

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

EMERGENCY REQUEST FOR EXPEDITED TREATMENT

PETITION FOR WAIVER

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ ComSouth Corporation (“ComSouth”) and Bloomingdale Telephone Company (“Bloomingdale”) (together “Petitioners”) hereby request an expedited waiver of Section 54.316(c)(1) of the Commission’s rules² which require rate-of-return carriers to submit location information, including geocodes, into the High Cost Universal Broadband (“HUBB”) portal maintained by the Universal Service Administrative Company (“USAC”) by March 1 each year. The purpose of the reporting requirement is so that the Commission may better monitor how high-cost support is being used to “improve broadband availability, service quality, and

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.316(c)(1).

capacity.”³ Petitioners specifically seek waiver of this rule and the associated penalties in a very limited manner. Petitioners seek waiver *only* to the extent that they had to certify that they had no locations to report and seek waiver *only* for the HUBB report due March 1, 2019, prior to the clarification and public realization that those failing to certify no locations would be subject to penalties in the form of significant reductions in high-cost universal service support.⁴

In its December 2, 2019 Order, the Wireline Competition Bureau (“Bureau”) found that good cause existed to waive the applicable section of the Commission’s rules and grant relief given the confusion and technical difficulties accompanying the first-ever HUBB filing and the fact that failure to certify locations, unlike “late-filed” locations, “did not impede the Bureau’s ability to monitor broadband deployment” since the geocoded location data was successfully uploaded to the HUBB prior to the deadline.⁵ For the reasons outlined in the Bureau’s

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3163-64, para. 9 (2016) (*Rate-of-Return Reform Order*).

⁴ See *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et. al.*, WC Docket No. 08-71 et al. Order., 34 FCC Rcd. 11139 (2019); see also Blackfoot Telephone Cooperative, Inc. and Fremont Telcom Company Request for Limited Waiver of March 1, 2018 Deadline for Certifying Broadband Locations in the High Cost Universal Broadband System for Alternative Connect America Cost Model Funding, WC Docket No. 10-90 (filed Apr. 25, 2019), <https://ecfsapi.fcc.gov/file/104251699611677/Blackfoot%20Waiver%20Request%20re%20HUBB%2004-25-19%20FINAL.pdf> (Blackfoot Waiver Petition); Petition of Cascade for Waiver and Rescission of High-Cost Support Reduction Penalties Imposed by the Universal Service Administrative Company pursuant to Section 54.316(c)(1) of the Commission’s Rules, WC Docket No. 10-90 (filed Jun. 18, 2019), <https://ecfsapi.fcc.gov/file/10618177001517/Cascade%20Petition%20Waiver%20and%20Rescission%20June%202019.pdf> (Cascade Waiver Petition); Request for Expedited Treatment Petition for Waivers of Section 54.316(c)(1) and Section 54.316(c)(1)(ii) of the Commission’s Rules FMTC, WC Docket No. 10-90, et al., (filed Aug. 13, 2019), <https://ecfsapi.fcc.gov/file/1081360387595/FMTC%20Jesup%20-%20Request%20for%20Waiver%20of%20ACAM%20Locations%20Certification.pdf> (FMTC Waiver Petition); KPU Petition for Waiver of March 1, 2018 HUBB Portal Certification Deadline, WC Docket Nos. 08-71, 14-58, 16-271, (filed May 9, 2019), <https://ecfsapi.fcc.gov/file/105090829408341/KPU%20HUBB%20Waiver.pdf> (KPU Waiver Petition); Petition for Expedited Waiver By NEP of Section 54.316(c) Of The Commission’s Rules, WC Docket Nos. 10-90, 14-58 (filed Mar. 12, 2019), <https://ecfsapi.fcc.gov/file/103121925821424/3%2012%2019%20NEP%20Petition%20for%20Expedited%20Waiver.pdf> (NEP Waiver Petition); Request for Expedited Treatment Petition of Olin, WC Docket Nos. 10-190, 14-58, 07-135, CC Docket No. 01-92 (filed Jun. 13, 2019), <https://ecfsapi.fcc.gov/file/10613734420163/Olin%20Telepnone%20HUBB%20Petition.pdf> (Olin Waiver Petition); Emergency Request for Expedited Treatment Petition For Waiver Impacted RLEC HUBB Filers, CC Docket No. 01-92, WC Docket Nos. 10-90, 14-58, 07-135 (filed Jun. 11, 2019), <https://ecfsapi.fcc.gov/file/10611356427306/HUBB%20Waiver%20-FINAL%206-11-2019.pdf>, confirming that the Petitions for Waiver filed by first round HUBB filers were not submitted until after the March 1st, 2019 HUBB deadline (together, “*First Round Hubb Filers Petitions for Waiver*”).

⁵ See *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et. al.*, WC Docket No. 08-71 et al. Order., 34 FCC Rcd. 11139, paras. 13-14 (Dec 2, 2019) (*December Order*).

December Order, Petitioners urge the Commission to exercise the same understanding for those HUBB filers that similarly did not certify no locations in the second-ever HUBB filing since the same insufficient guidance had not yet been clarified and was still being followed. As demonstrated herein, the underlying conditions of the second-ever HUBB filing were nearly identical to those of the first. Second round HUBB filers, like Petitioners, were still relying on incomplete information and the misleading Public Notice, that had been released the same day the first-ever HUBB reporting was due, for further guidance on HUBB reporting.⁶ Additionally, the *First Round HUBB Filers Petitions for Waiver* were not filed and made public until after March 1, 2019. Therefore, second-round HUBB filers were still unaware of the requirement to certify no locations and that the penalty for failing to certify no locations was a reduction in the amount of high-cost universal service support, until after the March 1, 2019 deadline.

As is evidenced below, Petitioners acted in good faith to complete the HUBB requirements that they believed were necessary for the HUBB filing in 2019, but they were ultimately penalized thousands of dollars in high-cost support that is intended to be used to deliver broadband to rural Americans. With the current COVID-19 pandemic forcing children and adults to complete school work and work from home, it is now more important than ever before that service providers, like the Petitioners, have enough funding and resources to deploy and maintain their networks and provide their customers with sufficient broadband to stay afloat during this unprecedented crisis. Petitioners urge the Commission to expeditiously grant this petition *nunc pro tunc* and direct USAC to restore the critical universal service support that has been deducted from their respective high-cost universal service support.

I. Background

⁶ Wireline Competition Bureau Provides Further Guidance to Recipients of Connect America Fund-Broadband Loop Support on Reporting and Deployment Obligations, WC Docket No. 10-90, DA 18-207 (rel. Mar. 1, 2018) (“Public Notice”).

a. ComSouth

ComSouth was not aware that it was late with filing its HUBB data because it had no data to file. As an A-CAM carrier, the company was aware of the FCC's requirement to input into the HUBB, by March 1, 2019, the specific location information where ComSouth offered its broadband service in satisfaction of the public interest obligations during the calendar year 2018.

Additionally, 2019 was the first year that HUBB filers had to make two separate certifications – one for 2018 data and one for pre-existing locations deployed in 2016 and earlier. ComSouth timely reported locations in the HUBB for its pre-2016 locations by the March 1, 2019 deadline. In fact, when ComSouth was attempting to initially certify locations in the HUBB, its certifying officer did not have entitlements in the HUBB to certify ComSouth's filings, despite being the certifying officer for all of ComSouth's other USAC filings. Consequently, ComSouth reached out to USAC on multiple occasions for assistance and finally, on February 26th, 2019, USAC was able to solve this issue prior to the deadline. Therefore, it is clear that ComSouth knew about the deadline and had every intention of complying with the deadline. On March 14, 2019, ComSouth was made aware, by USAC over telephone, that it also needed to certify in the HUBB that it had no newly deployed locations in 2018. On that same day that ComSouth was notified of the issue, it immediately certified that it had no new locations to report within its study area. However, by the time clear guidance was provided by USAC as to how to rectify the situation, ComSouth had incurred what would become a penalty of \$58,048.69, of which it was not made aware until the amounts were deducted from its February 2020 A-CAM disbursements.

After coming into compliance, ComSouth was not explicitly notified of any consequences of the late filing until it received notice in this year's settlement statements of

significant reductions in the amount of high-cost universal service support that followed the penalty schedule in 54.316(c)(1)(ii). The impact to ComSouth is that a total of \$58,048.69 of A-CAM support has been withheld. In February 2020, ComSouth anticipated that it would receive \$89,975.47 in A-CAM support for the month of February 2020. Instead, ComSouth only received \$31,926.78. This resulted in a total of \$58,048.69 in A-CAM support loss. ComSouth was never notified as to if or when it would receive a reduction in support, nor was it notified as to the amount by which support would be reduced. USAC merely stated, after ComSouth was made aware that it had to certify no locations, that approximately 21 days of A-CAM support *could* be withheld. ComSouth serves a very rural area of Georgia and is the only carrier providing broadband in its service territory. ComSouth's ability to deploy broadband to its sparse customer base significantly depends on A-CAM funding. Losing even a few dollars in funding puts increased pressure on the business case to deploy broadband.

b. Bloomingtondale

Bloomingtondale was not aware that it was late with filing its HUBB data since it had no new locations to report. As a legacy rate-of-return carrier with buildout obligations, Bloomingtondale was aware of the FCC's requirement to input into the HUBB, by March 1, 2019, the specific location information where the company offered its broadband service in satisfaction of the public interest obligations during the calendar year 2018. For the inaugural 2018 HUBB filing, Bloomingtondale timely inputted in all of its locations that had been deployed to 10/1 Mbps from May 25, 2016-December 31, 2017 by the March 1, 2018 deadline. Therefore, Bloomingtondale clearly knew about the deadline and had every intention of complying with the deadline.

Even when, prior to the March 1, 2019 filing deadline, Bloomingdale received a call from USAC reminding Bloomingdale about the upcoming HUBB filing deadline, the USAC representative did not advise Bloomingdale to certify that the company had no locations to report when there was an opportunity to do so. On February 26, 2019, Bloomingdale sent an e-mail to a member of USAC's High Cost Support Team, inquiring whether Bloomingdale needed to input locations where speeds may have changed due to the company building out Fiber-To-The-Home ("FTTH"). The USAC representative responded, stating that "A location that has been uploaded previously (no matter the speed) will not be accepted again" and "[i]f locations were uploaded previously, there [is] no need to upload them again; just make sure that all locations deployed to in 2018 are in the HUBB." Given that the USAC representative included the admonition that all locations deployed in 2018 should be in the HUBB, the representative then could have easily added an admonition to make the certification if there were no locations to report, however, the USAC representative did not do so.

After the March 1, 2019 HUBB filing deadline, Bloomingdale was not made aware that it needed to certify that it had no newly deployed locations in 2018 until March 21, 2019, when USAC finally provided clear guidance as to how to rectify the situation. Immediately upon receiving this guidance, Bloomingdale certified that it had no new locations to report within its study area. However, after coming into compliance, Bloomingdale was not explicitly notified of any consequences of the late filing until February 20, 2020, when Bloomingdale received an e-mail from its NECA Member Services manager, alerting Bloomingdale that USAC had directed NECA to reduce Bloomingdale's high-cost universal service support, in line with the penalty

schedule in 54.316(c)(1)(ii). The impact to Bloomingdale is that a total of \$62,223.00 of legacy support had been withheld.⁷

Bloomingdale never received any notification from USAC definitively stating that a loss of support, especially such a severe loss in support, would be the subsequent penalty. Even when Bloomingdale received notice that it would have to go back into the HUBB and certify that it had no new locations to report, Bloomingdale still was given no warning regarding the potential for such a large penalty.

Bloomingdale serves a very rural area of Michigan and is the only carrier providing broadband in its service territory. Bloomingdale's ability to deploy broadband to its customers significantly depends on universal service funding. Without its total amount of support, Bloomingdale will struggle financially to deploy broadband to its customers.

II. Waiver is Warranted

a. Strict Compliance is Inconsistent with the Public Interest

It is in the public interest for the FCC to grant Petitioners' narrow request that applies only to the second HUBB filing and only when Petitioners did not indicate there were no locations to report. Under Section 1.3, generally the Commission may exercise its discretion to waive an FCC rule "for good cause shown."⁸ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁹ The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special

⁷ In February 2020, Bloomingdale anticipated that it would receive \$71,440 in support for the month of February 2020. Instead, the company only received \$9,217. This resulted in a total of \$62,223.00 in support loss.

⁸ 47 C.F.R. § 1.3.

⁹ See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁰

Section 54.313(a)(1), the general FCC rule for the HUBB filing, states that “recipients of high-cost support with defined broadband deployment obligations...shall provide to the Administrator on a recurring basis information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations.”¹¹ Specifically, Section 54.316(a)(2) and (3) requires *locational* information, including geocodes, but make no reference to submitting that there are no locations to report.¹² From the Petitioners’ perspective at the time, there simply was no *locational* information to report on the March 1, 2019 HUBB filing.

Furthermore, the Bureau’s additional, yet insufficient, guidance on the HUBB filing released on March 1, 2018 – the day the first HUBB filing was due – had not been clarified or corrected by the second HUBB filing on March 1, 2019. In this Public Notice, the Bureau stated, “a carrier **can certify** in the HUBB that it did not deploy any locations in the prior reporting year.”¹³ This guidance conveyed that HUBB filers who did not deploy to any new locations in the reporting period had the *option* of certifying “no locations”; it did not convey the necessity of doing so or the severity of penalty for not doing so. It was not until after March 1, 2019 that first-round HUBB filers, that had failed to certify no locations, publicized that they were beginning to see large reductions in support as a result¹⁴ and the Bureau released its *December Order*,

¹⁰ See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

¹¹ 54.316(a)(1). Section 54.326(a)(2) and (3) then require specific locational information, including geocodes but make no reference to submitting that there are no locations to report.

¹² 47 CFR Section 54.316(a)(2) and (3) (emphasis added).

¹³ Public Notice at 2 (emphasis added).

¹⁴ See [First Round Hubb Filers Petitions for Waiver](#), confirming that documents were not filed until after March 1, 2019.

clarifying HUBB filing instructions for filers with no new locations to report.¹⁵ Accordingly, the guidance in the Public Notice continued to be inadequate, even during the second HUBB filing, and public notice of the first-round HUBB filers' reductions in support came too late to communicate the Commission's *requirement* that HUBB filers with no broadband locations to report must certify "no locations" or face late-filing penalties that could significantly reduce universal service support.

While Petitioners now understand that the FCC and USAC require the submission and certification of "no locations," at the time of the second HUBB filing, this was not clear—nor did USAC give the "no location" filers ample time and warning that they would face penalties if they did not certify that they had no information about broadband locations to report on the March 1 deadline. For example, when a USAC representative called ComSouth to notify the company that it had failed to certify no data locations, the USAC representative still did not reveal that the company would face late-filing penalties in the form of significant reductions to its universal service support. Instead, the USAC representative stated only that approximately 21 days of support *could* be withheld. Likewise, in a USAC representative's e-mail to Bloomingdale, the USAC representative never told Bloomingdale that it had to make sure to certify that it had no locations to report. Instead, the USAC representative's e-mail simply directed Bloomingdale to just make sure that all locations deployed in 2018 were reported in the HUBB. Consequently, the guidance provided by USAC and NECA continued to be confusing during the second HUBB filing.

Finally, the purpose of the HUBB filing's reporting requirements are so that the Commission may better monitor how high-cost support is being used to "improve broadband

¹⁵ See *Order Granting Waiver for First-Round Hubb Filers* at 11145-11146, paras. 19-20.

availability, service quality, and capacity.”¹⁶ The Bureau acknowledged in its *December Order* that failure to certify locations “ did not impede the Bureau’s ability to monitor [broadband] deployment” since the location data had been uploaded prior to the deadline.¹⁷ Similarly, Petitioners’ geocoded location data was successfully uploaded into the HUBB portal prior to the March 1, 2019 deadline and granting Petitioners’ requested relief would not undermine the policy objective of the rule.

Since Petitioners did not clearly understand the no location certification requirement at the time, the public interest would be served by waiving this requirement *nunc pro tunc* and restoring the high-cost universal service support that was withheld.

b. Restoring Universal Service Funds is in the Public Interest

Petitioners are small rate-of-return carriers that receive universal service funds to deploy broadband to residents and businesses and maintain vital voice and broadband networks to communities in their respective very rural areas of Georgia and Michigan. The Petitioners’ ability to deploy and support high-speed broadband in the rural areas they serve is vital given that no alternative providers exist to meet the broadband needs of residents and businesses. As required by Congress and affirmed repeatedly by the Commission, these universal service funds are to be sufficient and predictable. However, Petitioners were not notified by USAC in advance of receiving its February 2020 USF disbursement statement that their vital universal service support would be significantly reduced. Petitioners budgeted universal service disbursements for 2020 as though they would receive every payment in full, and then suddenly found that they did not. Petitioners were forced to quickly adjust their broadband deployment planning for the year

¹⁶ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3163-64, para. 9 (2016) (*Rate-of-Return Reform Order*).

¹⁷ See December 2nd Order at 11145, para. 19.

as well as figure out how to make up for the shortfall in support since Petitioners are obligated to build out to a certain number of locations, but now with less support.

ComSouth is the only carrier providing broadband in its service territory in a very rural area of Georgia, and Bloomingdale is the only carrier providing broadband in its service territory in a very rural part of Michigan. Petitioners rely heavily on high-cost universal service funding to deploy broadband to their sparse, isolated customer bases. Losing even a few dollars in funding puts increased pressure on Petitioners' ability to deploy broadband. The financial penalty that Petitioners incurred was a drastic adjustment and will directly and negatively impact the rural communities they serve. Specifically, the loss in support will directly affect Petitioners' ability to fund broadband deployment, as well as day-to-day operations and maintenance of their current networks and infrastructure. This funding is now more critical than ever due to the unprecedented COVID-19 pandemic. Petitioners are already seeing reductions in revenues from committing to the Chairman's Keep America Connected Pledge. Petitioners are waiving late fees, deferring disconnection of services and providing free broadband service to homes with school age children whose schools have closed due to the pandemic. Ultimately, these penalties will prevent residents in these service territories from not only accessing broadband service, but also accessing government services, health care services, educational opportunities and business opportunities which are more crucial now than ever before with so many businesses and schools operating remotely.

It is in the public interest to grant Petitioners' request for a limited waiver that applies only to the March 1, 2019 HUBB filing. The universal service support that was withheld from Petitioners is not being taken from Petitioners' bank account, it is being taken from the rural citizens who are counting on Petitioners to deliver high-speed broadband funded with federal

support. Petitioners acted in good faith to complete the “no locations” certification as soon as they were contacted by the USAC representative and told to do so. Petitioners did not deliberately miss the deadline to file “information” about broadband deployment. Petitioners believed that since it had no information to submit, no action was required. Petitioners were still relying on the Bureau’s guidance from the first HUBB filing that lacked language adequately conveying the importance of, or reason for, companies that had no information to report to still complete a certification. Additionally, Petitioners were not aware that the penalty for failing to certify no locations was a significant reduction in support since they were not notified of this possibility until after March 1, 2019, when a USAC representative called to inform ComSouth that 21 days of support *could* be withheld and NECA sent a Filing Reminder e-mail to Bloomingdale only stating that carriers *may* see reductions in support. Furthermore, the *First Round Hubb Filers Petitions for Waiver*, due to support being withheld, were not made public until Summer 2019.

Finally, Petitioners have now enacted internal controls to ensure compliance in future years. For example, ComSouth has established a stringent review process to ensure that all filings and certifications are completed prior to the due date. Additionally, ComSouth has worked with USAC to correct the user profiles applicable to this and other filings. However, ComSouth continued to have the same issue this year with its certifying officer’s ability to certify, and it was not until after multiple e-mails and phone calls that this was corrected prior to the filing deadline. Filings will be prepared by ComSouth’s regulatory staff and will be reviewed and signed off on by either the Senior Manager of Regulatory and/or the Director of Regulatory prior to being certified by ComSouth’s Chief Financial Officer. Print screens of filings and certifications will be maintained on ComSouth’s Regulatory Compliance drive. Finally, a

calendar notice for the day before the deadline has been created so that ComSouth's Regulatory Department may log into the website to ensure that data was uploaded and certified correctly and ComSouth will maintain screenshots. Now that ComSouth is aware of the requirement, it will make sure to certify in the HUBB even when it has no newly deployed locations to report.

Likewise, Bloomingdale has also enacted internal controls to ensure it does not miss any future HUBB filings after this experience. Moreover, by the end of 2020, Bloomingdale will have 100% FTTH coverage of its service area and will update its locations in the HUBB to include all locations Bloomingdale can serve. Once Bloomingdale has reported all of its locations from its FTTH build out, it will only need to report brand new construction locations to the HUBB or certify that it has no locations to report. Bloomingdale will set calendar reminders for the day before the deadline to ensure that it makes the correct reports and certifications in the HUBB.

III. Conclusion

The Bureau has already granted the *First Round Hubb Filers Petitions for Waiver* and acknowledged their "reasonable confusion" and zero impact on the "Bureau's ability to monitor broadband deployment" during the March 2018 HUBB filing.¹⁸ Second-round HUBB filers, like Petitioners, experienced the same confusion. While the consequences for failing to certify no locations in the HUBB have now been made clearly known, second-round HUBB filers, like Petitioners, received and relied on the same insufficient guidance and, therefore, were at the same disadvantage as first-round HUBB filers. Likewise, Petitioners failure to certify also did not impede the Bureau's ability to monitor broadband deployment since Petitioners geocoded location data was successfully uploaded into the HUBB prior to the March 1, 2019 deadline.

¹⁸ See *December Order*.

The Commission has since recognized that good cause existed to grant *First Round HUBB Filers Petitions for Waiver* and directed USAC to disburse withheld funds to their designated recipients.¹⁹ The customers of those similarly situated first-round HUBB filers, that were granted waivers, will not suffer since funding will be restored. The customers of future HUBB filers will not suffer since it is now clear that HUBB filers with no broadband locations to report must certify no locations or face late-filing penalties that could significantly reduce universal service support. Petitioners' customers should not have to suffer the consequences of a lack of high-speed broadband simply due to unfortunate timing, especially in the midst of the COVID-19 crisis.

For the reasons enumerated herein, Petitioners urge the Commission to expeditiously grant this petition *nunc pro tunc* and direct USAC to restore the critical universal service support they receive.

April 21, 2020

s/ John Kuykendall
John Kuykendall, Vice President
JSI
7852 Walker Dr. Suite 200 *Consultant for*
Greenbelt, Maryland 20770

Respectfully Submitted,

/s/ Jean Thaxton
Jean Thaxton, Sr. Manager, Regulatory
ComSouth Corporation
870 William Hilton Parkway, Building C
Hilton Head Island, South Carolina
29928

/s/ Steve Shults
Steve Shults, General Manager and CEO
Bloomingdale Telephone Company
PO Box 187
Bloomingdale, Michigan 49026

¹⁹ Id.