

**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

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**

FARMERS MUTUAL TELEPHONE COMPANY

Pursuant to Section 1.3 of the rules of the Federal Communications Commission ("FCC" or "Commission"),¹ Farmers Mutual Telephone Company d/b/a Heartland Technology ("FMTC") hereby requests, to the extent required under the circumstances, expedited waivers of the filing deadline and late filing penalties for certifying broadband locations in the High Cost Universal Broadband ("HUBB") system for Alternative Connect America Cost Model ("A-CAM") support received in 2019 for locations deployed in 2017. Specifically, FMTC requests that the Commission grant a waiver of the March 1, 2018 reporting deadline set forth in Section 54.316(c)(1) of the Commission's Rules² and a waiver of the support withholding or reduction

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.316(c)(1).

penalties set forth in Section 54.316(c)(1)(ii) of the Commission's Rules.³ FMTC requests an expedited waiver to ensure that ACAM support is not forfeited due to an unanticipated technical error that was not detectable and was not identified until a year after the applicable deadline. This Petition is filed together with a Declaration Under Penalty of Perjury attesting to the facts stated herein and signed by Tony Lang, General Manager of FMTC (Attachment A).

I. INTRODUCTION AND BACKGROUND

FMTC is a recipient of high cost support with defined broadband deployment obligations under the Commission's ACAM support mechanism. On February 26, 2018, FMTC timely certified "no locations to upload" in the HUBB portal in accordance with available instructions and guidance by USAC. FMTC personnel responsible for the filing believed that the certification was properly submitted and timely processed. FMTC has no record of receiving notice from the HUBB portal or from USAC concerning any failure or delinquency. In subsequent periods, the HUBB portal showed (and continues to show) zero certified locations for 2017. FMTC believed this to be confirmation that it had successfully certified "no locations to upload" for the 2017 reporting period. USAC has been unwilling or unable to provide any explanation as to if or how FMTC should or could have known that its certification had failed.

On February 28, 2019, FMTC was informed by NECA that the company's A-CAM disbursements for 2019 would be withheld because USAC had not received the required certification of locations deployed in 2017. This was the first time that FMTC received any indication or notice that the certification had failed. As soon as the failure was discovered, FMTC attempted to re-complete the certification, but the HUBB portal was closed. That same day, FMTC contacted USAC to report the issue and open a support ticket.

³ 47 C.F.R. § 54.316(c)(1)(ii).

In the time since the support ticket was opened, FMTC has been in regular telephone and email contact with USAC and NECA in an effort to identify the root cause of the failed certification and company's options to reverse USAC's decision to withhold the support. On March 1, 2019, FMTC was notified that NECA has requested information from USAC concerning the company's situation and that FMTC should interface with its NECA representative to resolve the issues (Attachment B). Ultimately, FMTC has been advised that it must request a waiver from the Commission in order to correct the situation (Attachment C).

NECA — at the direction of USAC — is now withholding \$36,777.16 in ACAM support on a monthly basis. Annualized, this will result in the loss of more than \$440,000.00 of support necessary to deploy and maintain broadband service in FMTC's very rural service area. As FMTC did complete its certification, USAC's withholding or reducing of support under FCC Rule 54.316(c)(1) is inequitable and unsupported by the facts. On information and belief, the failure of certification was caused by technical issues with the HUBB portal and not by any negligence or more culpable action or inaction of FMTC or its personnel. Under the circumstances, FMTC requests that the Commission deem FMTC's certification of "no locations to upload" for 2017 to have been timely filed. In the alternative and to the extent required, FMTC requests that the Commission waive the March 1, 2018 filing deadline and the support reduction penalties as they relate to the same locations.

II. STANDARD FOR WAIVER

The Commission has authority to waive its rules for good cause shown.⁴ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance

⁴ 47 C.F.R. § 1.3.

with the rule inconsistent with the public interest.⁵ The Commission may take into account, on an individual basis, considerations involving equity, hardship, or more effective implementation of overall policy.⁶ “Waiver of the Commission’s rules is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁷

III. DISCUSSION

A. Special Circumstances Warrant a Waiver of the General Rule.

FMTC undertook diligent efforts to comply with Commission’s requirements for reporting and certifying broadband locations data in the HUBB portal. The company believed in good faith that it had submitted a “no locations to upload” certification on February 26, 2018. The company never received a notice that its certification had failed or was delinquent.⁸ FMTC’s personnel had no reason to know or suspect that the certification failed to complete until February 28, 2019. To FMTC’s best knowledge, the certification failed to complete due a technical error and not due to any action or omission of FMTC or its personnel. Following discovery of the failure, the company sought guidance and assistance from representatives of NECA and USAC. The occurrence of the failed certification could not have been anticipated or detected by FMTC and was the product of a special circumstance entirely outside of the company’s control. Whatever the cause of the failure,

⁵ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S. Ct. 461 (1972) (“*WAIT Radio*”).

⁶ See, e.g., *BellSouth Telecommunications, Inc., Petition to Establish New Rate Elements for Direct Access Directory Assistance Service*, Memorandum Opinion and Order, DA 95-1676, 11 FCC Rcd 1229 (CCB 1995) (citing *WAIT Radio*, 418 F.2d at 1158).

⁷ *Temporary Waiver of Section 25.281(b) Transmitter Identification Requirements for Video Uplink Transmissions*, IB Docket No. 12-267, Order, DA 16-222 (IB, Mar. 4, 2016), at para. 6 (citing *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166).

⁸ In contrast, it appears that other carriers in similar circumstances were notified of failed or delinquent certifications of “no locations to upload” and were provided with at least some guidance and opportunity to correct the situation. See *Petition for Expedited Waiver of Impacted RLEC HUBB Filers*, WC Docket No. 10-90 et. al (filed June 11, 2019), *Request for Expedited Waiver of Olin Telephone Company*, WC Docket No. 10-90 (filed June 13, 2019).

FMTC was ultimately advised that the situation could not be corrected absent a waiver from the Commission.

B. The Requested Waiver Will Serve the Public Interest.

Good cause for waiver exists because the underlying purposes of the rule would not be served or would be frustrated by its strict application to the instant case. If the waiver is not granted, FMTC will suffer a punitive hardship, as it would be permanently stripped of more than \$440,000.00 in model-based support due to an unanticipated and undetected technical failure within the USAC HUBB system. In contrast, grant of the waiver would serve the public interest by ensuring that a carrier that voluntarily elected to transition to model-based support receives that support without further delay. As the Commission has recognized, the A-CAM model provides a means of closing the urban-rural digital divide by promoting broadband deployment, ensuring the efficient use of resources, and providing sufficient and predictable support necessary for FMTC and other rate-of-return carriers to increase broadband deployment. The loss of more than \$440,000.00 in critical universal service support under these circumstances will run directly contrary to the Commission's goals and will significantly impair FMTC's ability to deploy and maintain its next generation broadband network. Neither the public nor any other carrier will be harmed by the waiver.

IV. CONCLUSION

For the reasons set forth herein, FMTC requests that the Commission deem FMTC's certification of "no locations to upload" in 2017 to have been timely filed prior to the March 1, 2018 deadline. In the alternative and to the extent required, FMTC requests that the Commission waive the March 1, 2018 filing deadline and restore the withheld support or any late certification penalties based on the failed certification.

Respectfully submitted,

/s/ John Pietila

John C. Pietila
Davis Brown Law Firm
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West Des Moines, Iowa 50266
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Facsimile: (515) 243-0654
Email: JohnPietila@davisbrownlaw.com

*Attorneys for Farmers Mutual Telephone
Company*

Attachment A

Declaration of Tony Lang

[See attached]

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Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 10-90, et. al
Farmers Mutual Telephone Company)	
)	
Petition for Waiver)	
)	
)	
)	

DECLARATION UNDER PENALTY OF PERJURY

I, Tony Lang, hereby declare under penalty of perjury as follows:

1. I am the General Manager of Farmers Mutual Telephone Company.
2. This Declaration is submitted in support of the Petition for Waivers of Section 54.316(c)(1) and Section 54.316(c)(1)(ii) of the Commission's Rules, to be filed with the Commission by Farmers Mutual Telephone Company and to which this Declaration is attached.
3. I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that I have reviewed the foregoing Petition, I am familiar with the facts and information stated therein, and that the facts and information stated therein are true and correct to the best of my knowledge.

Signed on August 9, 2019.

/s/ Tony Lang

Tony Lang, General Manager
Farmers Mutual Telephone Company

Attachment B

Email Exchange Regarding Failed Certification

[See attached]



Tony Lang <tony.lang@heartlandtechnology.com>

ACAM

5 messages

Tony Lang <tony.lang@heartlandtechnology.com>
To: hcquestions@usac.org, "Snoddy, Burnie" <bsnoddy@bkd.com>

Thu, Feb 28, 2019 at 4:36 PM

We just received a phone call from our NECA representative stating that they had been contacted by USAC stating that our HUBB data we uploaded last year for the sample test was never certified. This was quite alarming to us as tonight is the deadline for this year's filing. In my login screen for USAC it shows me that it's certified. I've attached a few screenshots.

My SAC# is 351171
My SPIN# is 143001955
My name is Tony Lang the GM of Farmers Mutual Telephone Company
I can be reached 8-5pm CST at (319) 827-1151

I would like confirmation that you did receive this year data and it was certified. I also need to see what can be done to resolve the issues of our data last year supposedly not being certified. Obviously whatever we have to do to fix this and make it right.

Milestone Certification and Reporting

Select a fund

ACAM

State selected: IA

SAC selected: 351171

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): 678

Deployment Year	Locations Ready For Certification	Certified Locations	% of Certified Locations	Milestone Obligation %	Milestone on Target?	Certified On	Milestone Certification Status	View History
2016	0	488	-	-	-	-	-	
2017	0	0	-	-	-	-	-	
2018	0	18	-	-	-	-	-	
2019	0	0	-	-	-	-	-	
2020	0	0	-	40%	-	-	-	
2021	0	0	-	50%	-	-	-	
2022	0	0	-	60%	-	-	-	

Locations Overview as of 2019

Locations Information

506 Total Uploaded

0 Saved But Not Certified

506 Certified

My Study Areas

Percentage towards Milestone

SAC	Percentage
351171	74.63%

[See all milestones](#)



Home

Manage Uploads

Location Details

Milestone Certification and Reporting

Select Holding Company/ Carrier Name

Farmers Mutual Telephone Company-Jessup

Farmers Mutual Telephone Company-Jessup

Deployment Information

ACAM

IA

2019

Progress for Farmers Mutual Telephone Company-Jessup



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Tony Lang

Heartland Technology

(319)-827-1151 | Office
 (319)-830-9933 | Mobile
 (319)-827-1110 | Fax

www.heartlandtechnology.com

Heartland Technology Data Center

(319)-827-3282 | Office
 (319)-830-9933 | Mobile
 (319)-827-3280 | Fax

www.datacenterht.com

Tony Lang <tony.lang@heartlandtechnology.com>
 To: hcquestions@usac.org, "Snoddy, Burnie" <bsnoddy@bkd.com>

Thu, Feb 28, 2019 at 4:41 PM

Also do you have any tracking information on the uploading and certification last year. I talked to a coworker who I uploaded this with and certified last year and he also remembers doing this. I don't remember any issues uploading or certifying last year. Just as this year we were able to without issue. As see in the previous email with screenshots.
 [Quoted text hidden]

Tony Lang <tony.lang@heartlandtechnology.com>
 To: hcquestions@usac.org, "Snoddy, Burnie" <bsnoddy@bkd.com>

Thu, Feb 28, 2019 at 5:13 PM

I also looked back into my files. 2017 there was no deployments. We had numerous in 2016 and picked it back up in 2018. But there were no deployments in 2017. Is that why we were not "certified" last year? I know we had logged in and tested some data but we had no deployments in 2017.

[Quoted text hidden]

hcquestions@usac.org <hcquestions@usac.org>
To: tony.lang@heartlandtechnology.com
Cc: bsnoddy@bkd.com

Fri, Mar 1, 2019 at 11:24 AM

Hi Tony,

Thank you for your emails. NECA has requested information from USAC on this situation. Please work with your NECA representative to obtain this information.

Warm Regards,

Eric O.
HC Support Team
High Cost Program
Universal Service Administrative Company
HCQuestions@usac.org

On 2/28/2019 5:42 PM, Tony Lang wrote:

Also do you have any tracking information on the uploading and certification last year. I talked to a coworker who I uploaded this with and certified last year and he also remembers doing this. I don't remember any issues uploading or certifying last year. Just as this year we were able to without issue. As see in the previous email with screenshots.

On Thu, Feb 28, 2019 at 4:36 PM Tony Lang <tony.lang@heartlandtechnology.com> wrote:

We just received a phone call from our NECA representative stating that they had been contacted by USAC stating that our HUBB data we uploaded last year for the sample test was never certified. This was quite alarming to us as tonight is the deadline for this year's filing. In my login screen for USAC it shows me that it's certified. I've attached a few screenshots.

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Milestone Certification and Reporting

☒ Select a fund
☒ State selected: IA
☒ SAC selected: 351171

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.

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2018	0	18	-	-	-	-	-	
2019	0	0	-	-	-	-	-	
2020	0	0	-	40%	-	-	-	
2021	0	0	-	50%	-	-	-	
2022	0	0	-	60%	-	-	-	

Locations Overview as of 2019

Locations Information

506 Total Uploaded
 0 Saved But Not Certified
 506 Certified

My Study Areas

Percentage towards Milestone

SAC	Percentage
351171	74.63%

[See all milestones](#)



[Home](#)
[Manage Uploads](#)
[Location Details](#)
[Milestone Certification and Reporting](#)

Select Holding Company/ Carrier Name

Farmers Mutual Telephone Company-Jessup

Farmers Mutual Telephone Company-Jessup

Deployment Information

ALAM IA 2019

Progress for Farmers Mutual Telephone Company-Jessup



☒ Locations certified towards target
☐ Locations saved but not certified (not yet counted towards your target)
☐ Locations not saved or certified

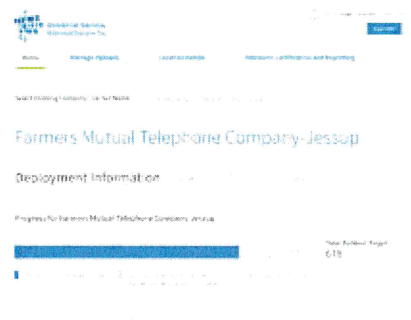
[Quoted text hidden]
[Quoted text hidden]

Tony Lang <tony.lang@heartlandtechnology.com>
To: "Cartwright, Brenda" <BCARTWR@neca.org>

Fri, Mar 1, 2019 at 12:15 PM

This was my response from USAC
[Quoted text hidden]

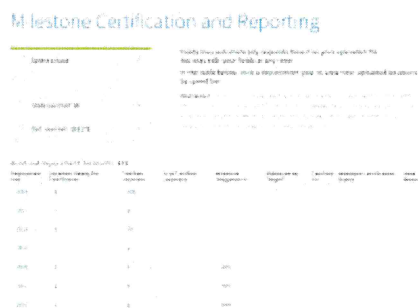
6 attachments



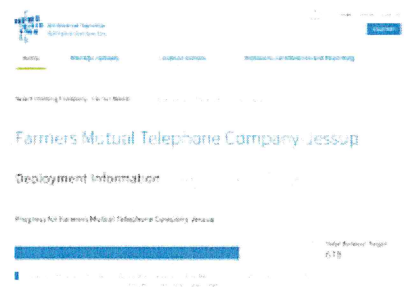
Screenshot 2019-02-28 at 4.27.41 PM.png
35K



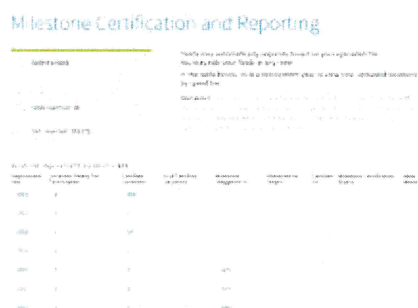
Screenshot 2019-02-28 at 4.28.04 PM.png
17K



Screenshot 2019-02-28 at 4.28.24 PM.png
44K



Screenshot 2019-02-28 at 4.27.41 PM.png
35K



Screenshot 2019-02-28 at 4.28.24 PM.png
44K

8/1/2019

Heartland Technology Mail - ACAM

[Locations Overview as of 2019](#)

500x300px (400x400px)

500x300px (400x400px)
0x300px (400x400px)
500x300px (400x400px)

My Group's Address

Home Page (Address, Location)
or
Home Page (Address, Location)
or
Home Page (Address, Location)

Screenshot 2019-02-28 at 4.28.04 PM.png
17K

Attachment C

Email Exchange Regarding Need for Waiver

[See attached]



Tony Lang <tony.lang@heartlandtechnology.com>

Certifications

4 messages

Cartwright, Brenda <bcartwright@neca.org>

Fri, Mar 8, 2019 at 2:17 PM

To: Tony Lang <fmtjesup@jtt.net>

Our Hq person is requesting for all communications the you had with USAC about the 3/1/2018 certification. They are still in discussions with USAC.



Brenda J. Cartwright

Sr. Manager

14515 F. St.

Omaha, NE 68137

1-800-228-0180

DID 402-537-1652

FAX 1-800-367-5058

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Tony Lang <tony.lang@heartlandtechnology.com>

Mon, Mar 11, 2019 at 10:51 PM

To: "Cartwright, Brenda" <bcartwright@neca.org>

I don't really have anything tangible. Unfortunately their system doesn't send you an email confirming you have submitted or certified anything. This is why I had requested a log of my logins around last year's deadline from USAC. Again with having reported zero, I think that is what has created the issue. I also double checked my emails, and we never received a notice that something wasn't filed/certified. And we don't delete any emails. Also Ben in my office had received a call from the directly as a reminder to file and certify before the deadline and they never made any mention that we had never certified last year. Ben even asked them a few questions as he was finishing up what he had filed this year and again nothing was mentioned. We assume they would have had our account pulled up when they called him. This call was received a couple days before your call stating that you had been informed to hold our money.

8/1/2019

Heartland Technology Mail - Certifications

[Quoted text hidden]

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Tony Lang

Heartland Technology

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Heartland Technology Data Center

(319)-827-3282 | Office
(319)-830-9933 | Mobile
(319)-827-3280 | Fax

www.datacenterht.com

Cartwright, Brenda <bcartwright@neca.org>
To: Tony Lang <fmtjesup@jtt.net>

Thu, Mar 14, 2019 at 11:57 AM

Below are the final responses from NECA HQ. Sorry I can't help you any further.



Brenda J. Cartwright

Sr. Manager

14515 F. St.

Omaha, NE 68137

1-800-228-0180

DID 402-537-1652

FAX 1-800-367-5058

3/14/2019

Brenda,

I have been informed by USAC that SAC 351171 Farmers of Jesup will have to submit a request for waiver for the filing deadline to the FCC.

Brenda,

Please make sure that Tony understands that NECA did not hold their money. It was withheld by USAC.

Without any documentation, I'm not sure there is much, if anything that I can do. I have not received any additional information from USAC but I will be following up.

[Quoted text hidden]

[Quoted text hidden]

Tony Lang <tony.lang@heartlandtechnology.com>
To: "Snoddy, Burnie" <bsnoddy@bkd.com>

Thu, Mar 14, 2019 at 3:17 PM

[Quoted text hidden]