

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

In the Matter of)	
)	
July 1, 2018)	WC Docket No. 18-100
Annual Access Charge Tariff Filings)	
)	
)	

PETITION FOR EXPEDITED TEMPORARY WAIVER

Minnesota Independent Equal Access Corporation (“MIEAC”), by its undersigned counsel, hereby petitions the Wireline Competition Bureau (the “Bureau”) pursuant to 47 CFR § 1.3 to waive until October 2, 2018, Section 69.3(f)(1) of the Commission’s rules requiring MIEAC to submit an access tariff filing with an effective date of July 1, 2018. MIEAC respectfully requests that the Bureau grant this limited and temporary waiver on an expedited basis.

I. BACKGROUND

MIEAC operates a robust statewide network of centralized tandem switches, fiber optic SONET systems and digital access cross-connect systems to provide centralized equal access (“CEA”) services. MIEAC provides service exclusively to interexchange carriers (“IXCs”) for access to and from the end offices operated by “routing exchange carriers,” which include numerous small local exchange carriers (“LECs”) operating in rural areas throughout Minnesota. MIEAC offers IXCs the opportunity to interconnect with its system at defined points of interconnection. MIEAC is regulated by the Commission as a dominant carrier and is subject to access tariff requirements applicable to rate-of-return carriers.

On April 19, 2018, the Pricing Policy Division of the Bureau adopted an Order Designating Issues for Investigation (the “*Aureon Order*”) regarding the lawfulness of the tariff revisions filed

with the Commission by Iowa Network Access Division d/b/a Aureon (“Aureon”) (the “Investigation”).¹ Aureon is another provider of CEA services. Several issues which were designated for investigation in the *Aureon Order* have the potential to influence MIEAC’s approach to its access tariff, including identification of the appropriate benchmark rate for Aureon’s interstate switched transport service² and the relationship between the benchmark rate and cost support.³ In light of the pendency of the Investigation, the Bureau granted a *sua sponte* waiver of Section 69.3(f)(1) of the Commission’s rules with respect to Aureon’s submission of an access tariff filing for the biennial period July 1, 2018 for a period of one year (*i.e.*, until July 1, 2019).⁴

The Bureau found that a temporary waiver of the requirement for Aureon to submit an access tariff filing in 2018 was appropriate because the tariff filing deadline will fall just prior to the conclusion of the Investigation.⁵ The Bureau concluded that strict compliance would not be in the public interest during the pendency of the Aureon investigation due to the potential for overlapping tariff investigations that could result if Aureon were to file a new tariff as required by Section 69.3(f)(1), which the Bureau found to be an unnecessary use of time and resources by the Commission, Aureon, and other interested parties.⁶ The Bureau further justified its *sua sponte* waiver due to the possibility that Aureon could likely need to file a tariff revision in response to the outcome of the Investigation and also due to the fact that the Commission could, at that point, require that Aureon’s rates be based upon more recent data, which would decrease the utility of a

¹ *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order Designating Issues for Investigation, DA 18-395 (rel. Apr. 19, 2018) (“*Aureon Order*”).

² *Aureon Order*, ¶¶ 9-16.

³ *Aureon Order*, ¶¶ 17-28.

⁴ *Aureon Order*, ¶ 33.

⁵ *Aureon Order*, ¶ 33.

⁶ *Aureon Order*, ¶ 35.

tariff filed prior to the conclusion of the Investigation.⁷ Additionally, the Bureau noted that Aureon has a pending petition for reconsideration in EB Docket No. 17-56, which addresses issues that may affect the lawfulness of tariff rates on a retrospective and prospective basis, including whether and how the competitive LEC benchmark rule applies to CEA providers, and the results of that proceeding could ultimately result in further revisions to Aureon's tariff after Aureon would have made its July 1, 2018 tariff filing.⁸

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."⁹ 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.¹⁰ In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.¹¹ In this case, the standard for a waiver is amply satisfied as highlighted in the *Aureon Order*.

MIEAC is similarly situated to Aureon in its regulatory status as a dominant CEA provider subject to rate-of-return regulation. Similar to Aureon, absent Commission action, MIEAC will be required to submit an annual access tariff with an effective date of July 1, 2018.¹² MIEAC faces

⁷ *Aureon Order*, ¶ 35.

⁸ *Aureon Order*, n. 75.

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

¹⁰ *Ne. Cellular*, 897 F.2d at 1166.

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Ne. Cellular*, 897 F.2d at 1166.

¹² 47 C.F.R. § 69.3(f)(1). *See also In the Matter of July 1, 2018 Annual Access Charge Tariff Filings*, WC Docket No. 18-100, Order, DA 18-335 (rel. Apr. 5, 2018).

similar issues in preparing its annual access tariff for filing as those faced by Aureon. Due to the pendency of the Investigation during this year's access tariff filing window and the relevance of the issues presented in the Investigation for MIEAC's own access tariff, MIEAC faces substantial uncertainty in preparing its access tariff filing this year as required by Section 69.3(f)(1). The existing uncertainty regarding the lawfulness of Aureon's tariff means that, upon resolution of the pending Investigation by the Commission, MIEAC may need to make revisions to its access tariff not long after the current July 1 deadline. Furthermore, the pending Investigation raises the risk that filing its access tariff at this time could subject MIEAC to investigation under Sections 204 and 205 of the Communications Act, as amended, and the Commission's tariff rules.

Requiring strict compliance by MIEAC with Section 69.3(f)(1) under these circumstances is inconsistent with the public interest because, absent a temporary waiver, MIEAC is likely to file its access tariff only to discover a couple of months later once the issues in the Investigation are resolved that its tariff requires revisions and/or will result in a costly investigation by the Commission. Deviation from the stringent timeline for filing access tariffs in this situation will serve the public interest by preserving limited Commission resources needed for reviewing and investigating access tariffs.

Waiver in these circumstances will also avoid hardship and inequity to MIEAC that would result if MIEAC were required to prepare and file an access tariff without sufficient certainty regarding critical issues that are under ongoing review by the Commission and which underpin MIEAC's access tariff. Allowing MIEAC to temporarily delay filing its access tariff while the Commission resolves the pending Investigation will enable more effective implementation of overall tariff policy by avoiding expenditure of private and public resources on duplicative regulatory

compliance and oversight by allowing MIEAC to fully understand the implications of the result of the Investigation before filing its tariff.

Finally, MIEAC only seeks a limited, temporary waiver until October 2, 2018. MIEAC's existing services and rates will remain in effect during the limited waiver period and therefore no harm to MIEAC's customers will result from a delayed tariff filing.

III. CONCLUSION

For the foregoing reasons, the Bureau should expeditiously grant this Petition and waive MIEAC's annual access tariff filing requirement contained in Section 69.3(f)(1) of the Commission's rules until October 2, 2018.

Respectfully submitted,

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