

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 an 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 FOR WAIVER OF CROCKET TELEPHONE COMPANY INC.,  
PEOPLES TELEPHONE COMPANY AND WEST TENNESSEE TELEPHONE  
COMPANY, INC.**

Crockett Telephone Company, Inc. (“CTC”), Peoples Telephone Company (“PTC”) and West Tennessee Telephone Company, Inc. (“WTC”) (collectively the “TEC Companies” or “Companies”) pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules<sup>1</sup> request waiver of the January 1, 2012 date specified in Section 54.313(h) for which rates must be in effect in order to determine

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<sup>1</sup> 47 C.F.R. §1.3

whether rate-of-return companies that receive high cost loop support (“HCLS”) meet the rate floor benchmark of \$10.<sup>2</sup> As explained herein, such a waiver would be an extension for three months of the January 1, 2012 date and would not cause any disruption to USAC in its implementation of the rate floor rule.

## **I. Background**

The TEC Companies are rate-of-return incumbent local exchange carriers that provide service in the state of Tennessee. Last year, the state of Tennessee enacted the “Uniform Access, Competition, and Consumer Fairness Act of 2011” (“2011 Act”) which required parity for interstate and intrastate access rates and rate structures.<sup>3</sup> Part of this legislation permits a carrier that transitions its intrastate rates in the manner specified by the 2011 Act to adjust its retail rates each year to recover any revenue losses resulting from its revision of intrastate switched access rates and rate structure.<sup>4</sup> The legislation provides that the Tennessee Regulatory Authority (“TRA”) is not permitted to review or regulate such retail rate adjustments; however, a tariff filing prior to April 1, 2012 was required before the new rates could go into effect.<sup>5</sup>

Pursuant to the 2011 Act, the TEC Companies filed tariff revisions on March 1, 2012 which increased all of the Companies’ R1 rates to \$10 effective April 1, 2012. Prior to the rate increases, CTC’s R1 rate was \$5.86; PTC’s R1 rate was \$1.91; and WTC’s R1 rate was \$1.11. These rates were some of the lowest in the country due to the

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<sup>2</sup> PTC and WTC receive HCLS. Although CTC does not currently receive HCLS, the Company raised its R1 rate to \$10 at the same time as PTC and WTC and seeks waiver of the January 1, 2012 date in the event that CTC were to become eligible to receive HCLS at a later date.

<sup>3</sup> Tenn. Code Ann. §65-5-301 and §65-5-302.

<sup>4</sup> See Tenn. Code Ann. §65-5-302(e).

<sup>5</sup> See Letter from David Foster, Chief, Utilities Division, TRA dated Feb. 15, 2012 at 2 (attached as Attachment 1). The TRA requested such tariffs be filed by March 1, 2012.

fact that the process of obtaining rate increases from the TRA was not only financially burdensome but the TRA was adamantly opposed to granting increases in local rates and the process could take many months. Although the TEC Companies were underearning for years, the cost of a full rate case would have offset any rate relief and the TRA and Consumer Advocate Division (CAD) both voiced their opposition to any rate increases when approached about a rate case. It was only after passage of the 2011 Act that the Companies' R1 rates could be raised to \$10, and only pursuant to the requirements of the legislation which did not allow the increases to go into effect until April 1, 2012. Accordingly, the TEC Companies were not able to have rates in effect on January 1, 2012 that met the \$10 benchmark; however, as of April 1, 2012, they now have such rates in effect.

## **II. Grant of this Waiver is Warranted**

Generally, the Commission's rules may be waived for good cause shown.<sup>6</sup> Furthermore, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> As demonstrated herein, good cause exists and the public interest would be served by waiving the January 1, 2012 date specified in Section 54.313(h) for which rates must be in effect in order to determine whether the TEC Companies meet the rate floor benchmark of \$10.

First, the waiver that the TEC Companies are seeking is not a permanent waiver, nor does it seek an exemption from the application of the rate floor rule. Instead, the

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<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> *Northeast Cellular Telephone co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

waiver if granted would allow for a three month extension of the date specified in a reporting requirement when rates must be in effect in order to determine if the TEC Companies meet the \$10 rate floor benchmark.

According to the *USF-ICC Order*, the rate floor will be phased in beginning with an initial rate floor of \$10 for the period of July 1, 2012 through June 30, 2013.<sup>8</sup> To implement the initial \$10 rate floor benchmark and the subsequent rate floor benchmarks, the *USF-ICC Order* requires affected carriers to annually report their R1 rates. Specifically, the order requires that

beginning April 1, 2012, subject to [Paperwork Reduction Act or “PRA”] approval, all incumbent local exchange carrier recipients of HCLS, frozen high-cost support and CAF also must report their flat rate for residential service to USAC so that USAC can calculate reductions in support levels for those carriers with R1 rates below the specified rate floor as established above.<sup>9</sup>

According to Section 54.313(h) of the Commission’s rules, the rates which must be reported by April 1 each year are those that are “in effect as of January 1.”<sup>10</sup> In sum, the *USF-ICC Order* requires rate-of-return carriers that receive HCLS such as the TEC Companies to annually report by April 1, their flat rates for residential service and state fees which were in effect as of January 1 of that year and to report any rates that were below the relevant benchmark as of January 1 as well as the associated line counts.

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<sup>8</sup> See *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 an 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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF-ICC Order*”) at para. 239. For the period July 1, 2013 through June 30, 2014, the rate floor benchmark will be \$14. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual survey of voice rates.

<sup>9</sup> *Id.* at para. 594.

<sup>10</sup> 47 C.F.R. § 54.313(h). This rule also requires these carriers to report all rates that are below the rate floor and the number of lines for each rate specified. The rates and number of lines must also be those in effect as of January 1.

USAC will then use this data to calculate any reductions in support levels which will be reflected in support payments beginning July 1 of each year.

It was not until after the *USF-ICC Order* was released in mid-November of last year that the TEC Companies could have known about the new rate floor rule and the Section 54.313(h) reporting requirement which specifies the January 1 date as when rates that will be used for the purposes of this rule must be in effect. As explained under Section I above, once the TEC Companies learned about the rule, they took prompt action and utilized the process allowed by the 2011 Act to increase their rates to the \$10 benchmark.<sup>11</sup> Without taking such action, the Companies would not have been able to raise their rates to this level and in such a brief period of time given the hurdles associated with a TRA rate case. Accordingly, good cause exists to grant the TEC Companies a three-month extension of the January 1, 2012 date specified in Section 54.313(h) so that they can report the rates which they raised with the specific intent to meet the \$10 benchmark.

Second, the three month extension would be well in advance of the July 1, 2012 date when the \$10 rate floor benchmark will be implemented and would be before any affected carriers are required to report their rates. Because the FCC is still awaiting PRA approval for this reporting requirement, as of this date, no affected carrier has filed its rates nor has USAC received any data to begin its calculations.<sup>12</sup> Accordingly, granting

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<sup>11</sup> The TEC Companies could have reduced intrastate rates by twenty percent as the first step in the intrastate rate transition but opted to move to full parity in order to take advantage of the revenue option which allowed the Companies to increase their local rates to \$10.

<sup>12</sup> It is the TEC Companies' understanding from informal discussions held between its consultant and Wireline Bureau staff that the Bureau will release a Public Notice after PRA approval has been obtained which will allow the affected carriers "sufficient time" to submit the data.

the three month extension to the TEC Companies would not cause any disruption to USAC in its implementation of the rate floor rule.

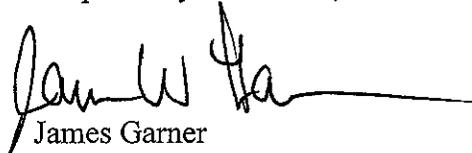
Further, grant of this petition is warranted because the particular facts make strict compliance inconsistent with the public interest. Absent grant of this waiver petition, the FCC will reduce, on a dollar-for-dollar basis, the HCLS received by the TEC Companies to the extent that the Companies' local rates plus their state regulated fees that were in effect as of January 1, 2012 do not meet the \$10 rate floor benchmark. This would mean a reduction in the amount of HCLS for the TEC Companies a combined annual amount of \$246,406. These reductions in HCLS would negatively impact the ability of the TEC Companies to continue to provide the high level of quality of services to its customers and would be especially adverse to the public interest given that customers' rates were increased significantly to ensure that such reductions in HCLS would not occur.

### **III. Conclusion**

In this waiver petition, the TEC Companies seek a three month extension of the January 1 date specified in Section 54.313(h) of the Commission's Rules for which rates must be in effect in order to determine whether the Companies meet the rate floor benchmark of \$10. As demonstrated herein, the "good cause" standard required for grant of waiver petitions has been met, and grant of this petition is consistent with the public interest. Specifically, once the TEC Companies learned about the \$10 rate floor benchmark, they took prompt action and utilized the process allowed by the 2011 Act to increase their rates to the benchmark. Absent taking such action, the Companies would not have been able to raise their rates to this level and in such a brief period of time due

to the fact that the process of obtaining rate increases from the TRA was not only financially burdensome but the TRA was adamantly opposed to granting increases in local rates and the process could take many months. Absent grant of this petition, the reductions in HCLS would negatively impact the ability of the TEC Companies to continue to provide the high level of quality of services to its customers and would be especially adverse to the public interest given that customers' rates were increased significantly to ensure that such reductions in HCLS would not occur.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James Garner", with a long horizontal line extending to the right.

James Garner  
Vice President of Operations  
Crocket Telephone Company, Inc.  
Peoples Telephone Company  
West Tennessee Telephone Company, Inc.

April 25, 2012

# TENNESSEE REGULATORY AUTHORITY



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

February 15, 2012

Dear Sir/Madam:

This letter serves as a reminder that effective April 12, 2011, the Tennessee Legislature enacted the “Uniform Access, Competition, and Consumer Fairness Act of 2011” under Tenn. Code Ann. § 65-5-301 and Tenn. Code Ann. § 65-5-302, **“Required parity for interstate and intrastate access rates and rate structures.”**

Specifically, § 65-5-302 requires:

(b) (2) Any entity<sup>1</sup> that, as of April 12, 2011, is imposing intrastate switched access charges that, on an average per minute basis, are higher than the average per minute interstate switched access charges imposed by the entity, shall, no later than April 1, 2012:

(A) Establish an intrastate switched access rates structure that is the same as its interstate switched access rate structure; and

(B) Implement revised intrastate switched access charges to effectuate a reduction of at least twenty percent (20%) in the difference between the average per minute intrastate switched access rate in effect for the entity on April 12, 2011, and the average per minute interstate switched access rate in effect for the entity on April 12, 2011.

An additional twenty percent (20%) switched access reduction is also required for each of the subsequent four years as set forth in § 65-5-302 (3) – (6).

In lieu of providing the above reductions and associated calculations, there is an additional provision in § 65-5-302(d) relating specifically to CLECs. This provision provides:

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<sup>1</sup> Entity is defined earlier in § 65-5-302 (a)(1): “Entity” means an entity that provides switched access service and is a public utility as defined in § 65-4-101 or a telephone cooperative governed by chapter 29 of this title.

(d) A competing telecommunications service provider, as defined in § 65-4-101, may provide by tariff that its intrastate switched access charges are the same as those of the incumbent local exchange telephone company, as defined in § 65-4-101, for whose service area the competing telecommunications service provider is offering intrastate switched access service, and be deemed thereby to comply with subsections (b) and (f), and the requirement in subsection (g) to set forth intrastate switched access rates and a rate structure in a tariff or price list.

Should you choose to file your own access reductions and not agree to the same intrastate switched access charges as the incumbent local exchange telephone company, it is requested that the following information be submitted with your switched access tariff filing in order to assist the Authority in its efforts to ensure compliance with the aforementioned statutory requirements.

1. Calculation(s) of the average intrastate switched access rate in effect on April 12, 2011. Please include all supporting documentation including switched access minutes of use by element and/or mileage, access rates by element and/or mileage and revenue amounts by access element;
2. Calculation(s) of the average interstate switched access rate in effect on April 12, 2011. Please include all supporting documentation including switched access minutes of use by element and/or mileage, access rates by element and/or mileage and revenue amounts by access element;
3. Calculation(s) demonstrating the required twenty percent (20%) intrastate switched access rate reduction for the proposed rates. Please include all supporting documentation including switched access minutes of use by element and/or mileage, access rates by element and/or mileage and revenue amounts by access element; and
4. Proposed tariffs reflecting the new intrastate switched access rates.

In order to allow sufficient time for Authority review, it is requested that the tariffs reflecting the new intrastate switched access rates be filed no later than Thursday, March 1, 2012.

Furthermore, § 65-5-302 (e) provides that:

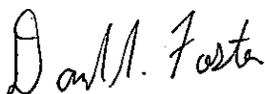
Notwithstanding any law of this state or requirements of the Tennessee regulatory authority to the contrary, an entity that transitions its intrastate access rates as provided in subdivision (b)(2)-(6), shall be entitled, but not required, to adjust its

retail rates each year to recover any revenue losses resulting from its revision of intrastate switched access rates and rate structure. The Tennessee regulatory authority may not review or regulate such retail rate adjustments.

Even though these retail rate increases are not reviewed by the Authority, a tariff filing will need to be made to revise your company's tariffs for the retail rates being increased.<sup>2</sup> You can either make this tariff filing separate from the access rate filing or include them with the access rate tariff filing. Also, please include notices provided to affected customers of any retail rate increases.

Again, it is requested that you provide the intrastate switched access reductions no later than Thursday, March 1, 2012 and that an original and three copies be submitted to my attention. Should you have any questions regarding this matter please contact me (615) 741-2904, ext. 188 or, if I cannot be reached, contact John Hutton at ext. 152.

Sincerely,

A handwritten signature in cursive script that reads "David M. Foster".

David Foster, Chief  
Utilities Division

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<sup>2</sup> Companies operating under Market Regulation are not required to file tariff revisions for retail rates.