

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Universal Service High-Cost Filing)	WC Docket No. 08-71
Deadlines)	
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Connect America Fund – Alaska Plan)	WC Docket No. 16-271
)	
_____)	

**KETCHIKAN PUBLIC UTILITIES PETITION FOR WAIVER OF MARCH 1, 2018
HUBB PORTAL CERTIFICATION DEADLINE**

Pursuant to 47 C.F.R. § 1.3, Ketchikan Public Utilities (“KPU”) hereby respectfully petitions the Federal Communications Commission (the “Commission” or “FCC”) for a waiver of the March 1, 2018 deadline to certify geocoded locations in the High Cost Universal Broadband (“HUBB”) portal. KPU entered all of its required data into the HUBB portal by the deadline, but experienced a series of technical difficulties with the portal that prevented it from finalizing its certification. Initially, the HUBB portal would not recognize the authorized user and required a password reset that created additional issues. Once those issues were resolved, the HUBB portal would not allow KPU to certify its data. KPU discussed its issue with USAC staff and was assured that an issue with the portal was the cause of the problem, not KPU. The issue was resolved within a week and KPU’s data was properly certified. KPU considered the matter

closed until it was very recently informed by NECA¹ that its February 2019 payment was deducted for failure to certify its data *eleven* months earlier.

Because this technical difficulty with the HUBB portal was outside of KPU's control and KPU took additional steps thereafter to ensure that its data was properly certified, KPU should not be penalized eleven months after this issue arose for a problem that cannot be fairly attributed to KPU's actions. KPU therefore requests a waiver from the Commission to remedy this situation.

I. KPU Was Required to File Wireline, Last Mile End-User Locations Deployed in 2017 by March 1, 2018.

The FCC adopted the Alaska Plan in 2016 to provide support frozen at 2011 levels for a 10-year term. In exchange for this support, the utility was required to meet individualized performance obligations.² KPU accepted \$4,217,490 from the FCC to provide newly deployed/upgraded service to 71 locations at 25/3 Mbps, 72 locations at 50/4 Mbps, and 502 locations at 100/5 Mbps by December 31, 2021.³

The Commission created the HUBB portal to perform real-time validation of geocoded broadband location data. The HUBB portal validates whether a location's latitude and longitude coordinates fall within an eligible area for funding and does not duplicate a location already submitted for validation. The Commission considers a location served if the carrier could turn up service to meet at least the minimum requirements for speed, latency, and usage within 10 business days of receiving an end-user request.

¹ Brandon Gardner from NECA notified KPU on February 28, 2019, that KPU's CAF payment "included a reduction and penalty for a late 54.316 certification from way back in March 2018." This February 28, 2019 e-mail is included as Attachment 1.

² See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) ("Alaska Plan Order").

³ *Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*, Public Notice, WC Docket No. 10-90 (Dec. 21, 2016).

All recipients of Alaska Plan support were required to file benchmark locations by March 1, 2018, although compliance with the actual benchmark is not required until halfway through the program, or the end of 2021.⁴ Updates are due annually on March 1 through the end of the program. “Specifically, starting on March 1, 2018, and on a recurring basis thereafter, [the FCC] will require all Alaska Plan participants to submit to USAC the geocoded locations for which they have newly deployed or upgraded broadband meeting the minimum speeds in their approved performance plans and their associated speeds.”⁵

Failure to comply with Commission deadlines may result in a reduction of support.⁶ An eligible telecommunications carrier (“ETC”) that files after the March 1 deadline, but by March 8 will have its support reduced in an amount equivalent to seven days of support.⁷ An ETC that files after March 9 will have its support reduced on a pro rata daily basis.⁸ The rules provide for a grace period for ETCs that file after March 1, but before March 5, so long as they have not previously missed the March 1 deadline.⁹ As discussed in more detail below, KPU’s filing in March 2018 should not have been considered late. But even if its filing were deemed late, KPU qualified for the regulatory grace period, and no penalty should have been assessed to KPU. Moreover, given the technical difficulties that KPU experienced with the HUBB portal and KPU’s efforts to ensure its data was properly certified, waiver of the requirement and/or waiver of the monetary penalty is in the public interest.

⁴ *Alaska Plan Order* at para. 31.

⁵ *Alaska Plan Order* at para. 57; *see also* 47 C.F.R. § 54.316(c).

⁶ *See* 47 C.F.R. § 54.316(c).

⁷ *See* 47 C.F.R. § 54.316(c)(1)(i).

⁸ *See* 47 C.F.R. § 54.316(c)(1)(ii).

⁹ *See* 47 C.F.R. § 54.316(c)(1)(iii).

II. KPU Made Good Faith Efforts To Certify Locations by the Deadline.

KPU entered its data into the HUBB portal on a timely basis.¹⁰ KPU believed it had completed the process on March 1, 2018. On Tuesday, March 6, 2018, USAC informed KPU that the HUBB was experiencing technical difficulties, and KPU's data had not been successfully certified on March 1, 2018. After an exhaustive exchange of emails and telephone calls, USAC staff and KPU staff attempted to identify and isolate the problem. Eventually, USAC told KPU that "[w]e've discovered *this is an issue on [USAC's] end*. [KPU is] not the only one having this problem. [USAC is] working it out. I will get back to you as soon as possible. Thanks for your patience."¹¹ USAC requested KPU to try again to certify its data.

After spending most of the day on March 6, 2018, attempting to certify its data, KPU again believed that its data had been successfully certified. USAC staff then noted that there is a penalty for late filings.¹² The email from USAC staff restated the penalty for late filing and offered the one-time grace period contained in 47 C.F.R. § 54.316(c)(1)(iii):

Please go ahead and try to certify. In addition, since we are after the deadline, the late filing rules are in effect. Specifically:

There is a reduction in support for late filings. The FCC will impose a minimum reduction of support of seven days since it is important that carriers meet all filing deadlines. After the initial seven days, support will be reduced further on a day-by-day basis until the carrier files the required certification, plus the minimum seven-day reduction. Therefore, a carrier that misses the deadline by four days would lose seven days of support.

For a late filer, a one-time grace period of three days can be applied so that a carrier that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support.

¹⁰ See Affidavit of Dan Lindgren.

¹¹ Email from Elizabeth, USAC Staff, on March 6, 2018 12:48 pm EST, included as Attachment 2 (emphasis added.) (Please note that the four-hour time difference between USAC in DC and KPU in Ketchikan is reflected in the time jumps in the email exchanges.)

¹² Email from Elizabeth, USAC Staff, on March 6, 2018 at 2:09 pm EST.

Please let us know if you would like to use this option. Thanks,
Elizabeth¹³

Dan Lindgren, KPU's Assistant Telecommunications Division Manager, responded that same day, informing USAC that KPU had worked in good faith to certify its data, and USAC had already acknowledged that the technical problem was with the HUBB portal and not KPU.¹⁴ Mr. Lindgren requested that USAC not penalize KPU or escalate the matter. USAC responded: "Dan—We will have answer to this shortly and will get back to you then. Thanks Elizabeth."¹⁵ KPU received no additional correspondence from USAC on this matter and considered the matter to be closed until KPU was notified *11 months later* that its support was reduced as a result of this situation.

USAC penalized KPU seven days of CAF support for missing the deadline.¹⁶ To large carriers, this reduction in support may be an inconvenience. KPU is a small carrier serving a high-cost area in Alaska. A seven-day reduction in CAF support for KPU equates to \$79,361.38. The loss of this support is material to KPU and imposes a significant financial burden on the company and its members. USAC's decision to penalize KPU is particularly galling given the HUBB's technical glitches, USAC's admission that the technical glitch was not KPU's fault, the inability of USAC to address the problem before March 1, 2018, and USAC's 11-month delay in communicating with KPU about this situation. For all of these reasons, KPU respectfully requests that the Commission reverse the penalty imposed by USAC.

¹³ *Id.*

¹⁴ See Affidavit of Dan Lindgren.

¹⁵ Email from Elizabeth, USAC Staff on March 9, 2018 at 9:13 am EST.

¹⁶ See 47 C.F.R. § 54.316(c)(1)(i).

Since 2018, USAC has made substantial improvements to the HUBB portal suggesting that there were inherent problems with the system.¹⁷ The user interface design improved navigation, added the ability to see location edits and uploads, and emailed receipts of certification confirmation. Alaska-specific improvements included the ability of Alaska wireless carriers to upload speed data and the addition of speed tier codes for Alaska wireline carriers.¹⁸ The fact that USAC made so many substantive improvements suggests that KPU's waiver addresses an unintended problem with the system and should be granted.

III. Strict Application of Certification Rule Is Inconsistent with the Public Interest.

The Commission may exercise its discretion to waive its own rules "where the particular facts make strict compliance inconsistent with the public interest."¹⁹ The Commission will assess whether the applicant has demonstrated good cause.²⁰ "The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an overall basis."²¹ KPU respectfully suggests that an analysis of the unusual facts of this situation, the hardship that would be imposed on KPU through the loss of material support, and the lack of impact on any other carrier or the Commission's public policy, all support granting KPU's waiver request.

KPU's situation is unique and the technical problems that KPU encountered on March 1, 2018, were beyond KPU's control. KPU does not believe this situation merits a waiver from the Commission because KPU believes the Commission can and should exercise its discretion to direct USAC to restore KPU's seven days of CAF funding without a waiver. USAC staff already

¹⁷ *Connect America Fund: filing with the HUBB Portal*, USAC Training (Jan. 31, 2019) at 10. Available at: <https://www.usac.org/res/documents/hc/training/.../Filing-with-the-HUBB-Portal.pdf>.

¹⁸ *Id.*

¹⁹ *In re Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-43 (2018) at para. 4 (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

²⁰ *Id.*

²¹ *Id.* at para. 4 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166).

acknowledged that KPU's inability to certify its locations was a glitch in the HUBB, not attributable to any fault or failure of KPU. The lack of any similar waiver requests suggests that other similarly situated carriers were not penalized. Such an outcome is appropriate and suggests that technical glitches with the HUBB portal should not result in penalties for any carriers, let alone small, rural carriers that make good-faith efforts to comply with the rules. If the Commission decides not to exercise its discretion to direct USAC to restore KPU's funding, then KPU believes a waiver is consistent with the public interest.

In this case, strict application of a carrier's obligation to upload and certify its location data in the HUBB portal would frustrate the purpose of the Alaska Plan program. KPU has worked hard to fulfill the purposes of the program and to build/upgrade its broadband network to provide service to its customers. KPU's HUBB filing shows that KPU has made substantial progress toward fulfilling its performance obligations. Granting KPU's waiver request serves the public interest because the issues triggering this waiver were outside of KPU's control, and penalizing a carrier for a technical issue that arose outside of its control does not further the purpose of the Alaska Plan program.

Even if the Commission imposes a strict application of a carrier's requirement to certify location data in the HUBB portal, the grace period in 47 C.F.R. § 54.316(c)(1)(iii) applies to KPU. USAC staff suggested that application of the grace period would be appropriate when USAC staff first realized that the submission problem originated with USAC—not KPU. At a minimum, granting KPU the grace period and reversing the material financial penalty would be consistent with the public interest.

While KPU believes it is well within the Commission's discretion to direct USAC to restore KPU's seven days of funding without a waiver, if the Commission does grant a waiver,

KPU prefers that the Commission grant KPU's requested waiver because USAC caused this issue. If the Commission grants this waiver under the grace period in 47 C.F.R. § 54.316(c)(1)(iii), KPU would still be penalized because a carrier can only use the grace period once.

Respectfully submitted,

MOSS & BARNETT, PA

A handwritten signature in blue ink, reading "Shannon M. Heim".

Shannon M. Heim
Moss & Barnett, P.A.
150 South Fifth Street
Suite 1200
Minneapolis, MN 55402
612-877-5230
Shannon.Heim@lawmoss.com

Attorneys on Behalf Ketchikan Public Utilities

ATTACHMENT 1

Subject: RE: Feb AK plan payment

From: Gardner, Brandon [<mailto:bgardner@neca.org>]

Sent: Thursday, February 28, 2019 12:59 PM

To: Dan Lindgren; Dani Marcano

Subject: Feb AK plan payment

Hi Dan/Dani,

Just wanted to give you a heads up, we were notified by USAC that your Jan AK plan funding (paid at the end of Feb) included a reduction and penalty for a late 54.316 certification from way back in March of 2018. That is why you will see your AK plan funds lower than previous months. Next month payment will return to normal. If you think this is an error you might want to call USAC.

Have a great week,
Brandon

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ATTACHMENT 2

Subject: RE: HUBB Certification button NOT WORKING

From: Dan Lindgren
Sent: Wednesday, March 13, 2019 4:30 PM
To: Elizabeth Pertsevoi
Subject: FW: HUBB Certification button NOT WORKING

Hi Elizabeth,
Do you know if there was any correspondence on this issue after the response below?

The next thing I have is a notice from Brandon at NECA on 2/28/2019 (a year later) that they were notified by USAC of a reduction and penalty for a late 54.316 certification. I had thought that the issue had been resolved so I did not pursue further at that time.

I really feel that KPU has tried to resolve this and that there would be a good case here for an internal reversal of this decision so that KPU does not need to go down the waiver path with the FCC. Is it possible that I could talk to your Operations Director – could you please provide his name and contact info. Thanks.
Dan

From: HCquestions [<mailto:HCquestions@usac.org>]
Sent: Friday, March 09, 2018 5:13 AM
To: Dan Lindgren; Tina Bredehoft
Cc: Carima Cassell; Habib Simab; Christina Cunningham
Subject: RE: HUBB Certification button NOT WORKING

Dan – We will have an answer to this shortly and will get back to you then. Thanks, Elizabeth

From: Dan Lindgren [<mailto:DanL@City.Ketchikan.Ak.Us>]
Sent: Thursday, March 08, 2018 7:53 PM
To: HCquestions <HCquestions@usac.org>; Tina Bredehoft <TinaB@City.Ketchikan.Ak.Us>
Subject: RE: HUBB Certification button NOT WORKING

Hi Elizabeth,
Could you please call me regarding this – 907-228-5439 or 907-617-6222 (mobile). Thanks.
Dan

From: Dan Lindgren
Sent: Tuesday, March 06, 2018 12:24 PM
To: 'HCquestions'; Tina Bredehoft
Subject: RE: HUBB Certification button NOT WORKING

Hi Elizabeth,

The City of Ketchikan, Ketchikan Public Utilities had uploaded its final list of locations on March 1, 2018 and tried to certify its HUBB filing that same day and on multiple occasions since then.

It was not until today that USAC indicated that there was an issue on USAC's end that was causing us not to be able to certify the filing that has been uploaded and ready for certification since the March 1, 2018 filing due date.

If it had not been for the technical glitches, we would have been able to complete the certification prior to the deadline. Is there a formal process that we would need to complete to consider the filing as timely or how do we correct this.

Thanks.
Dan

From: HCquestions [<mailto:HCquestions@usac.org>]
Sent: Tuesday, March 06, 2018 10:09 AM
To: Tina Bredehoft
Cc: Dan Lindgren
Subject: RE: HUBB Certification button NOT WORKING

Please go ahead and try to certify. In addition, since we are after the deadline, the late filing rules are in effect. Specifically:

There is a reduction in support for late filings. The FCC will impose a minimum reduction of support of seven days since it is important that carriers meet all filing deadlines. After the initial seven days, support will be reduced further on a day-by-day basis until the carrier files the required certification, plus the minimum seven-day reduction. Therefore, a carrier that misses the deadline by four days would lose seven days of support.

For a late filer, a one-time grace period of three days can be applied so that a carrier that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support.

Please let us know if you would like to use this option. Thanks, Elizabeth

From: Tina Bredehoft [<mailto:TinaB@City.Ketchikan.Ak.Us>]
Sent: Tuesday, March 06, 2018 12:41 PM
To: HCquestions <HCquestions@usac.org>
Cc: Dan Lindgren <DanL@City.Ketchikan.Ak.Us>
Subject: RE: HUBB Certification button NOT WORKING
Importance: High

Elizabeth,
I tried again to certify this morning; we are still unable to certify.

I notice the "delete" button is greyed out as well, and on mouse-over, notes nothing can be deleted as we are outside the filing window. Could the certify button have a similar date restrictive issue?

Thank you,
Tina
907-228-5479

From: Tina Bredehoft
Sent: Monday, March 05, 2018 11:49 AM

To: 'HCquestions'

Subject: RE: HUBB Certification button NOT WORKING

I've tried in both Chrome and IE.

Thanks,

Tina

From: HCquestions [<mailto:HCquestions@usac.org>]

Sent: Monday, March 05, 2018 11:47 AM

To: Tina Bredehoft

Cc: Dan Lindgren

Subject: RE: HUBB Certification button NOT WORKING

Tina – Can you tell me which browser you are using? Have you tried Chrome? We find that browser has the least bugs.

Thanks, Elizabeth

From: Tina Bredehoft [<mailto:TinaB@City.Ketchikan.Ak.Us>]

Sent: Monday, March 05, 2018 2:02 PM

To: HCquestions <HCquestions@usac.org>

Cc: Dan Lindgren <DanL@City.Ketchikan.Ak.Us>

Subject: RE: HUBB Certification button NOT WORKING

That did not fix the issue.

Thanks,

Tina

My Account

Name:	Tina Bredehoft
Email ID:	tinab@city.ketchikan.ak.us
Street Address1:	2970 Tongass Ave.
City:	Ketchikan
State:	AK ▼
Zip:	99901
Contact Phone:	9072285479
Contact Fax:	907-228-5479

Entitlements

Form 499 Preparer - 803718

Form 497 - User - 143002696

RHC Invoice - SPU - 143002696

Form 472 - SPU - 143002696

Form 525 - SPU - 143002696

Form 481 - SPU - 143002696

Form 690 - SPU - 143002696

NLAD - ETC ADM - 143002696

HUBB - SPO - 143002696

From: Tina Bredehoft
Sent: Monday, March 05, 2018 9:53 AM
To: 'HCquestions'
Cc: Dan Lindgren
Subject: RE: HUBB Certification button NOT WORKING

My Account

Name:	Tina Bredehoft
Email ID:	tinab@city.ketchikan.ak.us
Street Address1:	2970 Tongass Ave.
City:	Ketchikan
State:	AK ▼
Zip:	99901
Contact Phone:	9072285479
Contact Fax:	907-228-5479

Entitlements

Form 499 Preparer - 803718

Form 497 - User - 143002696

RHC Invoice - SPU - 143002696

Form 472 - SPU - 143002696

Form 525 - SPU - 143002696

Form 481 - SPU - 143002696

Form 690 - SPU - 143002696

NLAD - ETC ADM - 143002696

HUBB - SPO - 143002696

HUBB - SPU - 143002696

Deployment Year

2017 ▼

Status

Not Certified ▼

Carrier

SAC

Filter By Fund

Filter By Fund ▼

☐

Show My Uploads Only



Certify



Delete



You Have Selected All 10 Location(s) On This Page. [Select All 1131 Locations That Match The Fil](#)

From: HCquestions [<mailto:HCquestions@usac.org>]

Sent: Monday, March 05, 2018 9:39 AM

To: Tina Bredehoft

Cc: Dan Lindgren
Subject: RE: HUBB Certification button NOT WORKING

In order to certify the HUBB, an individual must have the HUBB SPO entitlement. The officer listed on your 498 would be able to give someone that entitlement. Thanks, Elizabeth

From: Tina Bredehoft [<mailto:TinaB@City.Ketchikan.Ak.Us>]
Sent: Monday, March 05, 2018 1:35 PM
To: HCquestions <HCquestions@usac.org>
Cc: Dan Lindgren <DanL@City.Ketchikan.Ak.Us>
Subject: RE: HUBB Certification button NOT WORKING

This screenshot is from our 499 Officer.

Tina

From: HCquestions [<mailto:HCquestions@usac.org>]
Sent: Monday, March 05, 2018 9:32 AM
To: Tina Bredehoft
Cc: Dan Lindgren
Subject: RE: HUBB Certification button NOT WORKING

Who is signed in? It looks to me that probably that person doesn't have an officer entitlement. Thanks, Elizabeth

From: Tina Bredehoft [<mailto:TinaB@City.Ketchikan.Ak.Us>]
Sent: Monday, March 05, 2018 1:26 PM
To: HCquestions <HCquestions@usac.org>
Cc: Dan Lindgren <DanL@City.Ketchikan.Ak.Us>
Subject: HUBB Certification button NOT WORKING
Importance: High






Hi there,

We are trying to certify our HUBB filing, but the certify button is not working. We have tried on multiple web browsers to no avail. Please help!

Thank you,

Tina Bredehoft
Tariff Specialist
KPU Telecommunications
Ph. (907) 228-5479
Fax 907-225-1788

Location Records Details

Deployment Year	Status	Carrier	SAC	Filter By Fund
2017 	Not Certified 			Filter By I
<input type="checkbox"/> Show My Uploads Only				
<div> Certify</div> <div> Delete</div>				
 All 1131 Locations Are Selected. Clear Selection				

<https://caf.universalservice.org/hubb/#/readyForCert>

**Before the
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_____)	

AFFIDAVIT OF DAN LINDGREN

STATE OF ALASKA)
)SS.
KETCHIKAN GATEWAY BOROUGH)

Dan Lindgren, after being duly sworn, states the following:

1. I have personal knowledge of the facts and information set forth in this Affidavit and I am competent to testify to these facts if called as a witness.
2. I am the Assistant Telecommunications Division Manager of Ketchikan Public Utilities (“KPU”). Acting on behalf of KPU, I have read the Petition to which this Affidavit is attached. I have knowledge of the facts stated in the Petition and those facts are true to the best of my knowledge and my belief.
3. KPU entered all of its geocoded location data into the HUBB portal before the March 1, 2018 deadline.
4. When KPU could not certify its data, KPU communicated with USAC help staff responsible for the HUBB portal in a timely manner to attempt to certify KPU’s data by the March 1, 2018 deadline.

5. My many email communications are attached to the Petition. They are an accurate representation of KPU's understanding of the basis of the problem, the appropriate steps USAC advised KPU to take to resolve the problem, and KPU's argument that the delay was not attributable to KPU's failure to input its data in a timely manner.

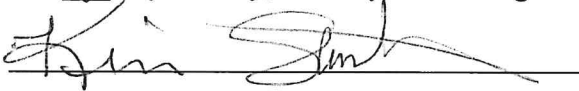
6. I attempted to resolve this issue with USAC staff before filing this Waiver, but those efforts were unsuccessful.



Dan Lindgren
Assistant Telecommunications Division Manager

Ketchikan Gateway Borough
State of Alaska

The foregoing instrument was acknowledged before me
this 8 day of May, 2019 by Dan Lindgren.



My commission expires: 1/16/2023

NOTARY PUBLIC
STATE OF ALASKA
Kim Stanker
Commission Expires: 1/16/2023