1, 2019

Released: March 1, 2019

By the Chiefs, Wireless Telecommunications Bureau and Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (Bureaus) deny a petition filed by the Alaska Telecom Association (ATA), which seeks a waiver of the Alaska Plan requirement that carriers receiving support under the plan submit fiber network maps that are accurate to within 7.6-meters.¹ We find that the Petition does not meet the waiver standard.

II. BACKGROUND

2. Under the \$1.5 billion Alaska Plan,² carriers receiving funding are required to “submit fiber network maps or microwave network maps covering eligible areas,” and “[a]t the end of any calendar year for which middle-mile facilities were deployed, these recipients shall also submit updated maps showing middle-mile facilities that are or will be used to support their services in eligible areas.”³ Pursuant to the *Alaska Plan Order*,⁴ the Bureaus released map instructions requiring, among other things, that funding recipients report nodes and links within 7.6 meters of accuracy by March 1, 2019.⁵

3. In 2017, ATA filed a Petition for Reconsideration of certain of the map instructions, including the 7.6-meter accuracy standard. ATA claimed that, to the extent site visits are necessary to meet the accuracy requirement, such visits are particularly difficult in November through January in Alaska due inclement weather and short days.⁶ As an alternative, ATA proposed a 1000-meter accuracy standard.⁷

¹ ATA, Petition for Limited Waiver of Alaska Telecom Association to Permit Commonly Accepted Industry Levels of Spatial Accuracy for Middle Mile Fiber Route Mapping, WC Docket No. 16-271, at 6-7 (filed on Feb. 6, 2019) (Petition).

² *Connect America Fund; Universal Service Reform–Mobility Fund; Connect America Fund–Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*).

³ 47 CFR § 54.316(a)(6).

⁴ *Alaska Plan Order*, 31 FCC Rcd at 10158, 10172, paras. 60, 102.

⁵ *Wireline Competition Bureau and Wireless Telecommunications Bureau Release Instructions for Filing Terrestrial Middle-Mile Network Maps*, Public Notice, 32 FCC Rcd 6863, 6867 (WTB, WCB, 2017) (*2017 Map Instructions PN*) (requiring that accuracy “must meet National Standard for Spatial Data Accuracy: accurate to within 7.6m CE95 (FGDC-STD-007, 3-1998”).

⁶ ATA, Petition for Reconsideration, WC Docket No. 16-271 (filed Oct. 10, 2017).

⁷ Letter from Julie A. Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, Attach. ATA Alternative Mapping Proposal at 1-2 (filed Dec. 14, 2017).

4. The Bureaus granted in part and denied in part ATA's petition for reconsideration. The Bureaus affirmed the 7.6-meter accuracy requirement after concluding that that level of accuracy was "critical for obtaining a complete picture of facilities' locations in relation to other existing data."⁸ The Bureaus added that the 7.6 meter standard, "a commonly-used mapping standard for Commission high-cost data, is necessary for the Bureaus to maintain compatibility with census boundary and road data for the census-block based Alaska Plan, and will allow the Bureaus to fully identify duplicative facilities."⁹ However, the Bureaus granted the petition in part by permitting Alaska Plan participants to provide, for the first year's filing only, a map that identified the location of their nodes and links within 50 meters accuracy instead of 7.6 meters.¹⁰ Neither ATA nor any of its members sought review by the Commission of the Bureaus' *Order on Reconsideration*.

5. ATA now seeks a waiver of the 7.6-meter accuracy requirement for all aerial and buried fiber deployments subject to the requirement for all of its members, including those members that already submitted data at the 7.6-meter accuracy level in whole or in part.¹¹ ATA filed the Petition on February 6, 2019, less than a month before the March 1, 2019 submission deadline. ATA argues that its members do not have a business reason to collect or retain records of the location of their fiber links at the 7.6-meter accuracy standard and that obtaining such information is a "practical impossibility."¹²

III. DISCUSSION

6. The Commission may waive its rules for good cause shown.¹³ Good cause exists where "special circumstances warrant a deviation for the general rule and such deviation will serve the public interest."¹⁴ The good cause standard is a "high hurdle," as the "very essence of waiver is the assumed validity of the general rule," and when one seeks "a waiver of a rule, it must plead with particularity the facts and circumstances that warrant such action."¹⁵ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ The Commission may deny waivers that it finds overly broad and, if granted, would provide relief beyond any harms shown or alleged.¹⁷

⁸ *Connect America Fund—Alaska Plan*, Order on Reconsideration, 33 FCC Rcd 2068, 2076, para. 21 (WCB, WT B 2018) (*Order on Reconsideration*).

⁹ *Id.* (footnote omitted).

¹⁰ *Id.* at 2076, para. 20. If a carrier already had internal digital data in its possession for its facilities that met the 7.6 meter accuracy standard, however, it was required to submit this more accurate data.

¹¹ See Petition at 8-9. The Petition states that carriers "will report to within 7.6 meters accuracy the location of nodes that touch the fiber." *Id.*

¹² *Id.* at 6-7. In a February 19, 2019 supplemental filing, ATA states that its members are able "to report the location of their buried and aerial fiber links to within 50 meters and certify that the information is accurate to the 80% confidence level." Letter from Christine O'Connor, Executive Director, Alaska Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Feb. 19, 2019) (ATA Supplemental Letter). ATA provides no details or record support for its February 19th proposal.

¹³ 47 CFR § 1.3.

¹⁴ *Nat'l Ass'n of Broad. v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-58 (D.C. Cir. 1969).

¹⁶ *Connect America Fund; Connect America Phase II Challenge Process*, 33 FCC Rcd 8903, 8913, para. 21 n.43 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

7. We deny ATA's Petition on the ground that its request is overly broad. Its request for relief fails to plead with particularity the facts and circumstances warranting relief. ATA fails to take into account the individual circumstances of its members, and, as a result, seeks relief for situations where relief is neither necessary nor warranted. Relief is unnecessary for the over fifty percent of ATA members who have already certified in their initial filing to the 7.6-meter accuracy standard for some or all of their owned fiber links, nearly six-months ahead of their obligation to do so.¹⁸ ATA provides no detailed information on the level of accuracy of the network data that its other members possess, why they do not possess similarly accurate data, or why a majority of its members had no problem meeting the requirement.

8. The Petition also fails to show how the 7.6-meter accuracy standard imposes an undue hardship on all ATA members, how the standard would be inequitable for individual members, or how elimination or modification of the standard would lead to more effective implementation of overall policy, as the waiver standard requires.¹⁹ As noted, over fifty percent of ATA members have already certified in their initial filing to the 7.6-meter accuracy standard for some or all of their owned fiber links, nearly six-months ahead of their obligation to do so. At least one member that originally filed estimates for all of its owned fiber links in 2018 recently submitted its 2019 filing within 7.6-meters of accuracy.²⁰ The Petition's assertion that \$600,000 has been spent by its members to meet the requirement fails to show any hardship on any specific member or that it is infeasible for any specific member to comply with the accuracy requirement.²¹ The argument is also undercut by the behavior of its members that certified to the 7.6-meter accuracy standard. Alaska Plan recipients must provide the Commission with sufficient information to ensure that the \$1.5 billion in funding is being used in accordance with the objectives of the Alaska Plan and the carriers' commitments.²² In its *Order on Reconsideration*, the Bureaus reaffirmed that the 7.6 meter requirement is necessary to meet those purposes.²³ Petitioners have not shown that the requirement is overly burdensome.

9. Moreover, we find that the Petition fails to differentiate the burden of meeting the obligation for fiber links deployed at different times and different places. The Petition argues that deployed fiber links were mapped with accuracy sufficient for business and network needs,²⁴ but these facts would not justify a waiver for aerial and buried fiber deployed after September 2017 when the Bureaus first notified ATA members of the 7.6-meter accuracy requirement.²⁵ In addition to the fiber links that ATA members have already certified within 7.6 meters of accuracy, the Petition also fails to demonstrate the need for relief for those fiber links that are in more densely populated areas, since, as

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¹⁷ See, e.g., *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Petitions for Temporary Partial Exemption or Limited Waiver*, 27 FCC Rcd 9630, 9638-40, paras. 16-17 (2012).

¹⁸ The Bureaus' analysis of the data of ten companies that reported owning fiber links in their August 2018 filings in the High Cost Universal Broadband (HUBB) portal reveals that four companies have certified to *all* of their owned fiber links at the 7.6 meters requirement, and two companies certified to portions of their owned fiber links at the 7.6-meter requirement. These data were filed confidentially. See *2017 Map Instructions PN*, 32 FCC Rcd at 6364.

¹⁹ See *supra* note 16.

²⁰ This analysis is based on the Bureaus' review of a carrier's 2019 confidential filing in the HUBB.

²¹ Petition at 5.

²² See *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102 (describing purpose the mapping requirement).

²³ See *supra* note 8.

²⁴ Petition at 6.

²⁵ See generally *2017 Map Instructions PN*.

ATA acknowledges, locations of fiber in those areas will generally not be far off the 7.6-meter standard.²⁶ Petitioner fails to provide any reasoned rationale or supporting empirical evidence to justify its proposed 50-meter accuracy standard or more importantly, its introduction of an 80 percent confidence interval for all aerial and buried fiber, which would allow up to 20 percent of reported data to not meet the standard.²⁷

10. Finally, we note the timing of the Petition.²⁸ Rather than filing an Application for Review or even a waiver request for specific members and areas once it knew the alleged barriers to collecting fiber data at the 7.6-meter accuracy level, ATA instead seeks broad relief from the Bureaus' *Order on Reconsideration* less than thirty days before the March 1, 2019 filing deadline. The Petition alleges that carrier employees would need to walk thousands of miles of fiber links in order to meet the 7.6-meter requirement prior to the winter months.²⁹ ATA's members knew or should have known the veracity of the facts alleged in the Petition well before the end of 2018. It did not file an alternative accuracy proposal until less than 10 days before the deadline.³⁰

²⁶ See Petition at 10.

²⁷ See ATA Supplemental Letter (stating only that they are "in a position to report the locations" to their proposed standard without further explanation).

²⁸ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 14 FCC Rcd 836, 839, para. 7-8 (1998) (denying a waiver petition without prejudice for being an "eleventh hour" filing, three weeks before the deadline); cf. *Applications of Montgomery County Media et al.*, Memorandum Opinion and Order, 8 FCC Rcd 2763, 2765, para. 12 (1993) (holding that "an applicant must show that it acted promptly after it discovered, or should have discovered, the potentially disqualifying deficiency...an applicant that sites idly by, either doing nothing or pursuing a course of action that is not likely to resolve the problem expeditiously, lacks diligence."); *Cuban-American Ltd*, Memorandum Opinion and Order, 5 FCC Rcd 3781, 3782, paras. 10-12 (1990) (applicant that sought after the ALJ's deadline to amend to a new site, rather than reducing its antenna height upon being advised by its engineer that the FAA would not approve a tower that tall, lacked due diligence).

²⁹ Petition at 7.

³⁰ See generally ATA Supplemental Letter.

IV. ORDERING CLAUSE

11. Accordingly, **IT IS ORDERED**, that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC § § 151-154 and 254, and sections 0.91, 0.131, 0.291, 0.331, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.131, 0.291, 0.331, and 1.3, that the request for waiver filed by the Alaska Telecom Association **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

Donald Stockdale
Chief
Wireless Telecommunications Bureau