

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

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

**PETITION FOR TEMPORARY LIMITED WAIVER/EXTENSION OF TIME
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

Pursuant to Section 1.3¹ of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association (“NTCA”)² hereby submits this Petition for Temporary Limited Waiver/Extension of Time with respect to two filing deadlines as adopted in a December 8, 2016 Public Notice³ by the Wireline Competition Bureau and as applicable to rural local exchange carriers (“RLECs”) receiving certain kinds of High Cost Universal Service Fund (“USF”) support.

These filing deadlines were set as part of implementation of Section 54.316 of the Commission’s rules as adopted by the *Rate-of-Return Reform Order*.⁴ First, the Public Notice set March 1, 2017 as the date by which RLECs electing to receive USF support as determined by the Alternative Connect America Cost Model (“A-CAM”) must geocode and report on

¹ 47 C.F.R. § 1.3.

² NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

³ Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations, Public Notice, WC Docket No. 10-90, DA 16-1363 (rel. Dec. 8, 2016) (“Public Notice”).

⁴ Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”).

locations “newly served” in “calendar year” 2016 with broadband meeting certain applicable performance characteristics.⁵ Second, the Public Notice likewise set March 1, 2017 as the deadline by which RLECs electing to receive support via the Connect America Fund Broadband Loop Support (“CAF BLS”) mechanism must geocode and report on locations “newly served” between May 25, 2016 (the effective date of the *Rate-of-Return Reform Order*) and December 31, 2016.⁶

As discussed herein, good cause exists to temporarily waive the March 1, 2017 deadlines established pursuant to Section 54.316 and extend such deadlines for all RLECs until December 31, 2017. Due to the short timeframe allotted by the Public Notice and further compressed by the still pending Paperwork Reduction Act (“PRA”) approval process (which must be completed before entities have any obligation to commence collection of such information pursuant to such a rule), the current deadline will impose a substantial burden on RLECs’ small staffs and should therefore be extended. As explained herein, such an extension of the deadline will not in any fashion impede or undermine the Commission in its effort to “determine if universal service funds are being used for their intended purposes.”⁷ To be clear, NTCA seeks a temporary limited waiver of Section 54.316 *only* as applicable to extending the March 1, 2017 deadlines as discussed herein and not more generally.⁸

⁵ Public Notice, p. 9.

⁶ *Id.*

⁷ *Rate-of-Return Reform Order*, ¶ 209.

⁸ The Commission should also include in any waiver adopted relief for companies receiving CAF Phase II model-based support. The Public Notice also adopts March 1, 2017 as the deadline for carriers receiving such support to geocode and report on via the HUBB new locations to which qualifying broadband service was made available in calendar year 2016. At the very least, such relief as requested herein should be available to rate-of-return carriers that have acquired facilities from other carriers awarded CAF phase II model-based support and made qualifying broadband service newly available to consumers in those areas.

Section 1.3 of the Commission's rules states that "rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."⁹ The "good cause shown" standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest.¹⁰ Generally, waiver of the Commission's rules is granted when both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.¹¹

Good cause exists to grant a temporary waiver of Section 54.316 and extension of the March 1, 2017 deadlines. RLECs operate with very limited staff resources, and they also typically operate in low density yet geographically large service areas. Geocoding each location at issue across expansive rural areas in the short time frame as allotted by the Public Notice will strain the resources of these small businesses at a time when they will just be initiating their buildout obligations as adopted by the Order. Indeed, the staff resources used to geocode and report on the locations that are the subject of this waiver petition will likely often be the very same staff members looking to manage or undertake such buildouts. Moreover, the time frame for March 1, 2017 compliance is further compressed and complicated by the facts that: (1) even just initial guidance on how to undertake geocoding did not become available until the Universal Service Administrative Company began to release such information very late in 2016; and (2) the legal duty to begin collecting such information still is not even yet effective, and remains subject to review – and potential approval or denial – pursuant to PRA procedures. In fact, not only has the

⁹ 47 C.F.R. § 1.3.

¹⁰ Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

¹¹ NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

Office of Management and Budget (“OMB”) not completed its PRA analysis of Section 54.316 and the High-Cost Universal Broadband (“HUBB”) electronic filing portal, but comments related to this review were not due on the Information Collection until January 30, 2017 – a month and a day before the compliance deadline.¹² Even assuming a remarkably short turn-around by the OMB in reviewing any comments and otherwise analyzing the reporting burden created by Section 54.316 and the HUBB electronic filing portal, the approval of the information collection will result in but a few weeks between the effective date of Section 54.316 and the date on which RLECs must have completed geocoding all applicable locations and enter such data into the HUBB portal. Such a short time frame will impose an unreasonable and unnecessary burden on RLECs.

By contrast, an extension until December 31, 2017 for the required geocoding activity is reasonable and appropriate. It will undoubtedly take OMB at least several weeks, if not several months, to thoroughly examine comments filed and otherwise undertake a good faith and thorough review of the burdens of geocoding in the field and completing the portal reports – putting approval into the spring of 2017. This, of course, is also the start of many carriers’ construction seasons, when many of the same personnel who might be dispatched to geocode (or oversee the geocoding of) last year’s installations are busy with this year’s deployments – including those deployments needed to achieve the broadband buildout public interest obligations imposed pursuant to the *Rate-of-Return Reform Order*. Practically speaking, this conflict for companies with small staffs can only be relieved with more time, including time extending beyond the 2017 construction season – making a December 31, 2017 compliance date for reporting geocodes of the applicable 2016 locations a reasonable and appropriate outcome. It is

¹² Information Collection(s) Being Reviewed by the Federal Communications Commission, 81 Fed. Reg. 96453 (published Dec. 30, 2016).

also quite clear that the collection will require significant amounts of time in ensuring the accuracy of the data captured, such that a year-end deadline will enable reporting of the best possible data with respect to prior installations.¹³ Thus, “good cause” exists for the limited waiver and temporary extension requested herein.

Providing a short-term delay in the compliance deadline will not in any way undermine the Commission’s accountability or broadband goals that underpin the adoption of the rule specifically and the *Rate-of-Return Reform Order* more generally; to the contrary, as noted above, an extension will promote broadband deployment goals by allowing these RLEC small businesses to focus their field personnel on construction rather than data gathering for much of the 2017 construction season. Indeed, the locations at issue herein (those subject to the March 1, 2017 reporting deadline) are specifically and only locations where RLECs *already* deployed broadband service last year. Thus, a temporary waiver and extension of time will not have any negative effect on the number of locations to which RLECs will deploy service, and might only promote achievement of 2017 and longer-term deployment goals that the Commission shares (and mandates) by minimizing the likelihood of distraction from deployment for purposes of unnecessarily accelerated regulatory compliance.

Nor will the delay generate any concerns with respect to accountability. A delay of less than one calendar year in reporting geocoded locations into the HUBB electronic filing portal will not undermine the Commission’s goals of ensuring that High Cost support is used for the purposes as set forth in Order. This is particularly true considering that deployment milestones as applicable to RLECs do not take effect until 2020 at least. More specifically, ACAM-based

¹³ Paperwork Reduction Act Comments of NTCA–The Rural Broadband Association, ICR Reference No: 201612-3060-022 (fil. Jan. 30, 2017).

support recipients need not begin showing progress on their buildout obligations until 2020;¹⁴ CAF BLS recipients can complete their buildout obligations at any time during the five-year term of support.¹⁵ Thus, the determination of whether support is being utilized as intended will not begin in greater earnest until 2020. Strict adherence to the March 1, 2017 deadline for the geocoding and reporting of the locations at issue herein will therefore not produce sufficient data for full evaluation of the policies set forth in the Order and, when weighed against the burden that the short time frame allotted to report on those locations and concerns about inaccuracy in any “rush” to file data (as discussed above), this represents a special circumstance that warrants a minor deviation from the rule for this limited circumstance and a temporary waiver. Even then, were it to grant the relief requested, the Commission will still have on hand at the end of this year the same data it is seeking now.

For all of the reasons above, the Commission should grant a temporary limited waiver of the locations at issue herein (those that must be geocoded and reported on by March 1, 2017) and extend that deadline until December 31, 2017.

Respectfully submitted,

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¹⁴ *Rate-of-Return Reform Order*, ¶ 32.

¹⁵ *Id.*, ¶ 174.