

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

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

ORDER ON RECONSIDERATION AND MEMORANDUM OPINION AND ORDER

Adopted: October 28, 2016

Released: October 31, 2016

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration and Memorandum Opinion and Order, the Commission resolves two pending matters regarding data utilized in the final version of the Alternative Connect America Cost Model (A-CAM) for purposes of calculating the offers of model-based support to rate-of-return carriers. Specifically, we deny Baraga Telephone Company's (Baraga) petition for reconsideration of the Commission's March 30, 2016 deadline for submitting corrections to an incumbent telephone carrier's FCC Form 477 used to determine a rate-of-return carrier's percentage of broadband deployment for purposes of making the offer of A-CAM support. We also deny the application for review filed by Valley Telephone Cooperative, Inc., and Copper Valley Telephone, Inc. (collectively, Valley/Copper Valley) of the Wireline Competition Bureau's (Bureau's) order denying Valley/Copper Valley's request to use FCC Form 477 data filed after March 30, 2016 in the model for its study areas. Consistent with this decision, these companies will not be eligible for the offer of A-CAM.

II. BACKGROUND

2. In the Rate-of-Return Reform Order, the Commission adopted a voluntary path for rate-of-return carriers to elect to receive model-based support in exchange for extending broadband service to a pre-determined number of eligible locations. At that time, we made decisions to finalize the A-CAM, and directed the Bureau to "take all necessary steps to release the adopted version of the model for

1 See Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband, WC Docket No. 10-90, 31 FCC Rcd 8641 (WCB 2016) (A-CAM Offer Public Notice).

2 Motion to Reconsider or, in the Alternative, Request for a Waiver of Certain Provisions within FCC 16-33, of Baraga, WC Docket No. 10-90 et al. (filed May 25, 2016) (Baraga Petition).

3 Emergency Application for Review of Valley Telephone Cooperative, Inc. and Copper Valley Telephone, Inc., WC Docket No. 10-90 (filed Aug. 5, 2016) (Valley/Copper Valley Petition); Connect America Fund, WC Docket No. 10-90, Order, 31 FCC Rcd 7790, 7795 para. 16 (WCB 2016) (A-CAM Challenge Process Order). We also dismiss as moot the accompanying petition for stay. Petition for Limited Stay of Valley Telephone Cooperative, Inc. and Copper Valley Telephone, Inc., WC Docket No. 10-90 (filed Aug. 5, 2016) (Valley/Copper Valley Petition for Stay).

4 Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3094-3117, paras. 17-79 (2016) (Rate-of-Return Reform Order).

purposes of calculating support amounts for rate-of-return carriers electing to receive model support.”⁵ In particular, we directed the Bureau to incorporate into the model the June 2015 FCC Form 477 data that had recently been released, and provide a final opportunity for commenters to challenge the competitive coverage contained in the updated version of the model.⁶

3. The Commission also determined that it would exclude from support calculations those census blocks where an incumbent or any affiliated entity is providing 10/1 Mbps or better broadband using either FTTP or cable technologies based on carrier-submitted FCC Form 477 data.⁷ For purposes of implementing this directive, we directed the Bureau “to utilize June 2015 FCC Form 477 data that had been submitted and certified to the Commission prior to the date of release of this order.”⁸ We also concluded that any carrier that has deployed 10/1 Mbps or better broadband to 90 percent or more of its eligible locations in a state, based on June 2015 FCC Form 477 data that had been submitted as of the date of release of the *Rate-of-Return Reform Order*, would not be eligible for A-CAM support.⁹ Our purpose in adopting both restrictions was to target support to areas of greater need.

4. On April 7, 2016, the Bureau released A-CAM version 2.2, which incorporated the inputs and modifications adopted by the Commission, including broadband coverage to reflect the publicly available June 2015 FCC Form 477 data, and commenced the challenge process.¹⁰ On July 25, 2016, the Bureau concluded the streamlined challenge process and made a final determination regarding the broadband coverage incorporated into the final version of the model for purposes of the voluntary election of model-based support.¹¹ On August 3, 2016, the Bureau announced the offers of model-based support to rate-of-return carriers, and stated that carriers have until November 1, 2016 to indicate, on a state-by-state basis, whether they elect to receive model-based support.¹²

III. PETITION FOR RECONSIDERATION

A. Background

5. Baraga asks the Commission to reconsider our decision to use June 2015 FCC Form 477 data submitted as of March 30, 2016 to determine whether a carrier has deployed 10/1 Mbps or better broadband to 90 percent or more of its eligible locations, and “instead provide a reasonable window for companies to correct or update June 2015 Form 477 data.”¹³ Baraga was not included in the offers of model-based support because its own data on file as of March 30, 2016 indicated that Baraga had

⁵ *Id.* at 3102, para. 37.

⁶ *Id.* at 3115, para. 71.

⁷ *Id.* at 3109, para. 56 (concluding that “it is appropriate to make this adjustment to the model in order to advance our policy objective of advancing broadband deployment to unserved customers”).

⁸ *Id.*

⁹ *Id.* at 3113, para. 66 (“This will preserve the benefits of the model for those companies that have more significant work to do to extend broadband to unserved consumers in high-cost areas, and will prevent companies from electing model-based support merely to lock in existing support amounts.”). The *Rate-of-Return Reform Order* was released on March 30, 2016.

¹⁰ *Wireline Competition Bureau Releases Alternative Connect America Cost Model Version 2.2 and Illustrative Results and Commences Challenge Process to Competitive Coverage*, WC Docket No. 10-90, 31 FCC Rcd 3455 (WCB 2016).

¹¹ *A-CAM Challenge Order*, 31 FCC Rcd 7790.

¹² *A-CAM Offer Public Notice*, 31 FCC Rcd 8641; *see also Wireline Competition Bureau Releases Report for Alternative Connect America Cost Model with Minor Corrections*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8959 (WCB 2016).

¹³ Baraga Petition at 3.

deployed at least 10/1 Mbps to more than 90 percent of its eligible locations. Baraga, in the alternative, also requested a waiver of the Commission's March 30, 2016 deadline, which the Bureau denied on September 21, 2016.¹⁴ Baraga filed revised data on May 25, 2016, and requests that we use the revised data to determine its eligibility to elect model-based support.¹⁵ Absent reconsideration or waiver of the March 30, 2016 deadline, Baraga will not be eligible to elect model support.

B. Discussion

6. We decline to reconsider the Commission's March 30, 2016 deadline for submitting FCC Form 477 used to determine a rate-of-return carrier's percentage of broadband deployment for purposes of making the offer of A-CAM support. The Commission deliberately adopted specific deadlines regarding the vintage of data used to determine limitations regarding eligibility for model-based support so that carriers could not change their data after release of the *Rate-of-Return Reform Order*. We specifically stated that "carriers may not resubmit their previously filed data to reduce their reported FTTP or cable coverage."¹⁶ Similarly, carriers may not resubmit their previously filed data to reduce the percentage of their eligible locations where they have deployed at least 10/1 Mbps.

7. We recognize that Baraga may have inadvertently incorrectly reported its competitive local exchange carrier (CLEC) affiliate's broadband coverage. Deadlines exist in administrative proceedings for a reason. The purpose of the deadline in this case was to impose administrative closure on the data set for incumbent study areas at a specific moment in time for the efficient implementation of the overall reform effort.

8. We are not persuaded by Baraga's argument that because there is a conflict between the incumbent Form 477 data and the CLEC Form 477 data, we should resolve the conflict by only looking at the incumbent data set that was on file with the FCC on March 30, 2016.¹⁷ In determining the percentage of incumbents' broadband deployment, the Bureau included broadband provided by affiliates because many carriers use their affiliates' facilities to deliver voice and broadband service in furtherance of their eligible telecommunications carrier obligations in the incumbents' service territories.¹⁸

9. We note that the routine filing deadline for submitting June 2015 Form 477 data was September 1, 2015, well in advance of the March 30, 2016 cut-off date we imposed for these purposes.¹⁹ Form 477 filers must certify to the accuracy of their data and are under a continuing obligation to make corrections to their filings, independent of this proceeding.²⁰ The Commission must balance using the most accurate data against other considerations, such as administrative finality and potential gaming by filers. Therefore, we decline to provide more time for carriers to correct or update their June 2015 FCC

¹⁴ *Connect America Fund*, WC Docket No. 10-90, Order, DA 16-1063 (WCB rel. Sept. 21, 2016).

¹⁵ Baraga Petition at 5.

¹⁶ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56.

¹⁷ Baraga made this argument in the context of seeking a waiver of the March 30, 2016 deadline. As noted above, the Bureau denied the waiver and the Commission agrees that waiver is not warranted. *See supra* para. 5 and note 14.

¹⁸ Previous versions of A-CAM had treated some affiliates as unsubsidized competitors, which resulted in no support being calculated for those census blocks. Months prior to the release of the *Rate-of-Return Reform Order*, the Bureau modified the methodology it previously had used to identify unsubsidized competitors to address concerns raised by rate-of-return carriers. *See Wireline Competition Bureau Releases Alternative Connect America Cost Model Version 2.1 and Illustrative Results for Potential Use in Rate-of-Return Areas*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 14217, 14219 (WCB 2015).

¹⁹ 47 CFR § 1.7002.

²⁰ *See, e.g., Rate-of-Return Reform Order*, 31 FCC Rcd at 3105, para. 45; 47 CFR § 1.7001(c),(e).

Form 477 data, which would delay implementation of the voluntary path to the model for those carriers interested in electing model support that had correctly filed their data.²¹

IV. MEMORANDUM OPINION AND ORDER

A. Background

10. Valley/Copper Valley, pursuant to section 1.115 of the Commission's rules, seeks review of the Bureau's order denying its request that the Bureau update A-CAM to reflect its June 2015 Form 477 data submitted after the March 30, 2016 deadline.²² Valley/Copper Valley was not included in the offers of model-based support because FCC Form 477 data on file as of March 30, 2016 indicated that it had deployed at least 10/1 Mbps to more than 90 percent of its eligible locations.²³ The Bureau found that Valley/Copper Valley had not demonstrated good cause warranting waiver of the deadline.²⁴ The Bureau was not persuaded by the argument that special circumstances exist because an otherwise routine reporting correction impacts the company's ability to elect model-based support and would harm the public interest by depriving it of the opportunity to receive support to which it otherwise would be entitled.²⁵ Valley/Copper Valley claims that the Bureau's action conflicts with established Commission policy, was arbitrary and capricious, inconsistent with the public interest, and should be overturned.

B. Discussion

11. We conclude that Valley/Copper Valley has failed to establish any basis to overturn the Bureau's decision finding that Valley/Copper Valley failed to demonstrate that there is good cause to waive the March 30, 2016 deadline, and thus we deny Valley/Copper Valley's application for review. We are not persuaded by Valley/Copper Valley's argument that the Bureau acted in a manner inconsistent with established Commission policy by rejecting Valley/Copper Valley's request to use its corrected data in A-CAM.²⁶ On the contrary, the Bureau was implementing the Commission's decision to determine the percentage of broadband deployment "based on June 2015 FCC Form 477 data that has been submitted as of the date of release of this Order."²⁷ Nor are we persuaded by Valley/Copper Valley's argument that the Bureau's decision to enforce the deadline adopted the Commission was arbitrary and capricious.²⁸

12. Contrary to Valley/Copper Valley's assertions,²⁹ the focus of the streamlined challenge process was on the data of competitors, not incumbents.³⁰ When we adopted the streamlined challenge

²¹ See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3111-14, paras. 60-69 (describing A-CAM budget and election process).

²² *A-CAM Process Challenge Order*, 31 FCC Rcd at 7795 para. 15-16.

²³ Copper Valley, an incumbent local exchange carrier, is a wholly owned subsidiary of Valley. Valley operates in study area code (SAC) 452176 and 492176, and Copper Valley operates in 452176. Although they both operate in the same study area in Arizona, Valley and Copper Valley separately file FCC Form 477 data.

²⁴ 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 if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *Connect America Fund*, 31 FCC Rcd at 7795, para. 16.

²⁶ Valley/Copper Valley Petition at 3-4.

²⁷ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 66.

²⁸ Valley/Copper Valley Petition at 6-7.

²⁹ *Id.* at 4-5, 6.

process, we thought it unlikely that there had been a significant increase in broadband coverage by unsubsidized competitors in the specific blocks eligible for support in rate-of-return areas; however, we wanted to “take steps to ensure that support is not provided to overbuild areas where another provider is already providing voice and broadband service meeting the Commission’s requirements.”³¹ Moreover, we intended to impose administrative closure on the data set for incumbent study areas used to determine the limitations regarding eligibility for model-based support. As noted above, the Commission deliberately adopted specific deadlines regarding the vintage of data used to determine these limitations so that carriers could not change their data after release of the *Rate-of-Return Reform Order* to evade the restrictions. We recognize that Valley/Copper Valley’s previously filed FCC Form 477, which it certified was accurate, may be incorrect, but other policy considerations inform our decision here, including our desire to proceed expeditiously with the offer of model-based support.

13. Nor are we persuaded by Valley/Copper Valley’s argument that the Bureau acted in a manner inconsistent with established Commission policy and the public interest by concluding that “[t]he fact that a routine correction in the future may well have affected support amounts for some carriers had they been recognized earlier is not grounds for a waiver.”³² In support of this contention, Valley/Copper Valley argues that “the Commission has routinely recognized economic harm resulting from the provision of corrected data after an applicable cutoff deadline to be grounds for a waiver.”³³ While the Bureau in the past has considered the impact of reductions in support among other factors that helped establish good cause to grant certain waiver petitions, more recently it has recognized that “[h]olding that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support.”³⁴ And in any event, we are not persuaded by Valley/Copper Valley’s unsupported claims that without the certainty of model-based support, it would lack the funding certainty to make additional network investments to extend and improve service, while maintaining reasonable rates.³⁵ Valley/Copper Valley will continue to receive support under the embedded cost mechanisms, as

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³⁰ Although we thought it unlikely there had been a significant increase in broadband coverage by unsubsidized competitors in the specific blocks eligible for support in rate-of-return areas, i.e. those that are higher cost, we did “want to take steps to ensure support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission’s requirements.” *Rate-of-Return Reform Order*, 31 FCC Rcd at 3115, para. 71.

³¹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3551, para. 71.

³² Valley/Copper Valley Petition at 5 (citing *Connect America Fund*, 31 FCC Rcd at 7795, para. 16).

³³ *Id.* (citing Bureau-level decisions granting requests for waiver of deadlines to submit updated line counts for certain types of universal service support). Valley/Copper Valley also argues that the Commission has granted waivers in order to “ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.” *Id.* at 5-6 (citing *Smith Bagley, Inc., Petition for Waiver of Sections 54.809(c) of the Commission’s Rules and Regulations*, Order, 16 FCC Rcd 15275, 15277, para. 7 (CCB 2001)). In that case, the Bureau found good cause to waive a filing deadline based, in part, on the special circumstances of a newly designated eligible telecommunications carrier that had recently filed a similar certification and immediately remedied its omission. We find that those additional facts, not present here, helped establish good cause to grant that waiver petition. In any event, this was a Bureau level decision and thus not binding on the Commission.

³⁴ *Petitions for Waiver of Universal High-Cost Filing Deadline*, 31 FCC Rcd 7386, 7390, para. 10 (2016) (citing *Coral Wireless d/b/a Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, Order, 29 FCC Rcd 9540, 9542 para. 8 (WCB 2014)). *Cf. Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Memorandum Opinion and Order and Order on Reconsideration, FCC 16-112, para. 12 (rel. Aug. 22, 2016) (declining to waive post-selection rules for rural broadband experiments based on speculative judgments about future service).

³⁵ Valley/Copper Valley Petition at 6.

reformed by the Commission, and may select one of two methods for determining its deployment obligations associated with that support amount.³⁶

14. Moreover, the precedent cited is inapposite. Valley/Copper Valley will continue to receive high-cost support through the reformed legacy mechanisms. Valley/Copper Valley may not have the opportunity to elect model support, but that is different from any of its cited precedent on missed filing deadlines that impacted an individual carrier's continued receipt of ongoing support.³⁷ Moreover, those carriers had special circumstances which we do not find present here. Therefore, we conclude that the Bureau did not err in concluding that Valley/Copper Valley had failed to demonstrate good cause warranting waiver of the March 30, 2016 deadline.³⁸

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405 and sections 1.3, 1.115, and 1.429 of the Commission's rules, 47 CFR §§1.3, 1.115, and 1.429, that this Order on Reconsideration, and Memorandum Opinion and Order IS ADOPTED.

16. IT IS FURTHER ORDERED that the Petition for Reconsideration, filed by Baraga Telephone Company, IS DENIED.

17. IT IS FURTHER ORDERED that the Application for Review, filed by Valley Telephone Cooperative, Inc., and Copper Valley Telephone, Inc., IS DENIED.

18. IT IS FURTHER ORDERED that the Petition for Stay, filed by Valley Telephone Cooperative, Inc., and Copper Valley Telephone, Inc., IS DISMISSED.

19. 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

Marlene H. Dortch
Secretary

³⁶ See *Wireline Competition Bureau Announces Posting of Information Regarding Deployment Obligations for Incumbent Rate-of-Return Carriers*, WC Docket No. 10-90, DA 16-1141 (WCB rel. Oct. 6, 2016).

³⁷ See *Petition for Waiver of Universal Service High-Cost Filing Deadlines, Federal-State Joint Board on Universal Service*, WC Docket No. 08-71, WC Docket No. 08-71, CC Docket No. 96-45, Order, 24 FCC Rcd 4818 (2009) (granting Northeast Iowa waiver of annual filing deadline that otherwise would have prevented it from receiving local switching support for an entire year); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 07-110 (WCB rel. Jan. 18, 2007) (granting NPCR waiver of quarterly line count filing deadline, mailed one day before the deadline and received one day after the deadline, that otherwise would have prevented it from receiving interstate access support for an entire quarter); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 05-2829 (WCB rel. Oct. 27, 2005) (granting Frontier waiver of quarterly line count filing deadline that otherwise would have prevented 31 companies in 19 states from receiving interstate access support for an entire quarter).

³⁸ See *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1225 (D.C. Cir. 1999) (holding that strict enforcement of a rule is not per se an abuse of discretion, noting that even-handed enforcement of a Commission deadline is justified "by the gain in certainty and administrative ease, even if it appears to result in some hardship in individual cases.") (quoting *Turro v. FCC*, 859 F.2d 1498, 1500 (D.C. Cir. 1988)).