

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PETITION OF ATLANTIC TELEPHONE MEMBERSHIP CORPORATION  
FOR LIMITED WAIVER OF 47 C.F.R. § 51.917(c)**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Atlantic Telephone Membership Corporation (“ATMC” or the “Company”) hereby requests a limited waiver of 47 C.F.R. Section 51.917(b)(7)(iii).<sup>2</sup> As explained herein, good cause exists for waiver of the 2011 Rate-of-Return Carrier Base Period Revenue (“Base Period Revenue”), specifically the Fiscal Year 2011 (“FY 2011”) revenues and expenses from Reciprocal Compensation received or paid by March 31, 2012. Limited waiver of these rules would allow the Company to exclude in their FY 2011 Base Period Revenue amounts for reciprocal compensation revenues and expenses that were billed to the Company or paid by the

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 51.917(b)(7)(iii).

Company for usage outside the date range defined as FY 2011<sup>3</sup> and were inadvertently included in the calculation of the Company's Base Period Revenue. The Company requests that the grant of the waiver allow for the adjustment of the amounts in the FY 2011 base period as of July 1, 2012. The "good cause" waiver standard has been satisfied, and grant of this waiver would be in the public interest.

## **I. BACKGROUND**

Atlantic Telephone Membership Corporation ("ATMC") is a rural incumbent local exchange carrier ("ILEC") operating in Brunswick County, NC serving approximately 30,000 access lines. The Company is a rate-of-return carrier and files its interstate tariff under John Staurulakis, Inc. Tariff FCC No.1.

When ATMC made its annual interstate tariff filing with the FCC on June 18, 2012, the Company submitted data to calculate the FY 2011 Base Period Revenue, including the three required components: (1) 2011 Interstate Switched Access Revenue Requirement; (2) FY 2011 revenues from rate elements included in the definition of Transitional Intrastate Access Service received by March 31, 2012; and (3) FY 2011 reciprocal compensation revenues received by March 31, 2012, less FY 2011 reciprocal compensation payments made by March 31, 2012. In these filings, however, the Company included reciprocal compensation revenues and payments that should not have been included in the base period revenue. This inadvertent oversight was discovered when preparing data to respond to an in-depth validation by the Universal Service Administrative Company ("USAC").

When the calculations were made by the Company for their 2012 annual interstate tariff filings, the Company relied on accounting data that included amounts for reciprocal compensation revenues and expenses and was based upon the date revenues were billed or expenses were paid. In doing so, the Company included revenue and expense amounts associated with usage outside the date range within FY 2011. The amount provided for reciprocal compensation expenses included amounts that were billed to the Company for prior period catch-up billings by one or more wireless carriers. The catch-up billings were related to periods outside FY 2011 and therefore, should not have been included in the net reciprocal compensation eligible recovery in the Company's 2012 annual interstate tariff filings.

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<sup>3</sup> 47 C.F.R. § 51.903(e) (October 1, 2010 through September 30, 2011)

The total amount of the reciprocal compensation revenues and expenses included in the Company's filing that was for usage outside FY 2011 is \$33,510.95. The Company respectfully requests the Commission waive its rules to allow the Company to include \$33,510.95 in its Base Period Revenue effective as of July 1, 2012.

## II. LIMITED WAIVER IS JUSTIFIED

In general, the FCC's rules may be waived for good cause shown.<sup>4</sup> Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."<sup>5</sup> 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 circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>6</sup>

The Commission anticipated that there would be circumstances where revenues associated with FY 2011 were not able to be collected by March 31, 2012 and allowed for a waiver of the March 31, 2012 deadline in its USF-ICC Transformation Order.<sup>7</sup> Specifically, the Commission stated:

Carriers may, however, request a waiver of our rules defining the Baseline to account for revenues billed for terminating switched access service or reciprocal compensation provided in FY2011 but recovered after the March 31, 2012 cut-off as the result of the decision of a court or regulatory agency of competent jurisdiction.<sup>8</sup>

Although the facts in this case differ somewhat, the overall purpose of the waiver is the same – to allow a company to include revenues and expenses associated with FY 2011 that were billed and collected or billed and paid prior to March 31, 2012 to be included in the Baseline.

Grant of this waiver is in the public interest. ATMC submitted its FY 2011 Base Period Revenue data in compliance with the Commission's rules and in good faith. This Base Period Revenue is a critical starting point to calculate the Company's Eligible Recovery and is part of the transitional recovery mechanism established by the Commission expressly to mitigate the

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<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> 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*").

<sup>6</sup> 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).

<sup>7</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*USF-ICC Transformation Order*"), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10<sup>th</sup> Cir. Filed Dec. 8, 2011)

<sup>8</sup> *Id.* at footnote 1745. To the extent necessary, ATMC also seeks waiver of the provision that waivers of this nature are a result of "the decision of a court or regulatory agency of competent jurisdiction".

impact of USS-ICC reforms on carrier revenues and investments. Grant of this limited waiver would allow the initial calculation of Eligible Recovery to accurately represent the Company's FY 2011 Base Period Revenue and would not penalize the Company's Eligible Recovery going forward.<sup>9</sup> Further, grant of the limited waiver would serve the public interest in that the Company would be able to continue to serve their customers consistent with the FCC's National Broadband Plan goals while having the benefit of the transitional recover mechanism to the full extent intended by the Commission.

### III. CONCLUSION

Limited waiver of Section 51.917(b)(7)(iii) is requested in order to address an inadvertent oversight by correcting the Company's baseline revenue data to adjust the reciprocal compensation revenues and expenses associated with usage outside FY 2011.

Grant of limited waiver to allow this correction will allow the Company to continue expanding their rural telephone network without impairment that would result from the negative financial impacts of the understated base period revenue.

Respectfully submitted,



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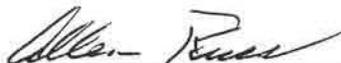
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Date

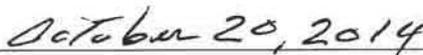
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<sup>9</sup> To illustrate, if the waiver is not granted, the exclusion of the \$33,510.95 would have a cumulative negative effect of approximately \$200,000 over the next eight years.

**Certification of Atlantic Telephone Membership Corporation**

I, Allen Russ, General Manager and Chief Executive Officer, of Atlantic Telephone Membership Corporation, hereby certify that none of the reciprocal compensation revenue and expense that is the subject of this Petition for Limited Waiver were excluded in the Atlantic Telephone Membership Corporation Eligible Recovery Baseline filed with the Federal Communications Commission on June 18, 2012.

  
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Allen Russ

  
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Date