

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

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90  
 )  
ACS Wireless, Inc. Petition for Waiver of Section )  
54.313(j) of the Commission’s Rules )

**ORDER**

**Adopted: September 17, 2012**

**Released: September 17, 2012**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) grants a limited waiver on its own motion of the deadlines for new reporting rules established in the *USF/ICC Transformation Order*.<sup>1</sup> Due to a number of unique circumstances surrounding the inaugural filings of the required reports, questions arose regarding the precise reporting obligations and filing deadlines; as a result, many eligible telecommunications carriers (ETCs) did not make timely or complete filings. Accordingly, we allow ETCs that failed to file by the July 2, 2012 deadline or made deficient filings to file complete and accurate reports within 30 days from the release of this Order. As a result of this limited waiver, the Bureau also dismisses as moot a petition filed by ACS Wireless, Inc. (ACS Wireless) for waiver of section 54.313(j) of the Commission’s rules.<sup>2</sup> Additionally, the Bureau waives on its own motion, for those states where any ETCs avail themselves of this limited waiver, the requirement in section 54.314(d)(1) that states certify by October 1, 2012, to the proper use of federal universal service support. Under these limited circumstances, those states must file a certification pursuant to section 54.314(a) within 60 days of the release of this Order.<sup>3</sup> The limited waiver granted in this Order will not undermine the strengthened framework for accountability and oversight over use of universal service funds, while recognizing that ETCs may have been uncertain regarding the specific timing of new reporting requirements adopted as part of comprehensive universal service reform last year.

**II. BACKGROUND**

**A. Reporting Requirements under Sections 54.313 & 54.314**

2. *Filing Requirements under Section 54.313.* In the *USF/ICC Transformation Order*, the Commission adopted or modified several reporting requirements for any ETC that receives high-cost

<sup>1</sup> 47 C.F.R. §§ 54.313(j), 54.314(d)(1). Under section 0.91 of the Commission’s rules, the Wireline Competition Bureau is delegated the authority to “[a]ct on requests for interpretation or waiver of rules.” 47 C.F.R. § 0.91(b); *see also* 47 C.F.R. §§ 0.201(d), 0.291.

<sup>2</sup> ACS Wireless, Inc. Petition for Waiver of Section 54.313(j) of the Commission’s Rules, WC Docket No. 10-90, 1 (filed July 16, 2012) (ACS Wireless Petition).

<sup>3</sup> *See* 47 C.F.R. § 54.314(a).

support.<sup>4</sup> Beginning in 2012,<sup>5</sup> ETCs are required to submit annually a report containing certain information.<sup>6</sup> First, as we noted in our previous *Clarification Order*,<sup>7</sup> ETCs must report the information required in section 54.313(a)(2)-(6) only to the extent the relevant state commission had previously required collection and reporting of such information.<sup>8</sup> Second, all incumbent local exchange carriers receiving high-cost loop support (HCLS) or high-cost model support (HCMS) must report the rates charged for voice service, if those rates are below the floor established by the Commission.<sup>9</sup>

3. Under section 54.313(j), an ETC faces reduced support for failing to file its report in a timely fashion. The extent of support reduction is based on how late the ETC is in filing its report. If an ETC misses the annual reporting deadline, it loses one quarter of its annual support for the subsequent year.<sup>10</sup>

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<sup>4</sup> 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 17666, 17851-59, paras. 576-606 (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). The reporting rules established in section 54.313 specifically apply to “high-cost recipients.” 47 C.F.R. § 54.313. The Commission defined high-cost to include all support mechanisms in place as of the date of the *USF/ICC Transformation Order*, specifically, high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high cost model support, and interstate access support, as well as the new Connect America Fund. For price cap carriers, it froze support under the existing mechanisms, which it called “frozen high-cost support.” See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17672, n.16, 17712, para. 128 & n.200, 17715, para. 133, and 17862, para. 614. We note that several parties have filed petitions for reconsideration, clarification and/or waiver of certain aspects of these rules. See, e.g., United States Telecom Association Petition for Reconsideration, *Connect America Fund et al.*, WC Docket No. 10-90 et al. at 9 (filed Dec. 29, 2011); CTIA—The Wireless Association and United States Telecom Association Petition for Clarification and Reconsideration or, in the Alternative, for Waiver, *Connect America Fund et al.*, WC Docket No. 10-90 et al. at 18 (filed June 25, 2012).

<sup>5</sup> Following approval from OMB under the Paperwork Reduction Act, the deadline for the first report was set at July 2, 2012. 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, in the *USF/ICC Transformation Order*, the due date for the annual reports was set 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 for all subsequent reports. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5625-26, paras. 9-10 (2012) (*Third Order on Reconsideration*).

<sup>6</sup> Additional information will be required in future years. See generally 47 C.F.R. § 54.313.

<sup>7</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd 605, 608, para. 10 (Wireline Comp. Bur. 2012) (*Clarification Order*).

<sup>8</sup> *Id.* § 54.313(a)(2)-(6). Thus, for the 2012 report, unless the ETC was previously required by its state commission to collect the information specified in section 54.313(a)(2)-(6), a state-designated ETC is exempt from reporting outages, unfulfilled service requests, number of complaints, certification that it is compliant with applicable service quality standards, and certification that it is able to function in an emergency situation. If a state-designated ETC did not collect this information during 2011, it would be impossible for it to report the information in 2012. However, if an ETC did collect this information in 2011, it is required to file a copy of the information in its 2012 reports. See *Clarification Order*, 27 FCC Rcd at 608, para. 10 (*Clarification Order*).

<sup>9</sup> 47 C.F.R. § 54.313(h). The Commission subsequently clarified that an incumbent local exchange carrier receiving HCLS or HCMS is only required to file information about its rates if the rates and specified regulated fees fall below the effective rate floor. If the rates are above the rate floor, there is no need to report the information. See *Third Order on Reconsideration*, 27 FCC Rcd at 5630, para. 21. For July 1, 2012 to June 30, 2013, the rate floor is \$10. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 239.

<sup>10</sup> 47 C.F.R. § 54.313(j)(1). The same penalty applies if the carrier misses the standard July 1 deadline in future years.

Failing to file by October 1, three months after the initial deadline, results in losing two quarters of its annual support.<sup>11</sup> Failing to file by January 1, six months after the initial deadline, results in losing three quarters of its annual support.<sup>12</sup>

4. *Filing Requirements under Section 54.314.* In the *USF/ICC Transformation Order*, the Commission also modified the requirement for states to annually certify that federal universal service high-cost support is used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>13</sup> The Commission modified and streamlined the certifications, with the new requirements set out at section 54.314 of the Commission’s rules.<sup>14</sup> Under section 54.314, a state must certify that support given to state-designated ETCs has been used and will be used only for the purposes for which the support was intended.<sup>15</sup> ETCs will not receive support unless the certification has been filed.<sup>16</sup> The first of these certifications is due on October 1, 2012, and failure to file on time results in reduced support to the ETC.<sup>17</sup> Support to ETCs declines based on how late a state is in filing its certification. Filing after October 1 results in losing one quarter of annual support for the subsequent year.<sup>18</sup> Filing after January 1 results in losing two quarters of support.<sup>19</sup> Filing after April 1 results in losing three quarters of support.<sup>20</sup> If a state still has not filed by July 1, 2013, ETCs in that state will receive no support for 2013.<sup>21</sup>

#### **B. ACS Wireless’s Petition for Waiver**

5. ACS Wireless is an ETC serving customers in Alaska. Because the Regulatory Commission of Alaska requires carriers to collect information contained in section 54.313(a)(2)-(6), ACS Wireless was required to file an ETC report under section 54.313(a) of the Commission’s rules.<sup>22</sup> ACS Wireless did not file its ETC report by the deadline of July 2, 2012.<sup>23</sup> Upon realizing this error, ACS Wireless submitted its report on July 10, 2012.<sup>24</sup> On July 16, 2012, ACS Wireless filed a request for a waiver of the July 2 deadline and of the accompanying reduction in support specified in section 54.313(j)(1) of the Commission’s rules.<sup>25</sup> ACS Wireless alleges that it stands to lose \$5,000,000 in support it would have received in the first quarter of 2013.<sup>26</sup> ACS Wireless argues that special circumstances justify grant of the

<sup>11</sup> *Id.* § 54.313(j)(2).

<sup>12</sup> *Id.* § 54.313(j)(3).

<sup>13</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17859, para. 607.

<sup>14</sup> *See id.* at 17859-62, paras. 607-14.

<sup>15</sup> 47 C.F.R. § 54.314(a). Section 54.314(b) permits an ETC not subject to the jurisdiction of a state to self-certify. *Id.* § 54.314(b).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* § 54.314(d)(1).

<sup>18</sup> *Id.* § 54.314(d)(2).

<sup>19</sup> *Id.* § 54.314(d)(3).

<sup>20</sup> *Id.* § 54.313(d)(4).

<sup>21</sup> *Id.* § 54.314(d)(5).

<sup>22</sup> *See* ALASKA ADMIN. CODE tit. 3, § 54.460 (2012).

<sup>23</sup> ACS Wireless Petition at 1.

<sup>24</sup> *Id.* ACS Wireless claims it had previously filed its report with the Regulatory Commission of Alaska on April 24, 2012, in accordance with state rules. *Id.* at 1.

<sup>25</sup> *See generally id.*

<sup>26</sup> *Id.* at 1-2.

waiver and granting the waiver would be in the public interest.<sup>27</sup> Specifically, ACS Wireless alleges this was the first time it was filing this report with the Commission;<sup>28</sup> its small regulatory staff was occupied with other matters and, misinterpreting the multiple revisions to section 54.313, the staff mistakenly believed ACS Wireless was not required to file for 2012. ACS Wireless also argues that withholding support would harm consumers by delaying ACS Wireless's deployment of new infrastructure and services.<sup>29</sup> Furthermore, ACS Wireless argues that a penalty of \$5,000,000 for a delay of five business days is out of proportion with any penalty the Commission has previously issued.<sup>30</sup>

### III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.<sup>31</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>32</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>33</sup> 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.<sup>34</sup> These standards are satisfied in these unique circumstances.

7. *Waiver of Section 54.313(j)*. On its own motion, the Bureau grants a limited waiver of section 54.313(j) of the Commission's rules to all ETCs. Any ETC that has already filed a complete and accurate report under section 54.313 will not be subject to the support withholding described in section 54.313(j)(1), even if that ETC filed after the July 2, 2012 deadline. Any ETC that has not yet filed, or any ETC that the Universal Service Administrative Company (USAC) finds filed an incomplete or deficient report, has 30 days from the release of this Order to submit or amend its report to provide information required by sections 54.313(a)(2)-(6) and 54.313(h) of the Commission's rules as necessary. Moreover, we direct USAC to contact, within five business days of the release of this Order, any ETC that failed to file a report or filed a deficient report under section 54.313. USAC shall notify any such ETC that its required report is absent or deficient and inform the ETC that it has 30 days from the release of this Order to submit or amend its report.

8. We find that special circumstances excuse ETCs' failure to timely file their reports by July 2, 2012. ACS Wireless was not alone in its failure to meet the reporting deadline. A preliminary review of the submitted reports reveals that a significant number of the submissions were untimely or incomplete. This widespread noncompliance suggests that many ETCs did not fully understand the new reporting requirements. In its submission, ACS Wireless suggests that the ambiguity created by multiple revisions to section 54.313 and the inexperience of ETCs having to make this first-time filing with the

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<sup>27</sup> ACS Wireless also argues that this was a minor delay and processes have been put in place to prevent such a mistake in the future. *Id.* at 5-6.

<sup>28</sup> *Id.* at 3, 5.

<sup>29</sup> ACS Wireless Petition at 7.

<sup>30</sup> *Id.* at 6-7.

<sup>31</sup> 47 C.F.R. § 1.3.

<sup>32</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>33</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>34</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

Commission, as well as other factors, necessitate a waiver of the requirements.<sup>35</sup> We conclude that these factors justify a waiver in this unique circumstance.

9. We also conclude the public interest would be served by a grant of this limited waiver. The Commission, USAC, and the states rely on the timely filing of the reports in Order to carry out their publicly mandated functions. Specifically, the ETC reports allow the Commission and USAC to ensure the continued availability of high-quality voice services and to ensure that universal service funds are used for their intended purposes.<sup>36</sup> States use the information to monitor state-designated ETCs' compliance with public interest obligations.<sup>37</sup> Granting this waiver gives carriers an opportunity to submit complete reports, which will provide states with the necessary information on which to base their section 54.314 certifications in a timely manner, as discussed below. By granting the waiver, carriers will be able to file their reports within the 30-day window provided in this Order, giving the Commission, USAC, and the states more timely access to the needed information.

10. Only ETCs that complete their submissions within 30 days of the release of this Order may take advantage of this waiver. Any ETC filing after the 30-day window will be subject to the loss of support outlined in section 54.313(j).<sup>38</sup> The Bureau emphasizes that this is a one-time waiver, largely predicated on the confusion surrounding the implementation of these new reporting requirements. Annual reports for 2013 must be submitted by July 1, 2013. Any ETC failing to do so will lose its annual support as specified in the Commission's rules, absent a persuasive showing that waiver is warranted.

11. In addition, given questions from carriers and state commissions regarding the multiple orders related to section 54.313, the Bureau also takes the opportunity to clarify the requirements of that section. If an incumbent local exchange carrier receives HCLS or HCMS and has rates that fall below the rate floor, currently set at \$10,<sup>39</sup> that carrier must report rate information required by section 54.313(h). If a state-designated ETC was subject to a state requirement to collect the information or submit the certifications described in section 54.313(a)(2)-(6) in 2011, it must include that information in its 2012 report.<sup>40</sup> However, if the ETC was not required to collect the information or submit the certifications described in section 54.313(a)(2)-(6) in 2011 pursuant to state requirements, it is not required to submit such information for 2012. This partial exemption from section 54.313(a)(2)-(6) is effective for the 2012 report only. All ETCs will be required to file all of the information in section 54.313(a)(2)-(6) and 54.313(h), as necessary, by July 1, 2013, with the Commission, USAC, and the relevant state commissions, U.S. Territory authorities, or Tribal governments, as appropriate.

12. The grant of this limited waiver, which applies to all parties that have filed late or incomplete reports under section 54.313, renders moot ACS Wireless's petition for waiver. Therefore, the Bureau dismisses as moot ACS Wireless's petition for waiver of section 54.313(j).<sup>41</sup>

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<sup>35</sup> ACS Wireless Petition at 3, 5.

<sup>36</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 580.

<sup>37</sup> *Id.* at 17861, para. 612.

<sup>38</sup> For example, a carrier submitting its report 29 days after the deadlines specified in this Order would qualify for waiver and face no reduction in support. However, a carrier turning in its report 45 days after the specified deadlines would not qualify for the waiver. It would lose two quarters of support under the provisions outlined in section 54.313(j)(2).

<sup>39</sup> *Id.* at 17751, para. 239.

<sup>40</sup> *See Clarification Order*, 27 FCC Rcd at 608, para. 10.

<sup>41</sup> We note as a general matter that ACS Wireless's argument that its small regulatory compliance staff was occupied with other compliance matters under ordinary circumstances would not excuse the failure to file by the deadline.

(continued...)

13. *Waiver of Section 54.314(d)(1)*. In addition to the waiver of section 54.313(j), 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 60 days from the release of this Order to file the certification pursuant to section 54.314(a), if ETCs within those states avail themselves of the waiver of section 54.313, in order to give states sufficient time to review those ETCs' reports before submitting their required certifications.<sup>42</sup> Waiver of section 54.314(d)(1) is justified by the special circumstances created by the 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.<sup>43</sup> Waiving the deadline for the ETCs to file their section 54.313 reports as set forth in this Order would leave states virtually no time to review these reports before the section 54.314 certifications would normally be due on October 1, 2012. The public interest is served by allowing states a corresponding waiver of time so that they have an opportunity to rigorously and thoroughly review the section 54.313 reports before issuing their section 54.314 certifications.<sup>44</sup> The review and certification process ensures the funds are used in an effective and efficient manner to deploy modern broadband-capable networks.

#### IV. ORDERING CLAUSE

14. 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.

15. IT IS FURTHER ORDERED that pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the petition filed by ACS Wireless, Inc. IS DISMISSED AS MOOT.

16. 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

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Carriers are expected to be aware of their regulatory obligations and meet their compliance obligations in a timely fashion.

<sup>42</sup> This waiver does not apply to states where all ETCs filed their required section 54.313 reports by the July 2, 2012 deadline. The rationale underlying the grant of a waiver – that states need time to review late section 54.313 reports – does not apply if all of a state's ETCs submitted the reports on time. Further, any ETC availing itself of the waiver of section 54.313 that files a self-certification pursuant to section 54.314(b) must still file by the October 1 deadline in order to receive its high-cost support. A self-certifying ETC does not need additional time to review its own section 54.313 filing.

<sup>43</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17861, para. 612.

<sup>44</sup> 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.”)