

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	WC Docket No. 01-92

PETITION FOR WAIVER

NTCA–THE RURAL BROADBAND ASSOCIATION

To the Commission:

I. INTRODUCTION

NTCA–The Rural Broadband Association (NTCA) files this Petition for Waiver of 47 C.F.R. § 54.316(c) on behalf of its members and similarly-situated companies. Waiver is requested for relief and avoidance of unnecessary administrative costs and/or penalties that may accrue from certain ministerial errors commonly occasioned during the filing of broadband deployment data in the High-Cost Universal Broadband portal (HUBB), but which have no practical impact on the ability of the Commission or the Universal Service Administrative Company (USAC) to determine a filer’s compliance with underlying obligations. Specifically, these instances include timely filing of location data per 47 C.F.R. § 54.316(a), but without the secondary certification required by 47 C.F.R. § 54.316(b) to reassert that all of the certified information submitted that demonstrates satisfaction of an applicable deployment obligation in fact satisfies that obligation. Accordingly, waiver of the 47 C.F.R. § 54.316(c), specifically, the

filing deadline, will enable companies that inadvertently erred by not certifying twice in each place respectively (even as they submitted all relevant information) to make this technical correction to their filings and enter compliance with applicable filing regulations but without risk of penalties or similar costs.

II. DISCUSSION

In the 2011 *USF Transformation Order*,¹ the Commission introduced reforms to the high-cost programs of the Universal Service Fund (USF). These included, for the first time, the provision of Connect America Fund (CAF) support for broadband networks. In 2016, the Commission introduced additional revisions for rate-of-return providers, including an opportunity to elect voluntary model-based support through the Alternative Connect America Model (ACAM) and the creation of Connect America Fund-Broadband Loop Support (CAF-BLS) and the Alaska Plan.² As part of these programs, most participants are generally required to meet build-out obligations for voice and broadband services and to report their deployment progress periodically in the HUBB, a web-based portal administered by USAC. Support recipients are required to upload into the HUBB by March 1 of each year locations that were deployed in the previous year. Failure to deploy, or failure to upload and certify deployed locations into the HUBB, can result in penalties that include suspension of high-cost support.

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up: Report and Order and Further Notice of Proposed Rulemaking*, Docket Nos. 10-90, 09-51, 07-135, 05-357, 01-92, 96-45, 03-109, 10-208, FCC 11-161 (2011).

² *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime: Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, Docket Nos. 10-90, 14-58, 01-92, FCC 16-33 (2016); *see also Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund – Alaska Plan*, Docket Nos. 10-90, 10-208, 16-271, FCC 16-115 (2016).

Support recipients are required to certify two criteria in the annual HUBB submission: (1) the number of newly serviced locations, and (2) a certification that they are meeting their deployment requirements, *i.e.*, that they are meeting deployment milestones as demonstrated by the locations reported. Many USAC submissions, however, appear to indicate that while providers are timely uploading their location data in satisfaction of the applicable deployment milestones, the separate “milestone” certification itself is not always completed despite the fact that the information showing achievement of this requirement is resident within the system. As a practical matter and for purposes of this instant Petition, the dual certification requirement can be viewed as a programmatic redundancy. Stated differently, a provider that reports the proper number of newly serviced locations pursuant to 47 C.F.R. § 54.316(a) *by definition* would be in compliance with the milestone obligations that are then certified separately pursuant to C.F.R. § 54.316(b). Accordingly, an inadvertent oversight to check a separate box to certify that the milestone has been met based upon the data already timely reported and itself certified carries no practical import because the preceding certifications of newly serviced locations demonstrate that the milestone requirements have indeed been met. Accordingly, where a provider has inadvertently neglected to complete the second § 54.316(b) certification, waiver of 47 C.F.R. § 54.316(c) (the filing deadline) will enable companies to *post hoc* correct their filings without undue administrative burden or penalty. Given the prevalence of this error in recent filings and the ministerial non-substantive nature of the “second certification” in the system, a waiver to address all inadvertent incomplete filings is warranted.

The Commission may waive its rules for good cause shown.³ “Good cause shown” is commonly defined as instances in which special circumstances are shown and deviation from the

³ 47 C.F.R. § 1.3.

applicable rule will serve the public interest.⁴ “Serving the public interest” can include the avoidance of undue hardship, the promotion of equitable outcomes, and/or the more effective implementation of rules.⁵ In a recent Order granting relief on the issue of unfilled HUBB certifications, the Commission reiterated that support recipients must account for situations that arise within the normal and ordinary course of business, such as inclement weather, vendor delays, employee issues, or other factors that could delay deployment. The Commission signaled that in instances involving reasonably foreseeable factors, a sufficient showing will be necessary to meet the waiver standard. In contrast, in several recent Orders, the Commission has acknowledged that the certification errors “appear[] to be an inadvertent administrative oversight . . .” and promptly resolved the matters by setting aside any potential penalties.⁶

The multiple occurrences of the administrative error described in this instant Petition by numerous companies, and the prompt and favorable resolution by the Commission for relief in several instances, indicates that the portal design may not be as fully intuitive as to be most effective. Accordingly, waiver of 47 C.F.R. § 54.316(c) is appropriate when locations are otherwise timely uploaded into the HUBB showing completion of required milestones but the separate milestone certification of C.F.R. § 54.316(b) is not made. Grant of this waiver will avoid administrative costs, burdens, and delays for both provider companies and Commission staff when these common errors are made. NTCA urges grant of this waiver in instances where USAC confirms the timely entry of locations into the HUBB that demonstrate compliance with the applicable milestone but where multiple successive certifications are not made. This is surely

⁴ See, *Northeast Cellular Telephone Co. L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ See, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶ See, *i.e.*, *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime: Oder*, Docket Nos. 10-90, 14-58, 07-135, 01-92, DA 21-1216, at para. 10 (2021).

consistent with the public interest and the fair and rapid distribution of funding necessary to speed broadband deployment more fully throughout the Nation.

III. CONCLUSION

For the reasons stated herein and above, NTCA recommends waiver of 47 C.F.R. § 54.316(c) is appropriate when locations are otherwise timely uploaded into the HUBB showing completion of required milestones but the separate milestone certification of C.F.R. § 54.316(b) is not made. The requested relief is consistent with the public interest as it will prevent undue hardship, promote equitable outcomes, and enable more effective implementation of applicable Commission rules.

Respectfully submitted,

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