

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

In the Matter of	)	WC Docket No. 11-42
Lifeline and Link-Up Reform and	)	
Modernization	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58

**PUBLIC SERVICES COMMISSION OF THE UNITED STATES VIRGIN ISLANDS  
EMERGENCY PETITION FOR WAIVER**

Pursuant to Section 1.3 of the Federal Communications Commission's (Commission's) rules,<sup>1</sup> the Public Services Commission of the United States Virgin Islands (VI PSC) respectfully submits this Emergency Petition for a waiver of Section 54.314(d)(1) of the Commission's rules, which establish the timeline for filing state certifications of support for eligible telecommunications carriers (ETC). Hurricane Irma, the strongest storm ever recorded in the Atlantic Ocean, struck the Territory last week and has caused massive destruction.<sup>2</sup> Power is out in most areas and telecommunications have been disrupted. Transportation between the islands is extremely limited. Restoration of these vital services is expected to take several weeks or even months. As a result, the VI PSC will face great difficulty in meeting the October 1, 2017 deadline for filing the required certifications. The VI PSC's inability to complete the certification process following a natural disaster should not result in the loss of high-cost USF support to the ETCs in the Territory, especially when they are in the process of rebuilding facilities damaged or destroyed by the storm. In view of the short time remaining before the

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<sup>1</sup> 47 C.F.R. § 1.3

<sup>2</sup> President Trump has declared a state of emergency for the United States Virgin Islands.

filing date in Section 54.314(d)(1), the VI PSC requests that the Wireline Competition Bureau<sup>3</sup> expeditiously grant a 30 day extension to file the annual “Use” certification.

## BACKGROUND

Section 54.314(a) says:

- (a) *Certification.* States that desire **eligible telecommunications carriers** to receive support pursuant to the high-cost program must file an annual certification with the **Administrator** and the Commission stating that all federal **high-cost support** provided to such carriers within that **State** was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. **High-cost support** shall only be provided to the extent that the **State** has filed the requisite certification pursuant to this section.

Section 54.314(d) says:

(d) *Filing deadlines.*

(1) In order for an **eligible telecommunications carrier** to receive federal **high-cost support**, the **state** or the **eligible telecommunications carrier**, if not subject to the jurisdiction of a **state**, must file an annual certification, as described in **paragraph (c)** of this section, with both the **Administrator** and the Commission by October 1 of each year. If a **state** or **eligible telecommunications carrier** files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An **eligible telecommunications carrier** subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An **eligible telecommunications carrier** subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(2) *Grace period.* If an **eligible telecommunications carrier** or **state** submits the annual certification required by this section after October 1 but before October 5, the **eligible telecommunications carrier** subject to the certification will not receive a reduction in support if the **eligible telecommunications carrier** and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) have not missed the October 1 deadline in any prior year.

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<sup>3</sup> 47 C.F.R. 0.91(b) authorizes the Bureau to act on requests for waiver of the FCC’s rules.

Under Title 30 of the Virgin Islands Code, the VI PSC has jurisdiction over ETCs for the purposes of designating and certifying their eligibility to receive support under the federal USF program. As the FCC has made clear, the annual “Use” certification process is intended as a rigorous review to ensure that the USF support is used for the purposes intended. Consequently, the final PSC decision is conducted by a vote of commissioners in a regular meeting during which the members of the public are invited to comment. The disruption to power, telecommunications and transportation in the aftermath of Hurricane Irma will make it extremely difficult for the VI PSC to conduct a public hearing and for consumers to attend and comment.

We note that in view of anticipated disruption from Hurricane Irma, the FCC recently granted a waiver of certain Lifeline filing requirements to Telrite Corporation, an ETC in the U.S. Virgin Islands.<sup>4</sup> The Commission found that it was in the public interest to temporarily waive these deadlines. Further, in response to past hurricanes, the FCC granted limited extensions of “use” certification filing deadlines when the state was unable to schedule a public hearing to consider the matter.<sup>5</sup>

## **REQUEST FOR WAIVER**

The VI PSC has always supported the FCC’s goal of ensuring that high-cost USF support is used only for the purposes intended. Recertification is only granted after a thorough review of each ETC’s progress in using the funds to build and maintain supported infrastructure and in

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<sup>4</sup> *In the Matter of Lifeline and Link Up Reform and Modernization, et. al.*, WC Docket 11-42 et. al., Order released September 7, 2017, DA 17-860

<sup>5</sup> For example, see *In the Matter of Connect America Fund, Century Link Request for Extension of Time and Petition for Waiver*, WC Docket 10-90, Order released December 3, 2012. This Order granted a petition for delay as a result of Hurricane Sandy.

providing high quality telecommunications services. It is critical that the final decision be made in a public meeting where consumers can express their views. The disruption to telecommunications, power and transportation infrastructure caused by Hurricane Irma jeopardizes the ability of the Commission to hold a public meeting before the October 1, 2017 deadline. Routine enforcement of the provisions of Section 54.314(d) would result in significant loss of revenue to the ETCs and ultimately would harm consumers. However, as infrastructure is returned to service over the coming weeks the VI PSC expects to resume operations when feasible.<sup>6</sup> Accordingly, the VI PSC requests an extension of the “Use” certification filing deadline by 30 days.

#### **GOOD CAUSE EXISTS TO GRANT THE REQUESTED WAIVER**

The Commission may waive any of its rules for good cause. On delegated authority, the Wireline Competition may waive these rules following the same standard. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Last week the Commission decided that it was appropriate to grant an extension of Lifeline filing requirements to Telrite based on the anticipation of conditions after Hurricane Irma. The storm was actually as devastating as forecast. Large areas in St. Thomas and St. John are without wireline or cellular service and it will take several weeks or months before full service is restored. The loss of power and transportation means it will be difficult for the VI PSC to conduct a public meeting to consider the “Use” certifications before the normal deadline. Unless the deadline is deferred, the ETCs in the Territory will be penalized through no fault of

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<sup>6</sup> The PSC is currently in limited operation with those Staff able to attend.

their own. It is in the public interest to ensure that they do not lose USF support due to a natural disaster.

## **CONCLUSION**

For the foregoing reasons, the Bureau should grant this petition and issue a 30 day temporary waiver of the filing deadline in Section 54.314(d).

Respectfully submitted.



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