

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

In the Matter of)	
)	
Petition of Cincinnati Bell Telephone)	WC Docket 10-90
Company LLC for Waiver or Clarification)	
of Section 54.316 of the Commission's)	
Rules)	
)	

PETITION FOR WAIVER OR CLARIFICATION

Cincinnati Bell Telephone Company LLC (“CBT”), by the undersigned counsel and pursuant to 47 CFR § 1.3, hereby petitions for waiver or clarification of Section 54.316 of the Commission’s rules, to the extent necessary, to enable CBT to certify in connection with its reporting due March 1, 2019, for the year ending December 31, 2018, and subsequent years, geo-location information for 651 units to which CBT deployed facilities pursuant to its Connect America Fund (“CAF”) Phase II model-based support obligations in 2017.

I. BACKGROUND

CBT is an incumbent local exchange carrier and subsidiary of Cincinnati Bell Inc., a widely held, publicly traded Ohio corporation (NYSE: CBB). Among other services, Cincinnati Bell and its subsidiaries provide high-speed data, video and voice solutions to consumers and businesses over an expanding fiber network and legacy copper network.

CBT is authorized to receive approximately \$2.2 million in CAF Phase II model-based support to serve 7,084 units in Kentucky and Ohio.¹ As a condition of receiving CAF Phase II

¹ See *Wireline Competition Bureau Authorizes Additional Price Cap Carriers to Receive Almost \$950 Million in Phase II Connect America Support*, Public Notice, 30 FCC Rcd 8577 (WCB 2015).

model-based support, CBT must “complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020.”² CBT must annually report the locations to which CBT is offering broadband service in satisfaction of its public interest obligations to the Universal Service Administrative Company’s (“USAC”) High Cost Universal Service Broadband Portal (“HUBB”), including “the number of locations for each state and location information, including geocodes, where [CBT is] offering service at the requisite speeds.”³ By March 1 each year through 2021, the Commission’s rules also require CBT to submit “a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interests obligations ... to the required percentage of its supported locations in each state.”⁴

By March 1, 2018, CBT reported geo-coded location information in the HUBB for 2,837 units in Kentucky (*i.e.*, 44.75% of its required units) and 581 units in Ohio (*i.e.*, 77.9% of its required units). In addition to the Kentucky and Ohio units reported by CBT in 2018, CBT had already deployed to an additional 651 units in Gallatin County, Kentucky by December 31, 2017 (the “Gallatin County Locations”), but CBT was unable to complete the requisite geocoding for these units prior to the reporting and certification deadline of March 1, 2018.

CBT would have had to purchase additional software from Gallatin County in order to geocode and report the Gallatin County Locations. However, CBT was already in the process of obtaining ESRI ArcGIS software that would alleviate the need to purchase the Gallatin County-

² 47 C.F.R. § 54.310(c).

³ 47 C.F.R. § 54.316(a)(4).

⁴ 47 C.F.R. § 54.316(b)(1).

specific software to complete the geocoding. Because CBT had already exceeded the required 40 percent interim milestone by year end 2017 without including the Gallatin County Locations, CBT did not see the wisdom in incurring the cost to obtain geo-coding software that would be used only once and did not believe it was required by the Commission's rules to enter those units prior to March 1, 2018.

Since March 1, 2018, CBT has acquired software in-house that enables it to geocode the Gallatin County Locations and uploaded those units into the HUBB on February 22, 2019. However, USAC informed CBT that although CBT is permitted to upload the additional units deployed in 2017 in Gallatin County into the HUBB, CBT cannot certify these units or count them towards CBT's ongoing milestones absent a waiver from the Commission.

At present, CBT intends to report a total of 3,628 units deployed in Kentucky (*i.e.*, 57.23 percent of the required units) and 722 units deployed in Ohio (*i.e.*, 96.91 percent of the required units). Without being able to count the Gallatin County Locations towards CBT's total deployment in Kentucky as of December 31, 2018, CBT will fall short of the interim buildout milestone under Section 54.310(c). However, with the inclusion of the Gallatin County Locations, CBT's total Kentucky deployment will be 4,279 units, representing 67.50 percent of its required CAF Phase II model-based support deployment.

CBT requests that the Commission waive Section 54.316 of its rules, to the extent necessary, to allow CBT to certify the Gallatin County Locations. Alternatively, CBT requests that the Commission clarify that CAF Phase II model-based support recipients are permitted to report and

certify all units built on a prospective basis so long as the units are not duplicative of already submitted units.⁵

II. ARGUMENT

A. The Requested Waiver is Consistent with the Public Interest and with the Commission's Waiver Standard.

The Commission's rules may be waived under section 1.3 of the rules for "good cause shown."⁶ The Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant a deviation from the general rule; and (c) such deviation will serve the public interest.⁷ In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.⁸

Strict compliance in this case is inconsistent with the public interest because failing to include the Gallatin County Locations will engender the appearance of non-compliance by CBT despite the fact that CBT has timely deployed to its required number of units. Although the *Rate of Return Order* establishing HUBB reporting obligations states that "price cap ETCs will be required to submit the requisite information to USAC no later than March 1 of each year, for locations newly enabled in the prior year,"⁹ the plain language of Section 54.316 does not specify that all units built in the prior calendar year must be reported by March 1 of the following year. Rather, specifically as regards CAF Phase II model-based support recipients, Section 54.316(a)(4) requires

⁵ To be clear, CBT is *not* seeking to amend its certification for calendar year 2017 builds, but only to include the Gallatin County Locations prospectively in its certifications for 2018 and subsequent years.

⁶ 47 CFR § 1.3; *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *Ne. Cellular*, 897 F.2d at 1166.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Ne. Cellular*, 897 F.2d at 1166.

⁹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3167-68, ¶ 219 (emphasis added) ("*Rate of Return Order*").

only the reporting of the *total* number of units (and geocodes) where the carrier is offering service at the requisite speeds. Furthermore, Section 54.316(b)(1) requires only that carriers certify “that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations ... to the required percentage of its supported locations in each state as set forth in § 54.310(c).” CBT reporting and certifying the total number of units it serves as of December 31, 2018 in connection with its HUBB submission due March 1, 2019 – including the Gallatin County Locations deployed in 2017 – is consistent with Section 54.316 and will enable CBT to exceed its interim buildout milestone under Section 54.310(c). Conversely, if CBT were not permitted to certify that it offered broadband service to the Gallatin County Locations during calendar year 2018, when in fact it did, it would be making a false report to the Commission.

Similarly, although guidance from the Bureau states that recipients of CAF Phase II model-based support “must file all new qualifying locations to which they made broadband available in each prior calendar year,”¹⁰ the same Public Notice states that recipients of Phase II model-based support “may count towards their respective deployment obligations *any location where service meeting the requisite requirements is available[.]*”¹¹ The Bureau further clarified that “recipients of Phase II model-based support ... will receive credit for all qualifying locations with service availability prior to the data submission date, regardless of when the location first become capable of receiving service, because they may count pre-existing locations towards satisfaction of their deployment obligation.”¹² Accordingly, allowing CBT to report and certify the Gallatin County

¹⁰ See *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect Am. Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900, 12906 (WCB 2016) (“Reporting Obligations PN”).

¹¹ *Reporting Obligations PN*, 31 FCC Rcd at 12902 (emphasis added).

¹² *Reporting Obligations PN*, 31 FCC Rcd at 12905.

Locations in connection with its March 1, 2019 submission to the HUBB is consistent with the Bureau's guidance on CAF Phase II model-based support recipient reporting.

Special circumstances warrant deviation from the rule because CBT's failure to include the Gallatin County Locations resulted solely from its effort to avoid expending unnecessary capital on a county-specific geo-coding software that would be utilized only for one HUBB reporting period. Without the requested waiver or clarification, CBT could face penalties at the end of the CAF Phase II model-based support term notwithstanding the fact that CBT has deployed and already is offering the requisite level of service at the Gallatin County Locations.¹³ Deviating from the general rule here will serve the public interest by ensuring that carriers such as CBT are able to continue to receive their allocated CAF Phase II model-based support for all units deployed in satisfaction of their interim buildout milestones.

Moreover, the Commission has stated that it expects "USAC to review compliance with the deployment obligations for all price cap recipients over the course of the Phase II support term."¹⁴ Therefore, permitting CBT to certify the Gallatin County Locations this year is consistent with the Commission's expectation that compliance will be viewed over the course of the support term, giving credit for all units to which the carrier is offering service, rather than penalizing CBT for its fiscally responsible decision to forgo the procurement of software that would be of only

¹³ See 47 C.F.R. § 54.320(d)(2) (establishing reductions in support for failing to meet the final buildout milestone in the amount that is equal to 1.89 times the average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations plus 10 percent of the ETC's total relevant high-cost support over the support term for that state).

¹⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15689, ¶ 128 (2014).

limited utility. Granting a waiver (or clarification) therefore will result in more effective implementation of overall universal service policy and avoid penalizing carriers for being rational stewards of their limited resources.

III. CONCLUSION

For the foregoing reasons, the Bureau should expeditiously grant this Petition and waive Section 54.316 of the Commission's rules or, in the alternative issue the appropriate clarification, to enable CBT to certify the Gallatin County Locations in connection with its March 1, 2019 submission to the HUBB.

Respectfully submitted,

/s/Russell M. Blau

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Dated: February 25, 2019

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

In the Matter of

Petition of Cincinnati Bell Telephone Company LLC for Waiver or Clarification of Section 54.316 of the Commission's Rules

WC Docket No. 10-90

DECLARATION OF TAMIKA L. GREEN

1. My name is Tamika L. Green and I am the Senior Director of Network, Planning, Engineering and Construction for Cincinnati Bell Telephone Company LLC ("CBT"). My business address is 221 E. 4th St (Mail Stop 121-900) Cincinnati, OH 45202.
2. I am authorized to make this declaration on behalf of CBT.
3. This Declaration is in support of the Petition for Waiver or Clarification filed by CBT on February 25, 2019.
4. As Senior Director of Network, Planning, Engineering and Construction, along with other responsibilities, I have overall responsibilities for CBT's network deployment and universal service reporting obligations, including deployment and reporting related to Connect America Fund ("CAF") Phase II model-based support. I have been responsible for these activities in my current position for approximately four years.
5. As of March 1, 2018, CBT reported and certified 2,837 units in Kentucky (*i.e.*, 44.75 percent of its required Kentucky units) and 581 units in Ohio (*i.e.*, 77.99 percent of its required Ohio units).

6. In addition to the 2,837 units reported in Kentucky, CBT deployed to an additional 651 units in Gallatin County (the “Gallatin County Locations”) before December 31, 2017.
7. CBT had not completed geo-coding the Gallatin County Locations prior to March 1, 2018, and because CBT exceeded the 40 percent interim milestone in Kentucky without the Gallatin County Locations, CBT did not believe it was required to enter these units prior to March 1, 2018.
8. In order to geo-code the Gallatin County Locations prior to March 1, 2018, CBT required additional software available for purchase only from Gallatin County. However, CBT already had plans to purchase ESRI ArcGIS software in 2018 that would alleviate the need to purchase Gallatin County-specific software. Since it was already over the 40 percent milestone, CBT did not see the wisdom in purchasing the County-specific software that would only be used once (*i.e.*, for the March 1, 2018 reporting deadline).
9. After March 1, 2018, CBT acquired software in-house that is able to geo-code the Gallatin County Locations. CBT is therefore ready to report and certify the Gallatin County Locations into USAC’s High Cost Universal Service Broadband Portal (“HUBB”). CBT reported the Gallatin County Locations to the HUBB on February 22, 2019. However, USAC has informed CBT that CBT cannot certify the Gallatin County Locations absent a waiver from the Commission.
10. For March 1, 2019, CBT will be reporting 791 units in Kentucky deployed in 2018 (excluding the Gallatin County Locations) and 141 units in Ohio deployed in 2018. This will result in a total of 3,628 units deployed in Kentucky, which is 57.23 percent of the required Kentucky units, and 722 units deployed in Ohio, which is 96.91 percent of the required Ohio units.

11. Including the Gallatin County Locations deployed in 2017, CBT's total deployment would be reported as 4,279 units or 67.50 percent of its required Kentucky units.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Tamika L. Green

Executed on: February 25, 2019