

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Special Access for Price Cap Local Exchange Carriers;)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

**BARBOURVILLE UTILITY COMMISSION
PETITION FOR WAIVER OF DEADLINE FOR STREAMLINED CERTIFICATIONS**

I. Introduction

Pursuant to Section 1.3 of the Commission’s rules,¹ Barbourville Utility Commission (“Barbourville”), a municipally-owned cable operator and broadband provider, respectfully requests a waiver of the December 15, 2014 deadline for filing streamlined certification responses to the Commission’s Special Access Data Collection so that its streamlined certification is accepted as having been timely filed. Due to clarifications related to the filing requirements made after the streamlined certification deadline, Barbourville recognized that it did not fall under any of the categories that must report data for the Special Access Data Collection. Pursuant to this understanding, Barbourville filed a streamlined certification on February 14, 2015. Good cause exists to grant the waiver, and a grant would serve the public interest by ensuring that the Commission does not expend resources pursuing an enforcement action against a small broadband provider that has been attempting to comply with the Commission’s Special Access Data Collection in good faith and is self-reporting its late streamlined certification.

¹ 47 C.F.R. § 1.3.

II. Background

Originally, Barbourville believed that it qualified as a Competitive Provider that would have to submit data as part of the Special Access Data Collection by February 27, 2015. Based on the Order on Reconsideration released on September 15, 2014 (“Data Collection Order”),² Barbourville understood a “connection capable of providing a dedicated service” to mean a direct fiber Connection from a Location to a Node on its network. Given this understanding, Barbourville was prepared to submit data for several fiber Connections that served Locations within its local franchise area with best efforts broadband that met the required speed characteristics, but did not provide any quality of service guarantees. In other words, Barbourville believed that under the Commission’s definitions, it would need to report on those lines as “capable of” providing Dedicated Services even though it had not contemplated providing dedicated service over those connections, nor did it have the capabilities to do so.

On January 19, 2015, the Commission’s Wireline Competition Bureau (“the Bureau”) released an updated Frequently Asked Questions document.³ In its response to the question about “which Locations with capable Connections do cable system operators need to report?”, the Bureau clarified that Competitive Providers that are cable system operators, operating within their traditional franchise area, must report Locations with Connections linked to a Metro Ethernet capable or equivalent headend.⁴ Cable systems with Locations that are not linked to a Metro Ethernet capable or equivalent headend must report only on the Connections that were in-service and used during the relevant reporting period to provide a Dedicated Service.⁵

² *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order on Reconsideration, WC Docket No. 05-25, DA 14-1327, (rel. Sept. 15, 2014). Capitalized terms used in this Petition have the meanings given in the Data Collection Order.

³ *Special Access Data Collection Frequently Asked Questions*, Wireline Competition Bureau, WC Docket No. 05-25 (rel. Jan. 19, 2015) (“*Special Access FAQ*”).

⁴ *Id.* at 19-20.

⁵ *Id.*

Barbourville does not have a Metro Ethernet headend, and in 2013, it did not provide any Dedicated Services, as defined under the FCC's Data Collection Order. Consequently, with this new understanding of the reporting distinction for cable operators, Barbourville realizes it does not fit into the Competitive Provider category. Barbourville also does not fall under any of the other reporting categories. Therefore, Barbourville is exempt from reporting data in this Special Access Data Collection and eligible to file a streamlined certification.⁶

III. Request for Waiver

By this petition, Barbourville seeks a waiver of the of the December 15, 2014 filing deadline for streamlined certifications so that the Commission will accept Barbourville's streamlined certification filing as having been timely filed. The Commission may waive any of its rules for good cause where, due to special circumstance, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.⁷ Here, special circumstances exist, deviation from the deadline serves the public interest, and good cause exists to grant the waiver.

Special Circumstances. Granting this waiver petition is warranted due to the special circumstances that caused Barbourville's streamlined certification to be filed after the certification deadline. Barbourville is a very small cable system⁸ that is seeking to comply with the Commission's directives. Barbourville initially believed it was required to submit data in the Data Collection and was in the process of compiling that data when it learned—after the deadline for the streamlined certification—that it had been eligible for the streamlined certification. Barbourville filed its certification shortly after.

⁶ *Id.* at 29.

⁷ 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁸ Barbourville has approximately 1,700 broadband subscribers and a staff of two employees dedicated to the provision of broadband.

Public Interest. Accepting Barbourville’s streamlined certification as timely filed would serve the public interest and would have no negative impact on the Commission’s data collection. Barbourville filed its streamlined certification on February 14, 2015—almost two weeks before the filing deadline for small entities required to report data.⁹ Accordingly, Barbourville’s late certification does not hinder or slow the Commission’s efforts in the data collection. Moreover, waiving the streamlined certification deadline for Barbourville serves the public interest by avoiding the expenditure of Commission and Barbourville’s resources on an enforcement action.

Good Cause. Lastly, good cause exists to grant the waiver because: (i) Barbourville is eligible for the streamlined certification;¹⁰ (ii) the Commission has recognized that it has a statutory obligation to “minimize the significant economic impact on small entities,” such as Barbourville, when promulgating record keeping requirements;¹¹ and (iii) upon receiving clarification of its obligations, Barbourville self-corrected by filing the certification soon after release of the FAQs.

For the foregoing reasons, Barbourville requests that Commission grant the limited relief requested and accept Barbourville’s streamlined certification filing as though it were timely filed.

Respectfully submitted,

Barbourville Utilities Commission

By:  _____

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⁹ *Special Access FAQ* at 8. Exhibit A.

¹⁰ *Id.* at 29.

¹¹ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Extension Order, WC Docket No. 05-25, DA 14-1706, at 3 (rel. Nov. 26, 2014).

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Exhibit A

Submission Confirmation

OMB No. 3060-1197

This confirmation verifies that on Saturday, 14 Feb 2015 6:49:47 PM the Federal Communications Commission received and accepted your certification in response to the special access data collection in this proceeding, WC Docket No. 05-25, RM-10593.

Summary:

- Filer Identification...

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