

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

In the Matter of

National Exchange Carrier Association, Inc. AAD 92-19

Petition for Waiver of Sections 36.611(a) and 36.613(a) of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: June 4, 1992;

Released: June 9, 1992

By the Deputy Chief (Operations), Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order we consider a petition filed by the National Exchange Carrier Association, inc. (NECA) on January 31, 1992, requesting that the date required for Local Exchange Carriers (LECs) to submit Universal Service Fund (USF) data to NECA be temporarily moved from June 30 to August 31, and the date required for NECA to submit these data to the Commission be moved from September 1 to November 1.¹ We are granting this petition in part, as discussed herein.

2. The Commission established the USF in 1986, based on a Federal-State Joint Board recommendation. The fund allows study areas with high loop costs to recover additional revenues from the interstate jurisdiction to offset intrastate costs. The goal of the fund is to preserve universal service by enabling high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies.

3. Section 36.611(a) of the Commission's Rules requires that the LECs file specific unseparated investment, expense and loop count data with NECA on June 30 of each year in order to determine eligibility for USF expense adjustment. These calculations are based on data through December 31 of the previous year. Section 36.613(a) of the Commission's Rules requires that NECA file unseparated loop cost data, a nationwide average unseparated loop cost, the amount of high cost expense adjustment for each study area, and the total nationwide amount of the expense adjustment with the Commission on September 1 of each year. Section 36.613(a) also requires that NECA file loop cost data, the dollar amount of USF expense adjustment and the percentage of change for each study area for the previous five years.

4. Section 61.58(d)(2) of the Commission's Rules requires that tariff filings involving a change in rate structure or a rate increase must be made on at least 45 days' notice. Therefore, NECA files the new USF tariff rate, to be effective January 1, on approximately November 15 of each year. Section 1.773(a)(2)(ii) provides that petitions seeking suspension or rejection of a new tariff filing made

on at least 45 days' notice will be filed and served within 15 days after the date of the tariff filing. As a result, interested parties have until approximately December 1 of each year to file their comments, effectively giving them from September 1 to December 1 to review and analyze NECA's USF filing.

II. PLEADINGS

5. In its petition, NECA states that many LECs are unable to complete separations categorization cost studies by the June 30 reporting date, so they submit estimated separations studies, or separations studies representing a prior period. According to NECA, the data used in the USF process are updated later, when the applicable separations studies become available. This situation results in many adjustments to USF data after the June 30 reporting date and, frequently, after the September 1 filing with the Commission. NECA claims that the LECs must gather data twice, once for USF purposes and a second time for input to their cost separations studies.

6. NECA requests that we add two months to the LECs' filing schedule to enable them to synchronize cost separations studies and USF data collection efforts, thus eliminating unnecessary steps and reducing the number of post-June 30 USF adjustments. NECA claims that, according to its survey of 1991 filings, more than 100 additional 1990 cost separation studies would have been completed and available for use in preparing the 1991 USF data submission had the LEC reporting date been August 31, 1991. NECA estimates that the current reporting schedule resulted in the LECs expending more than 200 hours to make more than 900 adjustments to their USF data. NECA admits that changing the filing date to August 31 will not guarantee that all cost studies will always be completed, but submits that significant savings will result, and fewer corrections for new or revised data will be necessary.

7. NECA also requests that we add two months to its filing deadline for filing USF data with the Commission, to correspond to the addition of two months to the deadline for the LECs' filings with NECA. NECA claims that it needs two months to perform an extensive set of edit and range analyses, and to conduct a review for conformance with FCC rules. NECA's filing deadline would then be November 1 instead of September 1.

8. NECA suggests that we grant this waiver temporarily, for two years, in order to give the Commission and all participating parties time to evaluate the benefits of this proposal. NECA states that two years, rather than one, would ensure that enough time is given to ascertain that the administrative burden on the LECs is reduced, and that reporting accuracy is increased. NECA states that if its suggested changes in filing deadlines are successful, it will initiate a Rule Making to change the filing dates permanently.

9. Ten parties filed comments, with nine parties in complete support of NECA's request.² These nine parties reiterate NECA's contention that allowing an additional two months for the submission of USF data will synchronize cost separations studies and USF data collection, thus reducing the number of adjustments and eliminating duplicative data gathering. NTCA also states that given industry and Commission experience with the annual USF process, NECA's request represents a reasonable balance

between the time needed for the public and the Commission to review these data and the time needed for the industry to prepare them in a cost effective manner.

10. AT&T does not oppose the requested waiver, provided that a corresponding two month extension of time be granted for interested parties to review the data and file comments. AT&T states that under NECA's proposal, NECA and the LECs are given a two month extension for preparing and filing the USF data, but interested parties and the Commission are given only one month to review and comment on the data (a two month cut in the time currently allotted for these activities). AT&T asserts that one month is insufficient to conduct any type of meaningful review because the data are voluminous and complex. AT&T recommends that approval of NECA's waiver request be accompanied by a two month extension of the review period and the effective date of new USF rates. AT&T would adjust for the delay by keeping the existing rates in effect for two extra months. Then, when the new rates are approved, an adjustment for the remainder of the year would be made as a "true-up" mechanism, if necessary.

11. All parties filing reply comments were in support of NECA's petition.³ In its reply, NECA opposes AT&T's suggestion that petitions to reject or suspend proposed USF rates be delayed until February 1 with new USF rates becoming effective on March 1. NECA states that this timetable would result in a mismatch between the effective date of the USF tariff and the USF revenue requirements. NECA further states the the "true-up" proposed by AT&T would result in a permanent mismatch rather than a one-time transition and would also add unnecessary complexity to the USF settlement process.

III. DISCUSSION

12. We believe that NECA presents credible evidence that a longer preparation period could result in better and more accurate filings and we grant its petition in part. However, NECA's proposal, as set out in its petition, is unacceptable because it reduces the time available for Commission and interested party review of the USF filings below the minimum necessary for effective review and analysis. Currently parties have approximately 90 days to review this data, from September 1 to December 1.⁴ Under NECA's proposal, the review period would be cut to 30 days. As AT&T stated, this is clearly inadequate, considering the volume and complexity of the data.

13. We accordingly determine that the due date for LECs to file USF data with NECA should be moved from June 30 to July 31, and the due date for NECA to file USF data with the Commission should be moved from September 1 to October 1. We believe that the review times remaining should be adequate for Commission staff and interested parties, and that this compromise resolution offers some of the benefits of NECA's proposal without imposing the unrealistic reviewing deadlines that that proposal would have created. This changed filing schedule is therefore implemented, as NECA requested, for a two-year trial period, 1992 and 1993, after which NECA and other interested parties may seek to make this modification permanent.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C § 154(i), and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the National Exchange Carrier Association's Petition for Waiver of Sections 36.611(a) and 36.613(a) of the Commission's Rules IS GRANTED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief (Operations)
Common Carrier Bureau

FOOTNOTES

¹ NECA's Petition requests this waiver for the years 1992 and 1993 only. If the USF process is improved by the changed filing dates, NECA would then file a petition to amend the rules permanently.

² The commenting parties are: Alltel Service Corporation; American Telephone and Telegraph Company (AT&T); Frederick & Warinner; Fred Williamson & Associates, Inc.; GVNW Inc./Management; John Staurulakis, Inc.; National Telephone Cooperative Association (NTCA); Southwestern Bell Telephone Company; Telephone Utilities Exchange Carrier Association; and the United States Telephone Association (USTA).

³ Reply Comments were filed by: Adams Telephone Co-Operative; Arctic Slope Telephone Association Cooperative; Baca Valley Telephone; Canby Telephone Association; Custer Telephone Cooperative, Inc.; Fairbanks Municipal Utilities System; Farmers Mutual Telephone Company, Ltd., Kingdom Telephone Company; Leaf River Telephone Company; Molalla Telephone Company; NECA; NTCA; Range Telephone Cooperative; Roggen Telephone Cooperative Company; Roosevelt County Rural Telephone Cooperative, Inc.; Scio Mutual Telephone Association; Stayton Cooperative Telephone Company; Triangle Telephone Cooperative Association, Inc.; Uintah Basin Telephone Association, Inc.; and USTA.

⁴ The data is made public when it is filed with the Commission on September 1. Interested parties have until December 1 to file objections to the tariffs which are based, in part, on the NECA USF data.