

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

ORDER

Adopted: August 5, 2020

Released: August 5, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) resolves two petitions requesting waiver of the March 1, 2019 deadline to upload and certify geocoded location information data with the Universal Service Administrative Company (USAC), the Commission’s administrator of universal service programs, through the High Cost Universal Broadband (HUBB) portal.¹ Specifically, we act on the joint petition filed by ComSouth Corporation (ComSouth) and Bloomingdale Telephone Company (Bloomingdale), and the petition filed by State Telephone Company (State) (collectively the Petitioners). Based on the record before us, we find the Petitioners have not demonstrated that there is good cause to waive the applicable sections of the Commission’s rules and, accordingly, deny the requested relief.

II. BACKGROUND

2. The 2016 *Rate-of-Return Reform Order* adopted new annual reporting requirements for rate-of-return eligible telecommunications carriers (ETCs).² The order directed these ETCs “to submit to [USAC] the geocoded locations to which they have newly deployed broadband.”³ ETCs must provide

¹ See ComSouth Corporation and Bloomingdale Telephone Company Emergency Request for Expedited Treatment Petition for Waiver, WC Docket No. 10-90, et al., CC Docket No. 01-92 (filed Apr. 21, 2020), <https://ecfsapi.fcc.gov/file/1042129184437/FINAL%20HUBB%20Waiver%20-%20ComSouth%20and%20Bloomingdale.pdf> (Joint Petition); Petition for Expedited Waiver by State Telephone Company of Section 54.316 of the Commission’s Rules, WC Docket No. 10-90, et al. (filed Jun. 12, 2020), <https://ecfsapi.fcc.gov/file/10612087429875/6%2012%2020%20State%20Telephone%20Company%20--%20HUBB%20Waiver%20Petition.pdf> (State Petition).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3163-64, para. 209 (2016) (*Rate-of-Return Reform Order*).

³ *Id.*, 31 FCC Rcd at 3164, para. 210.

annual certifications with this geocoded location information data to demonstrate the ETC is on track to meet its deployment obligations.⁴

3. The 2016 *Rate-of-Return Reform Order* further directed USAC to develop an online system to accept the geocoded location information data and related certifications.⁵ In response, USAC developed and administers the HUBB portal. ETCs receiving high-cost support now must file their geocoded location information data and related certifications through the HUBB.⁶ Section 54.316 of the Commission's rules contains the reporting and certification requirements for these ETCs.⁷ Subsection (a) sets out the broadband reporting requirements, subsection (b) outlines the certification requirements, and subsection (c) establishes the filing deadlines and penalties if an ETC fails to properly report and certify its geocoded location information data.⁸ On December 8, 2016, the Bureau released a Public Notice to provide further guidance on the dual requirements to report both geocoded location information data and the related certification through the HUBB.⁹

4. The Commission has consistently encouraged ETCs subject to defined deployment obligations and HUBB reporting obligations to report geocoded location information data on a rolling basis and has adopted a best practice of filing this information within 30 days after the initial offering of service.¹⁰ The Commission recommended this best practice to help minimize errors caused by the filing process.¹¹ Any carriers that did not deploy to locations in the prior year must still log into the HUBB and certify that they have no new locations to report.¹²

5. In December 2019, the Bureau granted several petitions to waive the March 1, 2018 filing deadline for geocoded location information data for locations deployed in 2017.¹³ The Bureau found that waivers were warranted because all of the petitioners reported confusion with the newly instated HUBB filing requirements and the requirement to certify in the HUBB even if carriers had no new locations to report.¹⁴ The Bureau found it in the public interest to grant the petitions for the filers who failed to certify they had no locations to report because of the carriers' "reasonable confusion" regarding the filing instructions and because "ultimately, each made the requisite certification."¹⁵ For the petitioners who experienced difficulties with accessing or using the HUBB, the Bureau found it in the public interest to grant the waiver because each petitioner "faced the unique situation of having both new reporting

⁴ *Id.* at 3092, para. 7.

⁵ *Id.* at 3166, para. 214 (directing the Bureau to work with USAC to develop an online portal).

⁶ *See, e.g., id.* at 3117, para. 79 n.156 (describing portal filing obligations for recipients of Phase II model-based support); *id.* at 3167, para. 219 (describing portal filing obligation for rate-of-return ETCs).

⁷ *See* 47 CFR § 54.316.

⁸ *Id.*

⁹ *See Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*HUBB Reporting Public Notice*).

¹⁰ *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3164, para. 211.

¹¹ *Id.*

¹² *See, e.g.,* USAC, Connect America Fund Filing with the HUBB Portal at 12-14 (2019), <https://www.usac.org/wp-content/uploads/high-cost/documents/training/2019-Filing-with-the-HUBB-Portal-Webinar.pdf>.

¹³ *See, generally, In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 34 FCC Rcd 11139 (Dec. 2, 2019) (*December HUBB Waiver Order*).

¹⁴ *Id.* at 11144, para. 14.

¹⁵ *Id.* at 11145-46, para. 19.

requirements and a new method through which to report the geocode location information data.¹⁶ The Bureau emphasized that this waiver applied only to the first round of HUBB reporting and stressed that it was “unlikely to grant future petitions with similar facts.”¹⁷

6. *The Joint Petition.* On April 21, 2020, ComSouth and Bloomingdale requested a waiver of the 2019 filing deadline established by section 54.316(c)(1) and the support reductions established by section 54.316(c)(1)(i) of the Commission’s rules.¹⁸ The deadline for ETCs to report and certify geocoded location information data for new broadband service deployed during 2018 was March 1, 2019.¹⁹ According to the Joint Petition, ComSouth and Bloomingdale did not have new geocoded location data information to report to the HUBB for 2018 because they did not deploy broadband service to any new locations during that year.²⁰ ComSouth and Bloomingdale claim they were not aware of the requirements to certify that they had no locations to report for 2018.²¹ ComSouth and Bloomingdale allege that the missed deadline resulted in significant reductions in support.²² They argue that granting the Joint Petition is in the public interest because the “financial penalty that [ComSouth and Bloomingdale] incurred was a drastic adjustment and will directly and negatively impact the rural communities they serve . . .” by “directly affect[ing] [ComSouth and Bloomingdale’s] ability to fund broadband deployment, as well as the day-to-day operations and maintenance of their current networks and infrastructure.”²³

7. *The State Petition.* On June 12, 2020, State Telephone Company requested a waiver of both the 2018 and 2019 filing deadline established by section 54.316(c) of the Commission’s rules.²⁴ State is a rural local exchange carrier the operates two exchanges in New York.²⁵ In 2017, the Bureau granted a waiver of the March 1, 2017 HUBB filing deadline for Connect America Fund-Broadband Loop Support (CAF-BLS) and other high-cost support recipients.²⁶ The Bureau extended the deadline for CAF-BLS recipients to make their first HUBB filing to March 1, 2018.²⁷ State receives legacy CAF-BLS support.²⁸ State asserts in its petition that it “erroneously believed that its March 2018 HUBB filing was limited to locations newly deployed during 2017 . . .,” so it did not report and certify the locations State had deployed broadband service to in prior years, which would have originally been reported by March 1, 2017.²⁹ State then attempted to complete its 2019 HUBB filing but did not have the “geocoded information necessary to make a complete HUBB filing.”³⁰ State had contracted with a third party to

¹⁶ *Id.* at 11144, para. 14.

¹⁷ *Id.* at 11146, para. 20.

¹⁸ *See* Joint Petition.

¹⁹ 47 CFR § 54.316(c)(1)(i).

²⁰ Joint Petition at 4-5.

²¹ *Id.*

²² *Id.* at 5-6.

²³ *Id.* at 11.

²⁴ State Petition at 1.

²⁵ *Id.* at 2.

²⁶ *Connect America Fund*, WC Docket No. 10-90, Order, 32 FCC Rcd 1445, 1445 para. 1 (WCB 2017) (*HUBB Extension Order*).

²⁷ *Id.* at 1445, para. 2.

²⁸ State Petition at 3.

²⁹ *Id.*

³⁰ *Id.*

provide the geocoded location information for the areas it newly deployed to in 2018 but the third party was ultimately unable to provide this information.³¹ State has since fixed any errors with its filings and recently completed its 2020 HUBB filing on time.³² State argues that granting the waiver is in the public interest because no entity was harmed by its faulty HUBB filings and because State ultimately corrected its filing.³³

III. DISCUSSION

8. We find that the Petitioners have not demonstrated that there is good cause to waive the applicable sections of the Commission's rules.³⁴ As we stated in the *December HUBB Waiver Order*, "USAC processes a tremendous amount of data each year, making it administratively necessary to require ETCs to meet the filing deadlines absent special circumstances."³⁵ It is the responsibility of all ETCs to familiarize themselves with any applicable rules and ensure that its filings are timely received, regardless of the time and method of their filings.³⁶ In the December 2014 Connect America Order, the Commission concluded that it would require strict adherence to filing deadlines for the certifications adopted in the *2011 USF/ICC Transformation Order*.³⁷ Consistent with this conclusion, the Commission has denied petitions for waiver of filing deadlines caused by inadvertent oversight,³⁸ internal ETC confusion,³⁹ or problems resulting from utilizing third party services to produce the required data.⁴⁰ In the *December HUBB Waiver Order*, the Bureau made clear that it was unlikely to grant future petitions to waive the HUBB filing deadline outside special circumstances.⁴¹

9. Though ComSouth and Bloomingdale claim it was "not clear" that they were required to certify that they had no locations to report and that guidance was "inadequate,"⁴² USAC has made consistent and repeated efforts to inform ETCs of the reporting and certification deadline, as well as the

³¹ *Id.*

³² *Id.* at 4.

³³ *Id.* at 10.

³⁴ Generally, the Commission's rules may be waived for good cause 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166. The party seeking waiver of the Commission's rules bears the burden of demonstrating good cause. *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

³⁵ *December HUBB Waiver Order*, 34 FCC Rcd at 11143-44, para. 13.

³⁶ See *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, Order, 24 FCC Rcd. 4811, para. 12 (WCB 2009); see also 47 CFR § 0.406.

³⁷ *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order, 29 FCC Rcd 15644, 15693, para. 138 (2014).

³⁸ *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 31 FCC Rcd 3758, 3761, para. 9 (WCB 2016).

³⁹ *Id.* at 3762, para. 10.

⁴⁰ *Id.* at 3763-64, para. 16.

⁴¹ *December HUBB Waiver Order* at 11146, para. 20.

⁴² Joint Petition at 9.

requirement to certify in the HUBB even if the carrier has no new locations to report.⁴³ In January 2019, USAC held a webinar outlining the HUBB filing requirements and indicated that “carriers that did not deploy any locations in 2018 must still log into the HUBB and certify ‘no location to upload’ by March 1, 2019.”⁴⁴ The HUBB User Guide, published annually by USAC, instructs ETCs that “[c]arriers that did not deploy any new locations in the prior year must certify ‘no locations to upload.’”⁴⁵ USAC’s website hosts a Frequently Asked Questions page where, in response to the question of whether carriers still must file with the HUBB even if it did not deploy any new locations in the prior year, USAC responds: “Yes. Carriers that have no new deployments to report must still log into the HUBB and certify ‘no locations to upload’ before the annual March filing deadline.”⁴⁶ Moreover, before the filing deadline, USAC reaches out to each carrier individually that has not yet submitted its annual reports and certification. On both February 21st and February 26th of 2019, USAC sent emails to ComSouth and Bloomingdale that included the following language in bold, red text: “Carriers that do not have locations to report must still log into the HUBB and indicate ‘No Locations to Upload’ on the ‘Managing Uploads’ screen of the HUBB.”⁴⁷ Given these multiple notifications, ComSouth and Bloomingdale should have been familiar with the filing requirements by March 1, 2019. Further, unlike those carriers granted relief in the *December HUBB Waiver Order*, ComSouth and Bloomingdale were not facing “the unique situation of having both new reporting requirements and a new method through which to report the geocoded location information data.”⁴⁸

10. ComSouth and Bloomingdale’s claim that USAC did not “give the ‘no location’ filers ample time and warning that they would face penalties if they did not certify that they had no information about broadband locations to report on the March 1 deadline”⁴⁹ is also unpersuasive. In the individual emails sent to ComSouth and Bloomingdale noted above, the sentence directly preceding the statement that carriers that have no locations to report must still log into the HUBB and indicate “No Locations to Upload” noted in bold, red text that “Carriers that do not certify by this deadline [March 1, 2019] may see reductions in support.”⁵⁰ As to ComSouth and Bloomingdale’s argument that they were not informed of “the severity of penalty for not [meeting the March 1 deadline],” the method of calculating the support reductions is contained in the same Commission rule that sets the March 1 deadline.⁵¹ Thus, ComSouth and Bloomingdale should have known what the reduction of support would be based on the number of days they filed after the deadline.

11. Similarly, we are not persuaded by State’s argument that granting its Petition is in the public interest. In its *HUBB Extension Order*, the Bureau made clear that CAF-BLS carriers must “file, in the HUBB portal . . . broadband information regarding location deployed from May 25, 2016, to December 31, 2016.”⁵² To ensure that carriers properly understood their obligations, in January and

⁴³ Letter from Habib Simab, Director, High Cost Operations, USAC, to Marlene H. Dortch, WC Docket Nos. 10-90, WC Docket No. 14-58, WC Docket No. 07-135; CC Docket No. 01-92 at 1 (Aug. 3, 2020) (USAC Letter).

⁴⁴ USAC, Connect America Fund Filing with the HUBB Portal at 12-14 (2019), <https://www.usac.org/wp-content/uploads/high-cost/documents/training/2019-Filing-with-the-HUBB-Portal-Webinar.pdf>.

⁴⁵ USAC, High Cost Universal Broadband (HUBB) User Guide at 8 (2019), formerly available at <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HUBB-User-Guide.pdf>.

⁴⁶ USAC, HUBB Frequently Asked Questions at 3 (2019), formerly available <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HUBB-User-Guide.pdf>.

⁴⁷ USAC Letter at 2.

⁴⁸ December HUBB Waiver Order, 34 FCC Rcd at 11144, para. 14.

⁴⁹ Joint Petition at 9.

⁵⁰ USAC Letter at 2.

⁵¹ 47 CFR §54.316 (c)(1).

⁵² *HUBB Extension Order* at 1447, para. 7

February 2018, USAC sent emails to all CAF-BLS carriers reminding them of their obligation to file location information for locations deployed from May 2016 through December 2017 and a further email to those carriers that had not certified by February 13, 2018, including State.⁵³ The Bureau also provided clear guidance regarding the need for “a list – in the format required by USAC’s data specification – of the residential and business locations to which they have made broadband service commercially available within their eligible service area within the relevant time period.”⁵⁴ The *2016 HUBB Guidance Public Notice* listed the HUBB locations requirements for residential and business locations and reiterated the carriers’ duty to “file accurate and timely locations data so that USAC can determine if carriers have met their interim and final milestones”⁵⁵ We are not persuaded that State has encountered special circumstances justifying a waiver when it failed to properly submit its 2018 and 2019 HUBB filings.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 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, 1.3, that this Order IS ADOPTED.

13. IT IS FURTHER ORDERED that the joint petition for waiver of section 54.316(c)(1) of the Commission’s rules, 47 CFR § 54.316(c), filed by ComSouth Corporation and Bloomingdale Telephone Company is DENIED as described herein.

14. IT IS FURTHER ORDERED that the petition for waiver of section 54.316(c)(1) of the Commission’s rules, 47 CFR § 54.316(c), filed by State Telephone Company is DENIED as described herein.

15. 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
Chief
Wireline Competition Bureau

⁵³ USAC Letter 1-2.

⁵⁴ *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12902-03 (2016) (*2016 HUBB Guidance Public Notice*).

⁵⁵ *Id.* at 12909.