

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

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

ORDER

Adopted: May 16, 2013

Released: May 16, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) further clarifies annual reporting obligations for 2013 and 2014 in response to informal inquiries from eligible telecommunications carriers (ETCs) regarding the scope of reporting obligations currently under Paperwork Reduction Act (PRA) review by the Office of Management and Budget (OMB).¹ The Bureau also waives the requirement that rate-of-return ETCs file five-year service quality improvement plans in 2013, in response to a petition filed by NTCA – The Rural Broadband Association (NTCA), the Eastern Rural Telecom Association (ERTA), the Independent Telephone Telecommunications Alliance (ITTA), the National Exchange Carrier Association, Inc. (NECA), the United States Telecom Association (USTelecom), and the Western Telecommunications Alliance (WTA) (collectively, Rural Associations).²

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission adopted several reforms to harmonize and update annual ETC reporting requirements.³ The Commission extended reporting requirements for voice service to all ETCs and adopted new reporting requirements to reflect new broadband obligations.⁴ The Commission required all ETCs subject to new broadband obligations to file five-year service quality improvement plans in a manner consistent with section 54.202(a)(1)(ii) in 2013,

¹ Pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, the Bureau is currently seeking approval from the Office of Management and Budget (OMB) for information collection number 3060-0986.

² See Emergency Petition for Clarification, or in the Alternative Waiver, of NTCA – The Rural Broadband Association et al., WC Docket No. 10-90 et al. (filed Apr. 1, 2013) (Rural Associations Petition); see also *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); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012) (*Third Reconsideration Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013) (*ETC Reporting Clarification Order*).

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 579.

⁴ *Id.*

and annual progress reports thereafter.⁵ 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.⁶

III. DISCUSSION

3. The Bureau reiterates that all ETCs will be required to file an annual report in 2013 pursuant to the OMB-approved sections of 54.313.⁷ The Commission announced that it had received PRA approval for the reporting on ETCs' voice service obligations in sections 54.313(a)(1) through (a)(7) and (h) on May 8, 2012.⁸ Pursuant to that existing approval, an incumbent carrier ETC's annual report filed in 2013 should include information as it relates to its provision of voice service in calendar year 2012 in response to section 54.313(a)(2) through 54.313(a)(6). ETCs thus are required to provide information in their 2013 annual report relating to their provision of voice service for those aspects of the rule requiring them to report data for the prior calendar year.⁹ Incumbent carrier ETCs also must report voice rates that were less than \$14 as of June 1, 2013, and the number of lines for each such rate, in response to section 54.313(h).

4. The Bureau is currently seeking approval for additional provisions of sections 54.313 and anticipates receiving such approval shortly before the July 1st filing deadline.¹⁰ The Bureau intends to provide affected ETCs with at least thirty days after PRA approval is announced in the Federal Register to file the relevant information required in the 2013 annual report.

5. Subject to PRA approval, an incumbent carrier ETC will be required to file information for the following additional requirements: its holding company, operating companies, ETC affiliates¹¹ and any branding in response to section 54.313(a)(8); its CAF-ICC certification, if applicable, in response to section 54.313(d); its financial information, if a privately held rate-of-return carrier, in response to section 54.313(f)(2); and its satellite backhaul certification, if applicable, in response to section 54.313(g).

6. We also take this opportunity to clarify what broadband-related information rate-of-return ETCs will be required to report in 2014, once OMB approval is obtained. In the *USF/ICC Transformation Order*, as a condition of receiving support for ongoing operations of mixed-use facilities capable of providing voice and broadband service, the Commission required rate-of-return carriers that receive HCLS, ICLS, or new CAF-ICC support to provide broadband service to their customers upon reasonable request.¹² We clarify that for purposes of reporting regarding this obligation, the relevant "customer" is the end-user customer of the retail broadband Internet access service, regardless of whether that customer purchases that retail service directly from the ETC or from an Internet service provider that

⁵ *Id.* at 17854, para. 587.

⁶ See *ETC Reporting Clarification Order*, 28 FCC Rcd at 2054, para. 8. Only those price cap ETCs that accept Phase II funding will be required to file five-year plans.

⁷ ETCs should file pursuant to the instructions published by the Wireline Competition Bureau once PRA approval is received for the request currently pending with OMB.

⁸ See 77 Fed. Reg. 26987 (May 8, 2012).

⁹ 47 C.F.R. § 54.313(a). ETCs should have begun collecting such information after May 8, 2012, when the Bureau announced PRA approval for those sections.

¹⁰ Pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, the Bureau is currently seeking approval from the Office of Management and Budget (OMB) for information collection number 3060-0986.

¹¹ For purposes of this requirement, the ETC is required to report all affiliates as defined under section 3 of the Communications Act, 47 U.S.C. § 153(3), that are also designated as ETCs or that provide retail broadband Internet access to end-user customers.

¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17740, para. 206.

purchases the ETC's wholesale broadband transmission service offering. The Commission required ETCs to include in their annual reports the number of unfulfilled requests for service from potential customers and the number of customer complaints, broken out separately for voice and broadband services.¹³ Further, beginning July 1, 2014, all rate-of-return ETCs must certify that they are taking reasonable steps to offer broadband service meeting the Commission's specific service requirements throughout their service area, and that requests for such service are met within a reasonable amount of time.¹⁴ To give full effect to that rule, we clarify that such certifications must be made regarding the provision of broadband Internet access either directly or indirectly to end-user customers.

7. The Commission committed to monitoring ETCs' annual reports to determine whether reasonable requests for broadband service are being fulfilled, and encouraged states and Tribal governments to do the same.¹⁵ As a condition of receiving federal support, the Commission required ETCs to report information in order to monitor progress in achieving its broadband goals and to assist the Commission in determining whether universal service funding is being used for the intended purposes.¹⁶ The Commission expects that states (or the ETC if the state lacks jurisdiction) will use the information reported in July of each year in determining whether they can certify that carriers' support has been used and will be used to maintain and extend modern networks capable of providing voice and broadband service.¹⁷ To read the Commission's rule as requiring only reporting with respect to the provision of broadband transmission service to an affiliated ISP would substantially thwart the Commission's overall framework for accountability and oversight, as the Commission's ultimate focus is on residential households, anchor institutions, and business customers across the nation.¹⁸ Therefore, once PRA approval is obtained, rate-of-return ETCs must begin collecting for calendar year 2013 the relevant information on broadband Internet access service provided either directly or indirectly to end-user customers, in satisfaction of their federal high-cost universal service obligations, in order to report such information in their 2014 annual report.¹⁹

8. Finally, in response to the Rural Associations' Petition,²⁰ the Bureau finds that it is in the public interest to grant a limited waiver of the requirement that rate-of-return ETCs submit a five-year plan in 2013.²¹ Instead, rate-of-return ETCs will be required to file five-year plans with their 2014 annual reports. The Bureau notes that price-cap carriers that accept Connect America Phase II support are required to file their five-year plans on July 1, 2014.²² By allowing rate-of-return ETCs to file their first

¹³ *Id.* at 17741, para. 208; *see also* 47 C.F.R. § 54.313(a)(3)-(4).

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17854, para. 588; *see also* 47 C.F.R. § 54.313(f)(1)(i).

¹⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17741, para. 208.

¹⁶ *Id.* at 17852, para. 580; *see also* 47 U.S.C. § 254(e).

¹⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17861, para. 612; *see also* 47 C.F.R. § 54.314(a).

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17681, paras. 51-52.

¹⁹ *See* 47 C.F.R. § 54.313(a)(2)-(7).

²⁰ Rural Associations Petition at 5-8.

²¹ Generally, the Commission's rules may be waived if good cause is shown. 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 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.

²² *See ETC Reporting Clarification Order*, 28 FCC Rcd at 2054, para. 8.

five-year plan on July 1, 2014, we will bring conformity in filing dates across all incumbent ETCs, thereby simplifying administrative processing for USAC.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the emergency petition for clarification, or in the alternative waiver, filed by NTCA – The Rural Broadband Association, the Eastern Rural Telecom Association, the Independent Telephone Telecommunications Alliance, the National Exchange Carrier Association, Inc., the United States Telecom Association, and the Western Telecommunications Alliance IS GRANTED IN PART, to the extent described herein, and DENIED IN PART, to the extent described herein.

10. 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

Julie A. Veach
Chief, Wireline Competition Bureau