



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 13, 2013

Allan Arlow
Administrative Law Judge
Public Utility Commission of Oregon
550 Capitol St NE – Suite 215
Salem OR 97301

Re: *In the Matter of: Staff Investigation into Eligible Telecommunications Carriers'
Requirements*
PUC Docket No.: UM 1648
DOJ File No.: 860105-GB0226-13

Dear ALJ Arlow:

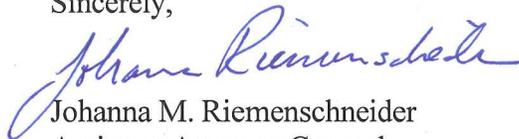
On June 3, 2013, a Partial Stipulation executed by all parties was filed in this docket. Staff filed, also on June 3, 2013, a motion to amend Order No. 06-292, expedited consideration requested, and a request for waiver of OAR 860-001-0350(7). In a ruling issued on June 6, 2013, a waiver of OAR 860-001-0350(7) was granted, the filing deadlines for a response to the motion to amend and any reply were shortened, and the deadline to file objections to the partial stipulation was shortened to seven days on the commission's own motion. The motion to amend Order No. 06-292 remains pending.

The Federal Communications Commission ("FCC") issued an order on June 10, 2013 that is relevant to this proceeding. *In the Matter of Connect America Fund*, FCC 10-90, DA 13-1348 (June 10, 2013). A copy of this order is enclosed with this letter. The order grants a limited waiver of certain ETC annual reporting requirements until after the federal Office of Management and Budget approves the FCC's new annual report form. The order further grants a limited waiver of the states' deadline for filing annual certification, which is normally October 1.

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Staff does not believe this order materially affects either the partial stipulation or the pending motion to amend. Among other changes, the parties request an amendment to Order No. 06-292 that requires filing a copy of the FCC annual report "no later than fourteen (14) days after each report is due to be submitted to the FCC." Partial Stipulation at 4, line 10; Motion to Amend at 3. This amendment language allows for continued flexibility that Staff believes is consistent with the FCC's limited waiver in the enclosed order.

Sincerely,



Johanna M. Riemenschneider
Assistant Attorney General
Business Activities Section

JMR:jrs/#4289741
Enclosure
(Electronic copy only)
c w/enc: UM 1648 Service list

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

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

ORDER

Adopted: June 10, 2013

Released: June 10, 2013

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a brief, limited waiver of the filing deadline for the annual eligible telecommunication carrier (ETC) reporting requirements under section 54.313(j) of the Commission's rules.¹ Specifically, the Bureau will allow ETCs a reasonable time to file the annual report required under section 54.313 after the Office of Management and Budget's (OMB) approval of information collection number 3060-0986 under the Paperwork Reduction Act of 1995 (PRA). Affected carriers, however, must report their rates pursuant to section 54.313(h) of the Commission's rules on July 1, 2013, as described below.² The Bureau also waives, on its own motion, the filing deadline for states, or ETCs not subject to the jurisdiction of a state, to certify to the proper use of federal universal service support under section 54.314(d) of the Commission's rules; instead, under the limited waiver granted herein, states or ETCs must file the section 54.314 certification within 60 days after ETCs have filed their 2013 annual reports.³

2. In the *USF/ICC Transformation Order*, the Commission adopted several reforms updating annual reporting requirements for ETCs.⁴ Specifically, the Commission extended reporting requirements for voice service to all ETCs and adopted new reporting requirements to reflect new broadband obligations,⁵ including a requirement that all ETCs subject to new broadband obligations file five-year service quality improvement plans in a manner consistent with section 54.202(a)(1)(ii) of the Commission's rules, and annual progress reports thereafter.⁶

¹ 47 C.F.R. § 54.313(j). See 47 C.F.R. § 1.3 (Commission may waive its rules on its own motion).

² 47 C.F.R. § 54.313(h).

³ 47 C.F.R. § 54.314(d).

⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); Third Order on Reconsideration, 27 FCC Rcd 5622 (2012) (*Third Reconsideration Order*); Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013) (*ETC Reporting Clarification Order*).

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 579.

⁶ *Id.* at 17854, para. 587; see 47 C.F.R. § 54.202(a)(1)(ii). Subsequently, the Bureau waived the requirement for price cap carriers to file five-year plans until after such carriers accept Connect America Phase II support; only those price cap ETCs that accept Phase II funding will be required to file five-year plans. See *ETC Reporting Clarification Order*, 28 FCC Rcd at 2054, para. 8. The Bureau also issued a limited waiver to rate-of-return carriers, so that they will file five-year plans in 2014. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 13-1115, para. 8 (Wireline Comp. Bur. rel. May 16, 2013) (*Rate-of-Return Five-Year Plan Waiver Order*).

3. Pursuant to section 54.313(j) of the Commission's rules, ETCs must file the information by July 1 each year.⁷ In 2012, the Bureau sought OMB approval under the PRA relating to certain reporting requirements. On May 8, 2012, the Bureau announced that it had received PRA approval for the ETCs' voice service reporting obligations in sections 54.313(a)(1) through (a)(6) and (h).⁸ This year, the Bureau created FCC Form 481, Carrier Annual Reporting (54.313/54.422) Data Collection Form, to collect the information for which it received PRA approval in 2012, as well as information relating to additional provisions of section 54.313.⁹ For administrative efficiency, it is necessary for all ETCs to submit the annual reports using the same format. The Bureau is currently seeking OMB approval of the new FCC Form 481.¹⁰

4. On our own motion, the Bureau grants a brief, limited waiver to all ETCs of the July 1 deadline under section 54.313(j) of the Commission's rules. Generally, the Commission's rules may be waived for good cause shown.¹¹ Because, to date, the Bureau has not yet received OMB approval for all provisions of section 54.313, we find special circumstances warrant grant of a limited waiver of the annual reporting requirements for which we have PRA approval, to lessen potential confusion among filers as to what is required to be filed on July 1. Upon OMB approval, however, all ETCs will be required to file an annual report in 2013. After PRA approval is announced in the Federal Register, the Bureau will release a Public Notice announcing the new deadline for ETCs to submit their annual reports, and announcing the deadline for states or ETCs to file their section 54.314 certifications.¹² ETCs that receive both high-cost and Lifeline support may satisfy both the high-cost reporting obligations under

⁷ Following approval from OMB under the Paperwork Reduction Act, the deadline for the first annual report was set at July 2, 2012. See *Wireline Competition Bureau Announces Filing Deadline of July 2, 2012*, WC Docket No. 10-90 et al., Public Notice, 27 FCC Rcd 5077 (Wireline Comp. Bur. 2012); see also 77 Fed. Reg. 26,987 (May 8, 2012) (announcing OMB approval of information collection). Subsequent reports are due annually on July 1. Originally, the *USF/ICC Transformation Order* set the due date for the annual reports as April 1. *USF/ICC Transformation Order*, 26 FCC Rcd at 17853, para. 581. Multiple parties petitioned the Commission to use a later deadline, arguing that the April 1 deadline was not feasible. On reconsideration, the Commission revised the filing deadline, moving the deadline three months later to July 1. *Third Reconsideration Order*, 27 FCC Rcd at 5625-26, paras. 9-10.

⁸ See 77 Fed. Reg. 26,987 (May 8, 2012) (announcing OMB approval of information collection, including section 54.313(h)); 47 C.F.R. § 54.313(a)(1)-(6), (h).

⁹ See 78 Fed. Reg. 12,750 (Feb. 25, 2013) (60-day notice for information collection 3060-0986); see also Universal Service Administrative Company (USAC), *FCC Seeks Comment on New Reporting Form*, "Latest News" (Mar. 5, 2013), <http://www.usac.org/about/tools/news/default.aspx>.

¹⁰ 78 Fed. Reg. 34,096 (June 6, 2013) (30-day notice for information collection 3060-0986).

¹¹ 47 C.F.R. § 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 a filing deadline in 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. *Northeast Cellular*, 897 F.2d at 1166.

¹² Subject to PRA approval, an incumbent carrier ETC will be required to file an FCC Form 481 with information for sections 54.313(a)(2)-(6), and for the following additional requirements: its holding company, operating companies, ETC affiliates (as defined under section 3 of the Communications Act of 1934, as amended, 47 U.S.C. § 153(3), that are also designated as ETCs or that provide retail broadband Internet access to end-user customers), and any branding, to comply with section 54.313(a)(8) of the Commission's rules, 47 C.F.R. § 54.313(a)(8); its CAF-ICC certification, if applicable, in response to section 54.313(d) of the Commission's rules, 47 C.F.R. § 54.313(d); its financial information, if a privately held rate-of-return carrier, to comply with section 54.313(f)(2) of the Commission's rules, 47 C.F.R. § 54.313(f)(2); and its satellite backhaul certification, if applicable, to comply with section 54.313(g) of the Commission's rules, 47 C.F.R. § 54.313(g). See *Rate-of-Return Five-Year Plan Waiver Order*, DA 13-1115, at paras. 3-5.

section 54.313 and the Lifeline reporting obligations under section 54.422(a) of the Commission's rules in the same filing.¹³ A single filing deadline will reduce the administrative burden on the Administrator, USAC.

5. This limited waiver does not extend to section 54.313(h), which requires all incumbent local exchange carrier recipients of high-cost support to report "all of their rates for residential local service for all portions of their service area, as well as state fees as defined pursuant to section 54.318(e)," to the extent the sum of those rates and fees as of June 1, 2013 are below \$14, and the number of lines for each rate specified.¹⁴ We note that the Commission already has PRA approval to collect such rates,¹⁵ and affected ETCs filed such rates last year on FCC Form 507, and should do so again on July 1, 2013.¹⁶ Because the Commission already has PRA approval to collect this information and a form by which to collect it industry-wide, we find that there is no reason to waive the July 1 deadline as it relates to compliance with section 54.313(h). Additionally, USAC must have such data in order to implement the Commission's rule to adjust high-cost support by an amount equal to the extent to which a carrier's rates for certain lines are below \$14.¹⁷

6. Additionally, under section 54.314, a state must certify annually that support given to ETCs within that state has been used and will be used only for the purpose for which support was intended; the certification is due on October 1.¹⁸ The Bureau, on its own motion, grants a limited waiver of the October 1 deadline set out in section 54.314(d)(1). We grant states and ETCs 60 days from the revised annual report deadline to file the certification pursuant to section 54.314, in order to give states sufficient time to review those ETCs' reports before submitting their required certifications. Waiver of section 54.314(d)(1) is justified by the special circumstances created by the limited waiver of section 54.313(j), discussed above. We anticipate that states will rely on the section 54.313 reports in developing their section 54.314 certifications.¹⁹ The public interest is served by allowing states a corresponding extension of time via this limited waiver so that they have an opportunity to rigorously and thoroughly review the section 54.313 reports before issuing their section 54.314 certifications.²⁰

7. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections 54.313(j) and 54.314(d)(1) of the Commission's rules, 47 C.F.R. §§ 54.313(j), 54.314(d)(1), ARE WAIVED to the extent described above.

¹³ 47 C.F.R. § 54.422(a).

¹⁴ 47 C.F.R. §§ 54.313(h)(1), 54.318(e).

¹⁵ See *supra* note 8.

¹⁶ FCC Form 507 was approved by OMB in information collection 3060-0972 and is available at <http://www.usac.org/res/documents/hc/pdf/forms/Form-Rate-Floor.pdf>.

¹⁷ 47 C.F.R. § 54.318; *USF/ICC Transformation Order*, 26 FCC Red at 17751, para. 239.

¹⁸ 47 C.F.R. § 54.314(a). ETCs not subject to the jurisdiction of the state must file the same certification. 47 C.F.R. § 54.314(b).

¹⁹ See *USF/ICC Transformation Order*, 26 FCC Red at 17861, para. 612.

²⁰ See *id.* (noting that the Commission expects "a rigorous examination of the factual information provided in the annual section 54.313 reports prior to issuance of the annual section [54.314] certifications"). In order to alleviate confusion, we grant the same extension of time to ETCs not subject to the jurisdiction of a state, even though a self-certifying ETC does not need additional time to review its own annual report.

8. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

CERTIFICATE OF SERVICE/SERVICE LIST

I hereby certify that on June 13, 2013, I served the foregoing LETTER REPORT OF INFORMATION upon all parties of record in this proceeding by electronic mail only as all parties have waived paper service.

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