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

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

ORDER

Adopted: May 26, 2021 **Released: May 26, 2021**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the Petition for Waiver filed by Alenco Communications, Inc. (Alenco) in which it seeks to revise its March 31, 2020, FCC Form 507, on which it reported line counts as of December 31, 2019.[1] While we emphasize that we do not routinely grant petitions for waiver to allow carriers to make late revisions of their filings that would increase their support, we find that the unique circumstances here warrant such a waiver and that a waiver is in the public interest. Accordingly, we grant the Alenco Petition.

I. BACKGROUND

2. In the 2011 *USF/ICC Transformation Order*, the Commission adopted a $250 monthly per-line cap on high-cost universal service support for each study area.[2] The Commission later reduced the monthly per-line cap to $225 effective July 1, 2019, and to $200 effective July 1, 2021.[3] To determine whether a study area's support exceeded the per-line cap, the rule originally specified that the Administrator (Universal Service Administrative Company or USAC) use the most recent line counts provided pursuant to section 54.1305(i) of the Commission's high-cost loop support rules.[4] These line counts were limited to "working [Cable & Wireless Facility] loops used jointly for exchange and message telecommunications service," which excludes broadband-only loops.[5]

3. In the *2016 Rate-of-Return Reform Order*, the Commission adopted rules to provide high-cost support for consumer broadband-only loops (CBOLs) to rate-of-return carriers though the

[1] Petition for Waiver of Alenco Communications, Inc., WC Docket 10-90 (filed April 21, 2021) (*Alenco Petition*).

[2] *See* 47 CFR § 54.302; *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., 26 FCC Rcd 17672, 17764-66, paras. 272-79 (2011) (*USF/ICC Transformation Order*).

[3] *Connect America Fund et al.,* WC Docket Nos. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893, 11930-34, paras. 125-135 (*December 2018 Rate-of-Return Reform Order*).

[4] *USF/ICC Transformation Order*, 26 FCC Rcd at 18201, Appendix A, § 54.302 (requiring use of section 36.611(h) to calculate cap). Section 36.611(h) has since been recodified as 54.1305(i). *See Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7069-70, para. 58 (2014)

[5] 47 CFR § 54.1305(i).

Connect America Fund Broadband Loop Support (CAF BLS) mechanism.[6] To conform with the expansion of high-cost support, the Commission revised the $250 monthly per-line cap to use line counts reported on FCC Form 507 pursuant to section 54.903(a)(1) of the Commission's rules.[7] Following the adoption of the *2016 Rate-of-Return Reform Order*, but prior to the effective date of the revision to section 54.302, FCC Form 507 was revised to include CBOL lines, in addition to access lines.

4. The requirement for USAC to use section 54.903-reported lines to apply the $250 monthly per-line cap became effective for universal service payments made in April 2017.[8] Due to administrative error, USAC instead used, from April 2017 until January 2021, a weighted average of lines reported pursuant to sections 54.903 and 54.1305. On March 31, 2021, USAC sent a letter to each affected carrier, including Alenco, explaining the error, the estimated impact of the error on the carrier, and how the error would be corrected.[9] For carriers that had been overpaid by the error, USAC indicated that the overpayment would be recovered by offsetting it against June 2021 support (which will be disbursed in July 2021), unless the carrier requested a payment plan prior to May 1, 2021. In Alenco's case, the letter estimated that it would be required to repay approximately $84,000 in overpayments that Alenco received over the relevant period.[10]

5. In its waiver petition, Alenco states that when it filed its March 31, 2020 FCC Form 507, it did not realize that the 28 CBOL lines it served on December 31, 2019 should be reported on the form.[11] Alenco argues that there is good cause to grant it a one-time waiver to permit it to revise the filing because, in essence, the $73,500 additional support it would receive is significant to Alenco and necessary for it to meet its deployment obligations.[12] Further, granting the waiver would reduce the size of its repayment due the universal service fund.[13] Finally, Alenco argues the waiver would not adversely impact ratepayers because $73,500 is not significant to the overall size of the fund.[14]

II. DISCUSSION

6. We find good cause to grant Alenco's petition for waiver. Generally, the Commission's rules may be waived for good cause shown.[15] The Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[16] In addition, the Bureau 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 when (i) special

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[6] *Connect America Fund et al.,* WC Docket Nos. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3119-24, paras. 86-94 (*2016 Rate-of-Return Reform Order*).

[7] *See id.* at 3251, App. B (revising section 54.302).

[8] *See Connect America Fund et al.*, Final Rule, 82 Fed Reg 14338 (Mar 20, 2017).

[9] Alenco Petition, at 2.

[10] *Id.*

[11] *Id*. at 3.

[12] *Id.* at 4-5.

[13] *Id.* at 5.

[14] *Id.* at 5-6.

[15] 47 CFR § 1.3.

[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.

circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[18]

7. At the outset, we make clear that Alenco's arguments that the estimated impact of the correction is both significant to Alenco but insignificant relative to the size of the fund would not typically support a finding of good cause to waive the filing deadlines in the Commission's rules. We have a strong interest in ensuring carrier compliance with the Commission's universal service reporting requirements.[19] USAC requires timely and accurate data in order to administer the high-cost universal service support mechanisms.[20] Many support calculations relying upon the filed data affect support for other carriers as well, and constant adjustments due to late filed or corrected data would render high-cost support unmanageable.[21] If we concluded that the relative significance to a petitioner and relative insignificance to the fund were a basis to find good cause, we might find a constant flow of waiver petitions from carriers requesting that we re-open closed filings on the basis the carriers find the extra support significant while the amount pales in comparison to the overall size of the fund.

8. In this case, however, USAC's error created circumstances in which waiver is appropriate. Because USAC must recalculate support for this period to correct for its own error, the general rule regarding strict adherence to the Commission's filing deadlines for reasons of finality is not applicable here. The calculations and adjustments must be made regardless of whether Alenco is granted permission to refile its FCC Form 507. Further, the Administrator's error has created a situation in which Alenco is now responsible for the repayment of support, which may cause significant hardship. USAC estimates that Alenco owes more than 50% of its forecasted June 2021 high-cost support. While Alenco may request a plan to spread the repayment over a period of time, the repayment will likely have a significant and negative impact on Alenco's cash flow during repayment. Waiving the filing deadline will moderately mitigate the hardship caused by the Administrator's error while otherwise maintaining the Commission's rules governing the calculation of high-cost support. For these reasons, we grant Alenco's petition.

9. We note that by our calculation, Alenco will receive slightly more benefit from this waiver than the $73,500 it estimated in its petition. The revised FCC Form 507 will effectively increase Alenco's monthly support cap by $6300 per month (28 additional lines times $225 monthly per-line cap) from July 2020 to June 2021, for a total increase of $75,600 over the period. Of that amount, $44,100 will directly reduce the overpayment that the Administrator must collect from Alenco because it is associated with the time period in which the Administrator was still using the incorrect source of line counts ($6300 per month from July 2020 through January 2021). The remainder will effectively offset further collections, but USAC should process the revision and any resulting prior period adjustments consistent with its normal practices.

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

[19] *See Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 15644, 15693, para. 138 (2014) (adopting "strict adherence to filing deadlines").

[20] *See, e.g.*, *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3157, para.187 (describing the interrelated steps necessary to manage CAF BLS, the budget control mechanism, and tariffs for rate-of-return carriers).

[21] *See id.* at 3143-45, paras. 149-53 (adopting a budget and budget control mechanism that limits the amount of support available to carriers receiving legacy support).

III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, Alenco Communications, Inc.'s petition for waiver of section 54.903(a)(1) of the Commission's rules is GRANTED.

11. 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