

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

In the Matter of )
Connect America Fund: A National Broadband ) WC Docket No. 10-90
Plan for Our Future High-Cost Universal Service )
Support )
ETC Annual Reports and Certifications ) WC Docket No. 14-58
Developing a Unified Intercarrier Compensation ) CC Docket No. 01-92
Regime )
Colo Telephone Company, Petition for Waiver of )
Section 47 CFR § 54.903(a)(4) of the )
Commission’s Rules )
South Canaan Telephone Company, Petition for )
Waiver of Section 47 CFR § 54.903(a)(4) of the )
Commission’s Rules )

ORDER

Adopted: March 12, 2024

Released: March 12, 2024

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies two petitions filed by Colo Telephone Company (Colo Telephone) and South Canaan Telephone Company (SCTC) seeking a waiver of section 54.903(a)(4) of the Commission’s rules, which requires each rate-of-return carrier to annually file by December 31 of each year the data necessary to calculate a carrier’s Connect America Fund Broadband Loop Support (CAF BLS).1 The petitioners failed to demonstrate good cause to justify a waiver.2 Accordingly, we deny the petitions.

I. BACKGROUND

2. In the 2016 Rate-of-Return Reform Order, the Commission adopted significant changes to the Universal Service Fund (USF) for areas served by rate-of-return carriers.3 Among other reforms, the Commission modernized the rate-of-return program to support standalone broadband offerings, as well as the previously supported interstate portion of the common line, in a single CAF BLS mechanism.4 In essence, CAF BLS supports voice and broadband-only lines to the extent that the carrier’s costs (i.e.,

1 See 47 CFR § 54.903(a)(4); Colo Telephone, Petition for Waiver, WC Docket No. 10-90 et al. (filed July 5, 2022) (Colo Tel. Petition); SCTC, Petition for Waiver of 47 CFR § 54.903(a)(4) (filed June 10, 2022) (SCTC Petition).

2 See 47 CFR § 1.3; Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

3 Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (2016 Rate-of-Return Reform Order).

4 Id. at 3117, para. 80.

revenue requirements) exceed its revenues, subject to a budget constraint.<sup>5</sup> CAF BLS is paid preliminarily using forecasted cost and revenue data and is later trueed up based on actual cost and revenue data.<sup>6</sup> The true-ups prevent carriers from recovering more revenue from end users and universal service than is necessary to meet their revenue requirements.

3. To determine CAF BLS, a carrier first files the FCC Form 508, which forecasts its interstate common line and consumer broadband-only costs and revenues for the upcoming July 1 to June 30 tariff year.<sup>7</sup> For the purpose of forecasting consumer broadband-only revenue, carriers impute the lesser of the forecasted annual consumer broadband-only revenue requirement or \$42 times the number of forecasted consumer broadband-only lines (CBOLs) times 12 months.<sup>8</sup> A budget control mechanism is then applied by the Universal Service Administrative Company (USAC or the Administrator) to that calculation, which reduces the amount of CAF BLS disbursed, if necessary to ensure that the support budget is not exceeded.<sup>9</sup> Each carrier is then required to subsequently file their actual cost and revenue data on FCC Form 509 by December 31 of each year as part of the true-up process pursuant to section 54.903(a)(4) of the Commission's rules.<sup>10</sup> For the purpose of determining consumer broadband-only revenue on the FCC Form 509, carriers are required to impute the carrier's maximum allowable consumer broadband-only rate times the number CBOLs times 12, if that amount is greater than the amount calculated using the same methodology as used for FCC Form 508.<sup>11</sup>

4. Colo Telephone is a rate-of-return carrier and National Exchange Carrier Association (NECA) member serving approximately 500 access lines in Iowa.<sup>12</sup> On December 31, 2021, Colo Telephone timely submitted an FCC Form 509, reporting data for the 2020 calendar year.<sup>13</sup> Colo Telephone subsequently discovered, due to a clerical error, the line count data was underreported, resulting in a decrease of calculated CAF BLS support by approximately \$27,000.<sup>14</sup> On July 5, 2022, Colo Telephone filed a petition seeking a waiver of section 54.903(a)(4) of the Commission's rules to allow it to revise its 2021 FCC Form 509 filing.<sup>15</sup>

5. SCTC is a rate-of-return carrier and NECA member serving "approximately 1,200 access lines and 571 broadband-only loops in northeastern Pennsylvania."<sup>16</sup> In December 2021, SCTC filed an FCC Form 509 reporting data for the 2020 calendar year. SCTC subsequently discovered it had underreported the number of CBOLs by "approximately 430, which resulted in an underpayment of CAF

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<sup>5</sup> *Id.* at 3120-21, para. 88.

<sup>6</sup> 47 CFR §§ 54.901-54.903.

<sup>7</sup> *Id.* § 54.903(a)(3).

<sup>8</sup> *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3120-21, at para. 88.

<sup>9</sup> 47 CFR § 54.901(f).

<sup>10</sup> *Id.* § 54.903(a)(4) ("Each rate-of-return carrier shall submit to the Administrator on December 31 of each year the data necessary to calculate a carrier's Connect America Fund CAF BLS, including common line and consumer broadband-only loop cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line CAF BLS amounts to the extent of any differences between the carrier's CAF BLS received based on projected common line cost and revenue data, and the CAF BLS for which the carrier is ultimately eligible based on its actual common line and consumer broadband-only loop cost and revenue data during the relevant period.")

<sup>11</sup> 47 CFR § 54.901(a)(2).

<sup>12</sup> Colo Tel. Petition at 1.

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1.

<sup>16</sup> SCTC Petition at 1.

BLS of approximately \$216,000.<sup>17</sup> The error occurred by SCTC’s failure to include CBOLs served via fiber technology and only including CBOLs served via copper transmission facilities in its submission.<sup>18</sup> According to SCTC, the error was due to its strict interpretation of a classification by NECA, to which there is no supporting citation, of all broadband-only loops as digital subscriber lines. On June 10, 2022, SCTC submitted a petition for waiver of section 54.903(a)(4) of the Commission’s rules to allow it to revise its 2021 FCC Form 509 filing to include the omitted CBOLs.<sup>19</sup>

## II. DISCUSSION

6. The Bureau finds the Petitioners have not demonstrated good cause to waive the Commission’s rules. Section 54.903(a)(4) of the Commission’s rules requires “[e]ach rate-of-return carrier [to] submit to the Administrator on December 31 of each year the data necessary to calculate a carrier’s [CAF BLS], including common line and [CBOL] cost and revenue data, for the prior calendar year.”<sup>20</sup> Both Colo Telephone and SCTC seek a waiver to revise their Form 509 filed by December 31, 2021, reflecting actual data for year-end 2020 as required by section 54.903(a)(4). The Commission’s rules do not provide a process for revising Form 509 submissions after the applicable filing deadline, necessitating a waiver petition.

7. Generally, the Commission’s rules may be waived for good cause shown.<sup>21</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>22</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>23</sup> Waiver of the Commission’s rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>24</sup> The Bureau does not routinely grant petitions for waiver to allow carriers to make late revisions of their filings that would increase their support.<sup>25</sup>

8. Colo Telephone states good cause exists to grant its waiver “because the revisions to the Form 509 are to correct a clerical error.”<sup>26</sup> Specifically, the “Commission has found that good cause to waive its rules exists for petitioners to make corrections for ministerial and clerical errors,” citing a 2010 order involving schools and libraries in the Commission’s E-Rate program.<sup>27</sup> Colo Telephone further asserts “good cause” exists because (1) of the small number of access lines it serves, (2) the amount in question, approximately \$27,000, is significant to Colo Telephone, and (3) the amount in question is

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<sup>17</sup> *Id.* at 1-2; 47 CFR § 54.901(g) (“For purposes of this subpart and consistent with § 69.132 of this chapter, a consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service . . .”).

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> 47 CFR § 54.903(a)(4).

<sup>21</sup> *Id.* § 1.3.

<sup>22</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>23</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>24</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>25</sup> *Connect America Fund*, WC Docket 10-90, Order, 36 FCC Rcd 9043, para. 1 (WCB 2021) (*Alenco Order*).

<sup>26</sup> Colo Tel. Petition at 3.

<sup>27</sup> *Id.* at 3 n.6 (citing Requests for Waiver and Review of the Universal Service Administrator by Ann Arbor Public Schools Ann Arbor, MI, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (TAPD/WCB 2010)).

insignificant to overall CAF BLS disbursements.<sup>28</sup>

9. In support of its waiver request, SCTC states the support “mismatch will have negative implications to SCTC as they try to deploy broadband to remote areas as well as upgrade their network.”<sup>29</sup> SCTC further states the error was due to a misunderstanding of how CBOLs are classified in the NECA settlement process, and that “[s]trict compliance with a rule that does not allow revisions to correct a mistake is not in the public interest.”<sup>30</sup> Additionally, SCTC states that the amount of potential increased settlements, approximately \$216,000, is immaterial to overall CAF BLS payments.<sup>31</sup>

10. Colo Telephone’s reliance on a 2010 E-Rate decision, granting a waiver to correct ministerial and clerical errors, is misplaced. In the 2021 *Alenco Order*, which involved a waiver to revise line counts reported per section 54.903, the Bureau affirmed the importance of carrier compliance with the Commission’s reporting requirements, stating “USAC requires timely and accurate data in order to administer the high-cost universal service support mechanisms.”<sup>32</sup> The Bureau further stated that “constant adjustments due to late filed or corrected data would render high-cost support unmanageable.”<sup>33</sup> In a 2014 rulemaking order, the Commission also emphasized the importance of adhering to filing deadlines in the high-cost program.<sup>34</sup> Accordingly, absent additional circumstances, the Bureau will not routinely grant a waiver in the high-cost program simply because the revision sought is to correct a clerical or ministerial oversight.

11. The Bureau finds petitioners’ arguments as to the significance of the support amount to petitioner’s broadband operations compared to the insignificance of the amount to the total amount of BLS payments equally unpersuasive. In the *Alenco Order*, a rate-of-return carrier sought a waiver of section 54.903(a) of the Commission’s rules to allow the carrier to revise its Form 507 submission after the filing deadline.<sup>35</sup> The carrier failed to include 28 CBOLs that resulted in a loss of \$73,500 in CAF BLS support.<sup>36</sup> The Bureau made clear “arguments [like Alenco’s] that the estimated impact of the correction is both significant to [the carrier] 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.”<sup>37</sup> Finally, the Bureau stated “[i]f 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.”<sup>38</sup>

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<sup>28</sup> *Id.* at 4-5.

<sup>29</sup> SCTC Petition at 3.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 3-4.

<sup>32</sup> See *Connect America Fund*, WC Docket No. 10-90, Order, 36 FCC Rcd 9043, 9045, para. 7 (WCB 2021) (*Alenco Order*).

<sup>33</sup> *Id.* at 9045, para. 7 n.19 (citing *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 15644, 15693, para. 138 (2014)).

<sup>34</sup> *Connect America Fund*, 29 FCC Rcd at 15690-93, paras. 129-138 (“We expect all ETCs, even those new to the Commission’s processes or with small staffs, to implement appropriate procedures to ensure compliance with the Commission’s filing deadlines and other regulatory requirements.”).

<sup>35</sup> See *Alenco Order*, 36 FCC Rcd at 9034, para. 1.

<sup>36</sup> Alenco Communications, Inc. (Alenco), WC Docket No. 10-90 et al., Petition for Waiver, at 4 (filed Apr. 21, 2021).

<sup>37</sup> *Alenco Order*, 36 FCC Rcd at 9045, para. 7.

<sup>38</sup> *Id.*

12. The Bureau in the *Alenco Order* did, however, ultimately grant a waiver to allow the carrier to revise its submission. The Bureau justified the grant due to a USAC error “that had created the circumstances in which waiver is appropriate” and not because of the carrier’s good cause showing.<sup>39</sup> The Bureau said that “[b]ecause 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.”<sup>40</sup> In this instance, there is no USAC error present to support waiving section 54.903(a)(4) to allow either Colo Telephone or SCTC to revise their FCC Form 509 submissions.

13. As for SCTC’s other argument supporting a waiver, we find it equally unpersuasive. SCTC says it misunderstood whether fiber lines providing broadband service to consumer households are to be included as CBOLs due to information received from NECA. While it is unclear what information NECA provided SCTC, the Commission’s rules unambiguously state that “a consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service.”<sup>41</sup> There is no mention of the technology used to provide the loop and clearly carriers use fiber to provide broadband service to consumers. As the Bureau has stated, “a carrier’s confusion regarding the rules does not establish special circumstances that warrant deviation from the Commission’s rules.”<sup>42</sup> Accordingly, we are not sympathetic to SCTC’s exclusion of fiber from its CBOL line count due to its own misunderstanding as to what qualifies as a reportable loop.<sup>43</sup>

### III. ORDERING CLAUSES

14. 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, the petition for waiver of section 54.903(a)(4) of the Commission’s rules filed by Colo Telephone Company is DENIED.

15. IT IS FURTHER 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, the petition for waiver of section 54.903(a)(4) of the Commission’s rules filed by South Canaan Telephone Company is DENIED.

16. 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

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>39</sup> *Id.* at 9045, para. 8. USAC, due to an administrative error, had incorrectly used a weighted average of lines reported from April 2017 until January 2021, requiring USAC to recalculate support for this period. *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 47 CFR § 54.901(g).

<sup>42</sup> *Federal-State Joint Board on Universal Service, NPI Omnipoint Wireless, LLC, Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission’s Rules et al.*, CC 96-45, Order, 22 FCC Rcd 4946, 4948, para. 7 (WCB 2007).

<sup>43</sup> The Commission revised Section 54.903 to require the reporting of CBOLs in 2016, more than five years before the reporting deadline at issue here. *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3248-49, 3250, at Appx. B.