

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

In the Matter of)	
)	WC Docket No. 10-90
Connect America Fund)	
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58

**PETITION FOR EXPEDITED WAIVER BY THE
NORTH-EASTERN PENNSYLVANIA TELEPHONE COMPANY
OF SECTION 54.316(c) OF THE COMMISSION'S RULES**

The North-Eastern Pennsylvania Telephone Company (the “Company” or “NEP”), by counsel and pursuant to 47 C.F.R. § 1.3, respectfully requests an expedited waiver of 47 C.F.R. § 316(c)’s High Cost Universal Service Broadband (the “HUBB”) reporting deadline of March 1st (the “HUBB Deadline”) to allow NEP’s update of its March 2018 HUBB filing.¹ For the reasons provided herein, the Company respectfully submits that good cause exists for a prompt expedited grant of this waiver request, and that such action will serve the public interest by rectifying the consequences of an inadvertent error arising from a partial HUBB certification by NEP.²

¹ See also *In the Matter of Connect America Fund, et al., Report and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, *et al.*, released March 30, 2016 (“*March 2016 Order*”) at ¶ 211. In the *March 2016 Order* the Commission noted that, as it “explained in a similar context, we will not find good cause to waive the March 1 deadline due to administrative or clerical oversight. See *December 2014 Connect America Order*, 26 FCC Rcd. at 15693, para. 138.” *March 2016 Order* at ¶ 210, n. 462. NEP respectfully submits that this admonition does not apply here since, as explained herein, the Company did not miss the filing deadline but, rather, seeks to update that filing in order to correct a partial certification of locations. An error in the original certification occurred based on the Company’s mistaken failure to certify a significant portion of the HUBB uploaded locations in its 2018 HUBB submission.

² Attached hereto is the Declaration of Steven D. Tourje, President of the Company verifying the factual assertions made herein.

I. BACKGROUND

NEP operates approximately 6,800 lines in northeastern Pennsylvania. As a rural incumbent local exchange carrier (“RLEC”), the Company was able to and, as the Commission’s records reflect, did elect to use the Alternative Connect America Cost Model (“A-CAM”) for its federal Universal Service Fund (“USF”) disbursements.³ The Company successfully submitted the necessary 2016 location information via the HUBB before the March 1, 2019 deadline. However, the Company became aware in mid-January, 2019 of an inadvertent submission issue related to what NEP intended to be a certification of all uploaded locations that it made in February of 2018. Specifically, due to what now appears to be mistakenly clicking on the incorrect filing prompt, the Company has learned that, rather than a full certification of uploaded 2017 locations within its 2018 HUBB submission, the certification was made for only a partial number of such locations. To be sure, the Company’s intent and actions – but for the failed certification efforts – were to certify in 2018 the full number of uploaded locations: 1,693. Attachment A hereto reflects the uncertified locations as shown in the HUBB portal screen.⁴

As part of its investigation of this clerical error with the Universal Service Administrative Company (“USAC”), the Company sought to rectify this issue by resubmitting its uncertified 2018 reporting information. However, NEP was informed by USAC that the filing window for 2018 had closed and that, in order to provide for the intended 2018 certification of the 1,683 locations, a waiver would be required.

³ See, e.g., Public Notice, WC Docket No. 10-90, DA 17-99, released January 24, 2017 at n. 3 and associated excel file; see also Public Notice, WC Docket 10-90, DA 18-750, released July 20, 2018 at n. 2 and associated excel file.

⁴ As shown in Attachment A, only a partial number of locations – 10 – were certified for calendar year 2017 with the remaining 1,683 location not properly certified. NEP notes that a fully certified submission was made by NEP in 2019 (for 2016 and prior and 2018 data) but such data has been redacted since no certification issue addressed in this Petition is present.

II. GOOD CAUSE EXISTS FOR AN EXPEDITED GRANT OF THIS WAIVER AND WILL, IN TURN, ADVANCE THE PUBLIC INTEREST

The Commission can waive the requirements of its rules upon a finding of “good cause.”⁵

The courts agree:

[T]he Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *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 only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.⁶

The Company respectfully submits that special circumstances exist for a grant of its request. HUBB reporting was a relatively new filing requirement in a system that, in fact, was also relatively new, with the Company's 2018 HUBB filing being the first such filing that the Company was required to make.⁷ Leading up to this first HUBB submission, the Company representatives responsible for uploading all necessary broadband locations began in 2016 to attend USAC-sponsored webinars, review USAC-related HUBB documentation, including the

⁵ See 47 C.F.R. § 1.3.

⁶ *In the Matter of Connect America Fund et al., Order*, WC Docket No. 10-90 et al., 27 FCC Rcd. 15768 (2012) at n. 9.

⁷ By Public Notice released in December 2016, the Commission announced that the HUBB would be used. See Public Notice, WC Docket No. 10-90, released December 8, 2016 (“December 2016 HUBB Public Notice”) at 1-2. The Company was later informed that the FCC extended the deadline for A-CAM companies’ first HUBB reporting to March 1, 2018. See generally *In the Matter of Connect America Fund, Order*, WC Docket No. 10-90, DA 17-196, released February 24, 2017 (the “February 2017 Order”). The Company notes that this filing date was confirmed by USAC via email received by the Company on February 24, 2017 wherein USAC confirmed that “[a]s a result of this order, the first HUBB filing deadline for Phase II carriers will be no sooner than July 1, 2017, and the first HUBB filing deadline for CAF-BLS and A-CAM recipients will be no sooner than March 1, 2018.”

instructions and generally reviewed HUBB-related filing information. Thus, at the time of the March 2018 filing, the Company believed in good faith that the necessary diligence regarding the HUBB filing requirements had been undertaken. Based on its 2019 HUBB filing experience, the Company believes that its representative making the 2018 HUBB location submission mistakenly failed to select the website's prompt to certify all uploaded locations, and apparently selected instead the prompt to certify those limited number of locations shown on the screen. Significantly, the Company had, in fact, uploaded all necessary HUBB locations to be certified in 2018, an act that would have been unnecessary in the event that the locations were not ready for certification.⁸

To be sure, the Company seeks this waiver not only to allow it to complete what was intended to be the entirety of the certification of 2017 locations in its 2018 HUBB filing, but also to provide a correct and full reflection of what efforts the Company had then taken to deploy broadband in its area.⁹ In this regard, the requested waiver of the Section 54.316(c) advances the Commission's overarching policy of encouraging broadband deployment,¹⁰ allowing the HUBB

⁸ As noted in USAC's "HUBB Frequently Asked Questions" (https://www.usac.org/_res/documents/hc/pdf/tools/HC-HUBB-FAQ.pdf, last visited March 6, 2019) (the "USAC HUBB Q&As"), USAC makes clear that if no locations are to be certified that year's filing should note that fact. *See* USAC HUBB Q7As, Q&A No. 7.

⁹ The Commission has acknowledged an anticipation for "correct and accurate data" being submitted through the HUBB. *See February 2017 Order* at ¶ 11.

¹⁰ With respect to this policy and by way of example, the Commission has stated

[u]niversal service can—and must—play a critical role in helping to bridge the digital divide to ensure that rural America is not left behind as broadband services are deployed. The directive articulated by the Commission in 2011 remains as true today as it did then: 'The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access.' "

March 2018 Order at ¶ 1 *citing Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90 *et al.*, 26 FCC Rcd. 17663, 17668, ¶ . 5 (2011) (*USF/ICC Transformation Order and/or FNPRM*); *aff'd sub nom., In re: FCC 11-161*,

to reflect the accurate and updated certified, and thus verifiable, broadband locations within NEP's service area. Accurate and accountable broadband deployment reporting clearly advances the public interest,¹¹ which is the result sought by NEP through this waiver.¹²

NEP respectfully submits that no entity is harmed by a prompt grant of this waiver. The first milestone applicable to NEP under the A-CAM model program is not due to be met until future filings, and thus the Company is unaware of any effect on the level of its A-CAM-related monthly A-CAM disbursements arising from this inadvertent oversight. Rather, in the absence of a prompt grant of this waiver, the accuracy of where broadband has and has not been deployed will not be reflected in the HUBB and could have unintended impacts on future A-CAM deployment milestone reporting¹³ even though the *reality* of the Company's operations and deployment may be otherwise.

753 F.3d 1015 (10th Cir. 2014) (*In re: FCC 11-161*). As the Commission has also stated:

Broadband access fosters employment and educational opportunities, stimulates innovations in health care and telemedicine and promotes connectivity among family and communities. And as important as these benefits are in America's cities, they can be even more important in America's more remote small towns, rural, and insular areas. Rural Americans deserve to reap the benefits of the internet and participate in the 21st century society—not run the risk of falling yet further behind.

March 2018 Order at ¶ 2.

¹¹ *Accord* December 2016 HUBB Public Notice at 2. Moreover, accurate HUBB reporting has the added benefits of, as the Commission noted, HUBB-related future consumer access and mapping capabilities. *See id.* at 2. Accurate HUBB data provides the basis for “an objective metric showing the extent to which rate-of-return ETCs are using funds to advance as well as preserve universal service in rural areas, demonstrating the extent to which they are upgrading existing networks to connect rural consumers to broadband.” *March 2016 Order* at ¶ 210.

¹² The Company notes that, on February 28, 2019, it has, consistent with USAC's questions and answers related to “Uploading and Managing Location Data,” edited the speed tiers for the uncertified data uploaded in its 2018 HUBB filing.

¹³ *See* 47 C.F.R. § 54.311(d).

III. CONCLUSION

For the foregoing reasons, NEP respectfully requests an expedited grant of this waiver request, action that will advance the public interest and otherwise reflects the circumstances surrounding the inadvertent certification error that gives rise to the instant request.

Respectfully submitted,

**The North-Eastern Pennsylvania Telephone
Company**

By: 

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Date: March 12, 2019

Attachment A

Milestone Certification and Reporting

☒ Select a fund

☒ State selected: PA

☒ SAC selected: 170191

Fields may automatically populate based on your uploaded file.
You may edit your fields at any time.

In the table below, click a deployment year to view your uploaded locations by speed tier.

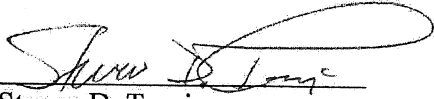
Disclaimer: This report provides feedback as data is added or removed from the HUBB. The information contained within this report is intended for informational purposes only to assist in compliance efforts and does not constitute a final determination of your compliance with the required performance obligations.

Build-out requirement (locations): **8077**

Deployment Year	Locations Ready For Certification	Certified Locations	% of Certified Locations	Milestone Obligation %	Milestone on Target?	Certified On	Milestone Certification Status	View History
2016	[REDACTED BY COMPANY SINCE NO CERTIFICATION ISSUE ADDRESSED IN THE PETITION IS PRESENT.]	-	-	-	-	-	-	
2017	1683	10	-	-	-	-	-	
2018	[REDACTED BY COMPANY SINCE NO CERTIFICATION ISSUE ADDRESSED IN THE PETITION IS PRESENT.]	-	-	-	-	-	-	
2019	0	0	-	-	-	-	-	
2020	0	0	-	40%	-	-	-	
2021	0	0	-	50%	-	-	-	
2022	0	0	-	60%	-	-	-	
2023	0	0	-	70%	-	-	-	
2024	0	0	-	80%	-	-	-	
2025	0	0	-	90%	-	-	-	

DECLARATION

I, Steven D. Tourje, President. of The North-Eastern Pennsylvania Telephone Company (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Expedited Waiver by The Northeastern Pennsylvania Telephone Company of Section 54.316(c) of the Commission's Rules," and the information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.



Steven D. Tourje
President.

Date: 3-12-19