

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Petition for Waiver of Frontier Communications)
Corporation)

ORDER

Adopted: January 14, 2020

Released: January 14, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition filed by Frontier Communications Corporation (Frontier) seeking waiver of the Commission’s rules requiring carriers accepting Connect America Phase II model-based support to complete deployment to 80% of supported locations by December 31, 2019.1 Frontier also requests that the Commission waive any support reductions associated with this missed deadline.2 We find that Frontier has established good cause to waive its interim milestone deadline. We expect Frontier to complete deployment to the remaining supported locations in Arizona, New Mexico, and Utah by the end of 2020, concurrently with its deadline to deploy to 100% of its supported locations.

II. BACKGROUND

2. Section 54.310(c) of the Commission’s rules requires carriers electing to receive Connect America Phase II model-based support to complete deployment to 40% of supported locations by December 31, 2017, to 60% of supported locations by December 31, 2018, to 80% of supported locations by December 31, 2019, and to 100% of supported locations by December 31, 2020.3 The Commission’s rules also require these carriers to make annual deployment reporting and certification filings detailing their progress in meeting these milestones.4 Carriers failing to meet these reporting and certification requirements are subject to support reductions.5

3. On October 31, 2019, Frontier filed the instant Petition. In it, Frontier explains that deploying fiber to locations in the Navajo Nation in Arizona, New Mexico, and Utah is necessary to allow it to reach its 80% deployment milestone.6 To complete this deployment, Frontier must use the Navajo Nation public rights-of-way. Though Frontier claims that it was granted access to these rights-of-way under certain purchase agreements, the Bureau of Indian Affairs (BIA) ordered Frontier to terminate work

1 Petition for Waiver of Frontier Communications Corporation, WC Docket No. 10-90, 14-58 (filed Oct. 31, 2019) (Petition).

2 Id. at 2.

3 47 CFR § 54.310(c).

4 47 CFR §§ 54.316(a)(1), (a)(4), (b)(1).

5 47 CFR § 54.316(c)(1).

6 Petition at 2.

on its fiber construction, asserting that Frontier lacked the proper authorizations.⁷ BIA subsequently proposed that Frontier and the Navajo Nation negotiate new rights-of-way agreements.⁸ Frontier contends that it has been unable to reach a resolution to this impasse and is unable to “resume construction and provide qualifying service to the remaining locations in the Navajo Nation in time to meet its year-end 2019 obligations.”⁹

III. DISCUSSION

4. We grant Frontier’s Petition and conclude that Frontier has demonstrated good cause to warrant a waiver of our rules.¹⁰ As the Commission stated when it originally adopted the deployment obligations, it did “not expect to routinely grant waiver requests” for carriers missing the required milestone deadlines.¹¹ However, the Commission observed that a waiver would be appropriate if a carrier was able to demonstrate that its failure to meet the required deadline was “due to circumstances beyond its control (e.g., a severe weather event, an inability to secure a right of way, or an unforeseen obstacle that prevents building to a location).”¹² In those cases, the Commission explained that a carrier may request an extension of time or waiver of the relevant milestone.¹³

5. Frontier has established special circumstances that clearly square with the Commission’s intent in permitting parties to avail themselves of the waiver process if they fail to meet their service milestones. Specifically, Frontier reasonably believed that it already held the adequate rights-of-way to undertake fiber construction in the Navajo Nation. Frontier presented ample evidence in its Petition to support this belief, including a purchase agreement between its subsidiary, Navajo Communications, and the Navajo Tribe that granted “all rights-of-way in the system already granted and to be granted in the future”; a memo from the Navajo Nation advising BIA of Tribal consent granting Navajo Communications “a right-of-way for the proposed telephone lines within all presently existing and future road rights-of-way”; a letter from the Navajo Nation Council to Navajo Communications reconfirming the rights-of-way granted in the purchase agreement; and Frontier’s payment of rights-of-way taxes to the Navajo Nation, including a letter from the Navajo Nation that Frontier’s rights-of-way taxes would increase in 2019.¹⁴ The totality of the evidence it presented demonstrates that Frontier believed it had access to the appropriate rights-of-way to be able to deploy to its required locations by its service

⁷ *Id.* See also Letter from AJ Burton, Vice President, Federal Regulatory, Frontier Communications Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58 (Dec. 18, 2019) (providing correspondence from BIA requesting that Frontier stop work on its fiber construction).

⁸ *Id.*

⁹ *Id.*

¹⁰ Generally, the Commission’s rules may be waived if good cause is 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 only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. “[D]eadlines can only be waived under ‘unusual or compelling circumstances.’” *NetworkIP, LLC v. FCC*, 548 F.3d 116, 126 (D.C. Cir. 2008) (citation omitted).

¹¹ *December 2014 CAF Phase II Order*, 29 FCC Rcd at 15660, n.93.

¹² *December 2014 CAF Phase II Order*, 29 FCC Rcd at 15700, para. 154.

¹³ *Id.*

¹⁴ Petition at 4-5.

milestone deadline. Thus, we conclude that these facts present special circumstances warranting deviation from the general rule.

6. We further conclude that the public interest will be served by granting a limited waiver of the Commission's rules. Strict enforcement of the rules in this instance—i.e., withholding support from Frontier for its failure to meet the required 80% service milestone—would potentially inhibit Frontier's ability not only to continue its work to meet this milestone, but also to fully complete its deployment by the end of 2020. Thus, waiving the rule to the extent described herein promotes the Commission's universal service goal of ensuring deployment of broadband service to previously unserved and underserved high-cost locations. We also note that Frontier has requested that its compliance with this service milestone be considered cumulatively with its 100% service milestone.¹⁵ As a result, the locations Frontier was unable to build to by the end of 2019 will experience only a limited delay in obtaining broadband service, given that Frontier must deploy to all its supported locations no later than December 31, 2020. We expect Frontier will continue to work diligently to reach a resolution on this issue with both BIA and the Navajo Nation and anticipate that the locations in question here will be served no later than the end of 2020. Thus, we conclude that waiving the rule to the extent described herein is in the public interest.¹⁶

7. Accordingly, we grant Frontier's Petition and waive section 54.310(c) of the Commission's rules to the extent described here. We also waive section 54.316(b)(1) of the Commission's rules, given that Frontier will be unable to certify that it has offered the requisite broadband service to "the required percentage of its supported locations in each state" as required by the rule.¹⁷ While Frontier failed to complete deployment to 80% of its supported locations by December 31, 2019, we expect that Frontier will comply with the applicable requirements of section 54.316(a) of the Commission's rules and will report the locations to which it was able to deploy broadband service by the close of 2019. Failure to meet this deadline may result in support reductions under section 54.316(c)(1) of the Commission's rules.¹⁸

¹⁵ Petition at 2-3.

¹⁶ See *Connect America Fund; ETC Annual Reports and Certifications*, Order, 32 FCC Rcd 968, 975-76, para. 21 (2017). See also *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17701, para. 103 (2011) ("[A]ll broadband obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an 'unsubsidized competitor.'"), *aff'd sub nom.* *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

¹⁷ 47 CFR § 54.316 (b)(1).

¹⁸ 47 CFR § 54.316(c)(1).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 503, 1302, and sections 1.1 and 1.3 of the Commission's rules, 47 CFR §§ 1.1, 1.3, that the Petition for Waiver, filed by Frontier Communications Corporation on October 31, 2019, IS GRANTED, to the extent described herein.

9. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau