

**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
)	
Bloomington Telephone Company Application for Review)	
)	
State Telephone Company Application for Review)	

ORDER ON REVIEW

Adopted: November 27, 2023

Released: November 28, 2023

By the Commission:

I. INTRODUCTION

1. One of the Commission’s central missions is to make “available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹ This principle of “universal service” ensures affordable telecommunications services across America, including to consumers living in high-cost areas. The Commission’s High-Cost program—one of four Universal Service Fund programs—authorizes universal service support to Eligible Telecommunications Carriers to bring broadband capable voice networks to consumers living in rural, insular and high-cost areas. Receipt of support is conditioned on, in part, carriers satisfying deployment obligations and annually reporting their deployment through the High-Cost Universal Broadband (HUBB) portal. Our reporting requirements are necessary for the Commission to monitor carriers’ progress and significantly aid in deterring waste, fraud, and abuse of federal funds. Carriers that fail to comply with our reporting obligations are subject to support reductions.²

2. As carriers participating in the Commission’s High-Cost program, Bloomington Telephone Company (Bloomington) and State Telephone Company (State) (collectively, Petitioners) are subject to these requirements. In 2018, State timely filed its annual report but did not fully understand the reporting time period, which led to an incorrect filing. In 2019, both State and Bloomington failed to timely file their annual report, which resulted in a support reduction assessed in January 2020. The Petitioners separately sought relief from the Wireline Competition Bureau (Bureau). State sought relief to correct its 2018 filing after the deadline to report locations it was required to report, and it sought relief of the 2019 filing deadline. Bloomington, jointly with ComSouth Corporation (ComSouth) sought relief of the 2019 deadline. The Bureau denied both requests, and the Petitioners seek reversal of the Bureau’s

¹ 47 U.S.C. § 151.

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3166, para. 214 (2016) (directing the Bureau to work with USAC to develop an online portal) (*Rate-of-Return Reform Order*).

denials.³ For the reasons set forth below, we reverse the Bureau's decision and grant the waiver requests of Petitioners and ComSouth.

II. BACKGROUND

3. *Applicable Rules.* The 2016 *Rate-of-Return Reform Order* adopted new annual reporting requirements for rate-of-return eligible telecommunications carriers (ETCs).⁴ The Order directed these ETCs "to submit to the Universal Service Administrative Company (USAC) the geocoded locations to which they have newly deployed broadband" on a recurring basis.⁵ ETCs must provide annual certifications with this geocoded location information data to demonstrate the ETC is on track to meet its deployment obligations.⁶

4. The *Rate-of-Return Reform Order* further directed USAC to develop an online system to accept the geocoded location information data and related certifications.⁷ In response, USAC developed the HUBB portal. ETCs receiving high-cost support must file their geocoded location information data and related certifications through the HUBB portal.⁸ Section 54.316 of the Commission's rules establishes the reporting and certification requirements for these ETCs.⁹ Specifically, 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.¹⁰ Carriers' reports are due annually, by March 1 of a given year for the previous year's data.¹¹ Any carrier that does not deploy broadband service in the prior year must nonetheless certify via the HUBB portal that it has no new locations to report; otherwise, it will have failed to meet the Commission's annual reporting and certification requirement.¹²

5. On December 2, 2019, the Bureau adopted an Order granting several petitions for waiver of the March 1, 2018 deadline in part because of confusion relating to the filing requirements for the newly created HUBB portal.¹³ In that Order, the Bureau acknowledged the potential confusion about the filing and certification requirements for ETCs that did not deploy any locations in the reporting year,¹⁴ and it stated that, with the release of its Order, it expected ETCs to be familiar with all relevant reporting requirements in the future.¹⁵

6. *Bloomingtondale and ComSouth's Waiver Request.* On April 21, 2020, Bloomingtondale and

³ *Connect America Fund, et al.*, WC Docket No. 10-90, et al., CC Docket No. 01-92, Order, 35 FCC Rcd 8205, 8208-10, paras. 8-11 (WCB 2020) (*2020 Denial Order*).

⁴ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3163-64, para. 209.

⁵ *Id.* at 3164, para. 210.

⁶ *Id.* at 3166, para. 215.

⁷ *Id.* at 3166, para. 214 (directing the Bureau to work with USAC to develop an online portal).

⁸ *See, e.g., id.* at 3177, 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).

⁹ *See* 47 CFR § 54.316.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See* 47 CFR §§ 54.316(a)(1), (c)(1), and *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 *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 34 FCC Rcd 11139, 11144, para. 14 (WCB 2019) (*2019 HUBB Waiver Order*).

¹⁴ *Id.* at 11145, para. 17.

¹⁵ *Id.* at 11146, para. 20.

ComSouth requested a waiver of the March 1, 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.¹⁶ According to its petition, Bloomingdale did not have new geocoded location data information to report in the HUBB for 2018 because it did not deploy broadband service to any new locations during that year.¹⁷

Bloomingdale claims it was not aware of the requirement to certify that it had no locations to report for 2018.¹⁸ Bloomingdale and ComSouth alleged that the missed deadline resulted in a significant reduction in support.¹⁹ They argued that granting the petition was in the public interest because the "financial penalty that [petitioners] incurred was a drastic adjustment and will directly and negatively impact the rural communities [it] serve[s] . . ." by "directly affect[ing] [petitioners'] ability to fund broadband deployment, as well as the day-to-day operations and maintenance of [their] current networks and infrastructure."²⁰

7. On August 5, 2020, the Bureau denied Bloomingdale and ComSouth's petition, finding that "ComSouth and Bloomingdale should have been familiar with the filing requirements by March 1, 2019."²¹ The Bureau found, for example, that USAC had made "consistent and repeated efforts to inform ETCs of the reporting and certification deadline" as well as the underlying reporting requirement.²² The Bureau was also unpersuaded by ComSouth and Bloomingdale's argument that it was not aware of the severity of the penalty. The Bureau concluded that ComSouth and Bloomingdale "should have known what the reduction of support would be" because the calculation is contained in the same rule that set the reporting deadline.²³

8. On September 1, 2020, Bloomingdale filed the instant Application for Review alleging that the Bureau's Order: (1) involves a question of law or policy which has not been previously resolved by the Commission; (2) made an erroneous finding in concluding that Bloomingdale should have known what the reduction of support would be, based on the number of days it filed after the March 1, 2019 deadline; and (3) was inconsistent with Bureau precedent waiving the March 1 deadline for HUBB filings.²⁴ On December 28, 2020, Bloomingdale filed a supplement to its Application for Review,²⁵ seeking, as an alternative to a complete waiver of its support reduction, a partial waiver of its support reductions. In support for its request for partial waiver, Bloomingdale noted the effects of the COVID-19 pandemic and its efforts to aid consumers.²⁶

¹⁶ 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://www.fcc.gov/ecfs/document/1042129184437/1> (Bloomingdale and ComSouth Petition).

¹⁷ Bloomingdale and ComSouth Petition at 4-5.

¹⁸ *Id.*

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 11.

²¹ *2020 Denial Order*, 35 FCC Rcd at 8209, para. 10.

²² *Id.* at 8208-8209, para. 9.

²³ *Id.* at 8209, para. 10.

²⁴ Application for Review of Bloomingdale Telephone Company, WC Docket No. 10-90, et al., at 2 (filed Sept. 1, 2020) (Bloomingdale AFR), <https://www.fcc.gov/ecfs/document/109011532002978/1>. ComSouth did not jointly file the AFR, despite jointly filing the original petition for waiver.

²⁵ See Supplement to Bloomingdale Telephone Company's Application for Review WC Docket No. 10-90, et al., CC Docket No. 01-92 (filed Dec. 28, 2020), <https://www.fcc.gov/ecfs/document/1228028267428/1> (Bloomingdale Supplement).

²⁶ *Id.* at 2.

9. *State's Application for Review.* On June 12, 2020, State requested a waiver of both the March 1, 2018 and March 1, 2019 filing deadlines established by section 54.316(c) of the Commission's rules.²⁷ In 2017, the Bureau had waived the March 1, 2017 HUBB filing deadline for Connect America Fund-Broadband Loop Support (CAF BLS) and other high-cost support recipients,²⁸ essentially extending it so that the deadline for CAF BLS recipients to make their first HUBB filing would be March 1, 2018.²⁹ In the waiver order, the Bureau said that by March 1, 2018, CAF BLS carriers must report all locations deployed to between May 25, 2016 and December 31, 2017. State, however, "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, 2017.³⁰ State sought waiver of the March 1, 2018 deadline so that it could report locations deployed to between May 25, 2016 to December 31, 2016.

10. State says that it never certified its March 1, 2019 HUBB filing because it did not have the "geocoded information necessary to make a complete HUBB filing."³¹ State asserts that it had contracted with a third party to 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.³² State claims it has since fixed any errors with its filings and completed its March 1, 2020 HUBB filing on time.³³ State argued that granting the waiver was in the public interest because no entity was harmed by its faulty HUBB filings and it ultimately corrected its filing.³⁴

11. In the same August 5, 2020 Order, the Bureau denied State's petition for reasons identical to those on which it denied Bloomingdale and ComSouth's petition.³⁵

12. On September 3, 2020, State filed the instant Application for Review alleging that the Bureau's Order: (1) is in conflict with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law or policy which has not previously been resolved by the Commission; and (3) presents an erroneous finding as to an important or material question of fact.³⁶

13. *Standard of Review.* Section 1.115 of the Commission's rules specifies the factors that warrant Commission consideration of the issues presented in an application for review of action taken pursuant to delegated authority.³⁷ The Commission considers, among other things, whether the action

²⁷ 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://www.fcc.gov/ecfs/document/10612087429875/1> (State Petition).

²⁸ *Connect America Fund*, WC Docket No. 10-90, Order, 32 FCC Rcd 1445, 1445 para. 1 (WCB 2017) (*HUBB Extension Order*).

²⁹ *Id.* at 1445, para. 2.

³⁰ State Petition at 3.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 4.

³⁴ *Id.* at 10.

³⁵ *2020 Denial Order*, 35 FCC Rcd at 8209, para. 10. The Bureau held that State should have been aware of its reporting and certifications obligations in part because of the repeated efforts USAC took to inform all carriers of these requirements. *Id.* at 8209-10, para. 11. Further, the Bureau had 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 . . .'" in the *2016 HUBB Guidance Public Notice*. *Id.*

³⁶ See Application for Review of State Telephone Company, WC Docket No. 10-90, et al., at 5 (filed Sept. 3, 2020), <https://www.fcc.gov/ecfs/document/10903270410510/1>.

³⁷ 47 CFR § 1.115. See also 47 U.S.C. § 155(c)(4)-(7).

taken is in conflict with case precedent or established Commission policy, whether it was based on an erroneous finding as to an important or material question of fact, or whether there was prejudicial procedural error.³⁸

III. DISCUSSION

14. *Bloomingtondale and ComSouth.* We grant Bloomingtondale's Application for Review because we find that confusion about filing obligations was reasonable until the Bureau's December 2, 2019 waiver order,³⁹ and that Bureau precedent supports waiving Bloomingtondale's support reductions. In the *2019 HUBB Waiver Order*, the Bureau concluded that carriers had "reasonable confusion" about their filing obligations.⁴⁰ That confusion, specifically about carriers' requirement to certify when there was no deployment in the prior year, was not obviated until the December 2, 2019 waiver order under these circumstances. While the Bureau in the *2019 HUBB Waiver Order* stated that it did not anticipate granting "future petitions with similar facts,"⁴¹ Bloomingtondale missed the March 1, 2019 HUBB filing prior to the release of the *2019 HUBB Waiver Order*. Thus, Bloomingtondale's confusion that it was not aware of the requirement to certify that it had no locations to report for 2018 was reasonable. Accordingly, we reverse the Bureau's decision in the *August 2020 Waiver Order* to deny Bloomingtondale's waiver, and we direct USAC to restore support consistent with our decision. For the same reasons, on our own motion, we reverse the Bureau's decision in the *August 2020 Waiver Order* to deny ComSouth's waiver, and we direct USAC to restore support consistent with this decision.⁴²

15. *State Telephone.* State contends 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, 2017.⁴³ Our locations reporting rule requires carriers to report all locations deployed to in the prior year.⁴⁴ While the Bureau announced that the March 1, 2018 HUBB filing needed to include 2017 locations and 2016 locations back to May 25, 2016, State's belief that only 2017 locations were needed was reasonable as the Bureau's announcement deviated from the usual requirement. Accordingly, we reverse the Bureau's decision to deny State relief from the March 1, 2018 HUBB deadline.

16. State failed to make its HUBB certification due March 1, 2019 and was consequently subject to a support reduction of over \$1 million. Based on the record before us, State has shown that even though it never actually made the certification, State had reason to believe that it did not need to file given it did not yet have geocoding for its deployed locations. As is customary and happened here, USAC contacted carriers that failed to make their HUBB certifications and, therefore, contacted State shortly after March 1, 2019. State responded promptly, candidly described the situation about its delays and struggles with geocoding its served locations for the first time, and assured USAC that it was "working diligently" to obtain the necessary information.⁴⁵

17. By the time of that correspondence, the HUBB system was closed for filing locations deployed to in 2018. While State would not file locations until March 2020, it was reasonable for State to

³⁸ 47 CFR § 1.115(b)(2).

³⁹ Bloomingtondale AFR at 12.

⁴⁰ *2019 HUBB Waiver Order*, 34 FCC Rcd at 11145-46, para. 19.

⁴¹ *Id.* at 11146, para. 20.

⁴² We do this *sua sponte* because ComSouth is similarly situated to Bloomingtondale but, unlike Bloomingtondale, did not file an Application for Review of the Bureau's denial of its petition for waiver.

⁴³ State Petition at 3.

⁴⁴ 47 CFR § 54.316.

⁴⁵ See State Petition at Attachment B.

believe that it did not need to file its deployed locations until it had the necessary geocoding for those locations. Accordingly, we reverse the Bureau's decision in the *August 2020 Waiver Order* to deny State from any relief from the March 1, 2019 HUBB deadline, and we direct USAC to restore support consistent with our decision.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(1), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 1.3 and 1.115 of the Commission's rules, 47 CFR §§ 1.3 and 1.115, that this order IS ADOPTED.

19. IT IS FURTHER ORDERED that the Application for Review, filed by Bloomingdale Telephone Company, IS GRANTED, and 47 CFR § 54.316(c)(1) is waived, as indicated herein.

20. IT IS FURTHER ORDERED that the Application for Review, filed by State Telephone Company, IS GRANTED, and 47 CFR § 54.316(c)(1) is waived, as indicated herein.

21. IT IS FURTHER ORDERED that, as applied to ComSouth Corporation, 47 CFR § 54.316(c)(1) is waived, to the extent indicated herein.

22. 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