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May 25, 2016

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Universal Service High-Cost Filing Deadlines; Petition of Virgin Islands Telephone Corp. d/b/a Innovative Telephone for Waiver of the National Exchange Carrier Association Adjustment Period, WC Docket 08-71*

Dear Ms. Dortch:

On May 24, 2016, in connection with the above-referenced proceeding, Nathania Bates, Vice President – Legal Affairs for the Virgin Islands Telephone Corp. d/b/a Innovative Telephone (“Innovative”), and the undersigned with Wiley Rein LLP, counsel for Innovative, met with Nicholas Degani, Wireline Legal Advisor for Commissioner Ajit Pai.

During this meeting, we discussed the attached written presentation, which explains Innovative’s petition for a waiver of the National Exchange Carrier Association’s (“NECA”) rolling 24-month adjustment period and subsequent application for review of the Wireline Competition Bureau’s February 24, 2015 order denying that petition. As we discussed, granting Innovative’s waiver request would: (i) ensure that the company’s high cost loop support for 2011 and Connect America Fund (“CAF”) frozen support would be calculated based on accurate loop count data; and (ii) would be consistent with Commission precedent. Innovative underscored the significance of the waiver, which, if granted, would result in \$565,860 in increased high cost support in 2011 and annual frozen CAF support.

Apart from the waiver, Innovative also explained that the Commission should direct that USAC recalculate the company’s baseline support amount based on accurate loop counts for November and December 2011, which would result in \$113,172 in increased annual frozen CAF support. This recalculation is warranted because Innovative properly submitted revised loop counts for November and December 2011 within the 24-month period, and NECA agreed to use the corrected November and December 2011 loop counts in calculating Innovative’s 2011 high-cost loop support by January 31, 2012. Because the \$113,172 in additional support is “for 2011,” this amount is properly included within Innovative’s baseline frozen support

Ms. Marlene H. Dortch

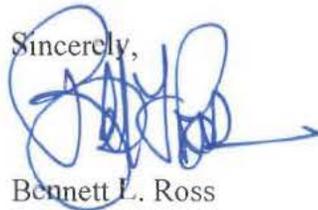
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under Section 54.312(a)(1) of the Commission's rules. That this additional support was not actually disbursed in 2011 as a result of the actions or inactions of NECA or USAC is not a valid basis for denying Innovative support to which it is lawfully entitled, as the Bureau erroneously concluded.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Sincerely,



Bennett L. Ross

BLR/rw

cc: Nicholas Degani



Waiver Petition of Virgin Islands Telephone Corp. d/b/a Innovative Telephone

May 24, 2016

OVERVIEW

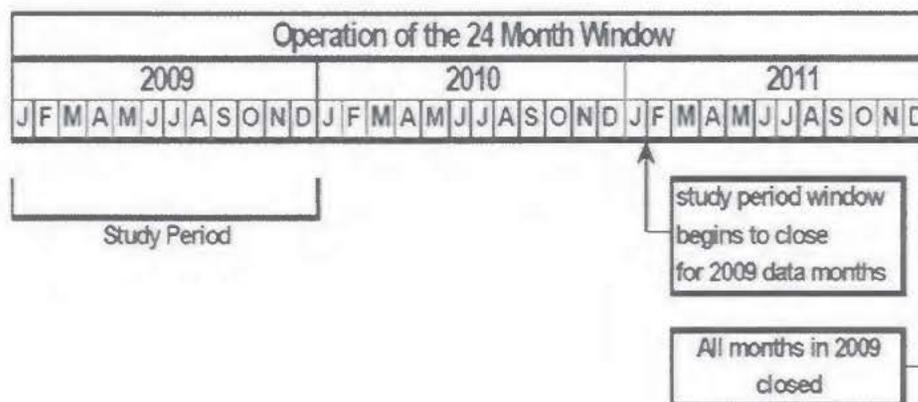
- Innovative seeks a waiver of NECA's rolling 24-month adjustment period so that the company's high cost loop support for 2011 and frozen CAF support will be calculated based on correct loop count data.
 - The Commission should grant the waiver, which would be consistent with the APA and Commission precedent.
 - It would allow Innovative to receive the support to which it is entitled under the Commission's rules.
- The FCC also should enforce its rules by directing that Innovative's baseline frozen support be calculated based on corrected November and December 2011 loop counts, which are properly included in calculating the company's 2011 HCLS.

OVERVIEW (cont'd)

- The waiver petition is hugely significant to Innovative.
 - It basically means approximately \$566,000 in 2011 and in subsequent years in frozen CAF support.
 - There is an additional \$113,000 in annual support to which Innovative is entitled that does not require a waiver but only an FCC directive that NECA follow the rules.

BACKGROUND

- NECA calculates HCLS in October of the year immediately preceding the funding year based on historical year-end data from two years before the funding year subject to a 24-month adjustment period.
- NECA permits carriers to submit adjustments to data over a 24-month rolling period following individual data months.



BACKGROUND (cont'd)

- In November 2011, Innovative implemented a new physical facilities database that was developed to allow the company to determine more precisely access lines and loops in service.
- In connection with implementing this new database, Innovative discovered that its 2009 loop count data submitted to NECA was wrong by including switched wideband loops.
- Almost immediately after discovering this error in November 2011, Innovative alerted NECA, which agreed that non-switched wideband loops should have been excluded from the company's loop counts.

BACKGROUND (cont'd)

- NECA indicated that, absent a waiver, it would not recalculate Innovative's HCLS for January through October 2011 under its 24-month adjustment procedure.
- However, NECA agreed to make the adjustment for November and December 2011 by the end of January 2012, since this adjustment was properly within the 24-month period.

NECA FAILED TO FOLLOW THE RULES

- Under the FCC's rules, a price cap carrier's baseline support amount for frozen support purposes is based on the carrier's total 2011 support as determined by USAC on January 31, 2012. 47 C.F.R. § 54.312(a).
- NECA agreed that it would, by the end of January 2012, use corrected November and December 2011 loop counts in calculating Innovative's 2011 support and then send its calculations to USAC.
- However, that did not happen, as Innovative's baseline frozen support reflects inaccurate loop counts for November and December 2011 – an error that has cost Innovative \$113,172 in annual support since 2011.

A WAIVER IS WARRANTED

- Consistent with precedent, the Commission should grant the waiver to ensure that accurate loop count data are used in calculating Innovative's support.
- As the Commission has recognized in other contexts, it has “a well-established duty under the Administrative Procedure Act ('APA') to ‘analyze . . . new data’ when faced with existing data that ‘are either outdated or inaccurate.’” *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 138 (2014) (citing *Dow Agrosciences LLC v. Nat'l Marine Fisheries Service*, 707 F.3d 462, 473 (4th Cir. 2013)).

A WAIVER IS WARRANTED (cont'd)

- Indeed, in the universal service context, the Bureau has repeatedly found that “[t]he public interest is served by ensuring accurate data is used in necessary computations, regardless of the extent of support reduction or increase.” *Connect America Fund High-Cost Universal Service Support*, 27 FCC Rcd 12106, ¶ 4, n.9 (2012) (granting the request for expedited waiver to correct its study area boundaries that were used in the regression analysis that established “benchmarks” for high-cost loop support); *Connect America Fund High-Cost Universal Service Support*, 27 FCC Rcd 11075, ¶ 4, n.9 (2012) (same); *Connect America Fund; High-Cost Universal Service Support*, Order, 27 FCC Rcd 4235, ¶ 31 (2012).

THE BUREAU ERRED IN DENYING THE WAIVER

- The Bureau erred by requiring that Innovative show as a condition to a waiver that its existing universal service support “is inadequate.”
 - No other carrier seeking or receiving a waiver has been required to make such a showing.
 - Holding Innovative to a different waiver standard than other similarly situated carriers is arbitrary and capricious.
 - Even if the Bureau applied the correct standard, according to the FCC’s data, the population in the USVI without access to fixed 25 Mbps/3 Mbps broadband is **45 percent**.

THE BUREAU ERRED IN DENYING THE WAIVER (cont'd)

- The Bureau disregarded Commission precedent that warranted granting Innovative a waiver.
 - The Commission routinely grants waivers when the carrier files corrected information immediately and takes prompt action to fix the problem going forward.
 - Innovative met this standard for a waiver, which the Bureau did not even address.

THE BUREAU ERRED IN DENYING THE WAIVER (cont'd)

- The Bureau's decision was predicated on a misreading of the Commission's rules.
 - The Bureau insists that only HCLS disbursements received in 2011 are properly included in a price cap carrier's baseline frozen support amount.
 - However, the FCC's rules define baseline frozen support as the amount disbursed "for 2011," not "in 2011." 47 C.F.R. § 54.312(a)(1)