

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

In the Matter of )  
)  
**Connect America Fund** ) WC Docket No. 10-90  
)  
**Developing an Unified Intercarrier Compensation Regime** ) CC Docket 01-92  
)  
**Federal-State Joint Board on Universal Service** ) CC Docket No. 96-45  
)  
**The Chillicothe Telephone Company (SAC #300597)** )  
Petition for Waiver of Section 54.304(d)(1) Filing Deadline )  
For Submission of CAF ICC Support Data to USAC )

TO: Chief, Wireline Competition Bureau

**PETITION FOR EXPEDITED WAIVER OF SECTION 54.304(d)(1) DEADLINE  
FOR FILING OF CAF ICC SUPPORT DATA WITH USAC**

The Chillicothe Telephone Company (“Chillicothe”; Study Area Code 300597), by its attorney and pursuant to Section 1.3 of the Commission’s Rules, requests waiver of the portion of the July 2, 2012 deadline<sup>1</sup> established by Section 54.304(d)(1) of the Rules that relates to the submission to the Universal Service Administrative Company (“USAC”) of a duplicate copy of Chillicothe’s Connect America Fund Intercarrier Compensation (“CAF ICC”) Support data for the initial July 1, 2012 to June 30, 2013 period. Chillicothe made the requisite Section 51.917(f) election with the Commission to receive CAF ICC support and submitted the required CAF ICC Support data to the Commission in timely fashion on June 18, 2012, with its annual access tariff transmittal. However, due to an inadvertent oversight, a copy of the CAF ICC Support data submitted to the Commission was sent to the Universal Service Administrative Company (“USAC”) a couple days after the July 2, 2012 deadline.

<sup>1</sup> The June 30, 2012 date set forth in Section 54.304(d)(1) of the Rules was pushed back to Monday, July 2, 2012, because June 30, 2012, was a Saturday.

**I**  
**Factual Background**

Chillicothe is a rural incumbent local exchange carrier ("RLEC") that serves ten exchanges (approximately 22,250 access lines) in rural Ohio. Chillicothe has been an eligible telecommunications carrier ("ETC") since the Universal Service provisions of the Telecommunications Act of 1996 were implemented.

Chillicothe maintains its own traffic sensitive interstate access tariff, Chillicothe Telephone Company Tariff F.C.C. No. 1, pursuant to Section 61.38 of the Commission's Rules. During the period prior to June 18, 2012, Chillicothe prepared the materials for its 2012 tariff transmittal, including the CAF ICC Support data required by Sections 51.917 and 51.919(b) of the Commission's Rules. Chillicothe submitted this CAF ICC Support data to the Commission as part of its Transmittal No. 102 on June 18, 2012. Its transmittal letter also included an express election to receive CAF ICC Support pursuant to Section 51.917(f)(1) of the Commission's Rules.

On June 20, 2012, Chillicothe submitted, at the request of the Wireline Bureau staff, a further revision to its interstate access tariff to clarify and specify more exactly its new Access Recovery Charge ("ARC") for the initial July 2012- June 2013 period. This revision required an Application for Special Permission (granted as Special Permission No. 12-015), and a further tariff transmittal (Transmittal No. 103), both of which were filed (at different times) on June 20, 2012.

On June 21, 2012 and June 26, 2012, Chillicothe promptly prepared and filed, at the request of the Wireline Bureau staff, a letter and a revised letter verifying in accordance with Section 51.917(c) of the Commission's Rules that it had used Fiscal Year 2011 intrastate access

revenues that were billed during 2011 and collected by March 31, 2012 to calculate its Eligible Recovery with respect to its CAF ICC Support.

On July 2, 2012, Chillicothe and its counsel were focused upon and awaiting the Wireline Bureau's order suspending the 2012 annual access tariff filings. That Order was issued late in the day, *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, Order, DA 12-1037, WCB/Pricing No. 12-09, released July 2, 2012 ("*ARC Suspension Order*"). Chillicothe's counsel prepared the requisite supplement on July 2 and filed it as Transmittal No. 104 on July 3, 2012.<sup>2</sup>

Unfortunately, with all of the focus upon the tariff transmittals and related submissions of CAF ICC Support material and documents to the Commission, Chillicothe's counsel inadvertently overlooked the new Section 54.304(d)(1) requirement to submit a copy of the same CAF ICC Support data that had previously been filed with the Commission on June 18, 2012, to USAC by July 2, 2012. As soon as this was discovered on July 5, 2012 – two business days after the deadline – counsel forwarded information to USAC.<sup>3</sup> USAC did not reject the data filings; in fact, it used them to make a preliminary calculation of the CAF ICC Support payable to Chillicothe during the July 2012 to June 2013 period (see Attachment A). However, on July 23, 2012, a USAC representative notified Chillicothe that it would have to petition the Commission for a waiver for USAC to accept the data and disburse CAF ICC Support to Chillicothe (Attachment A).

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<sup>2</sup> In addition, July 2, 2012 was also the deadline for filing the new Section 54.313 annual reports for high-cost support recipients.

<sup>3</sup> Counsel inadvertently attached an incomplete data file to the July 5, 2012 communication, but corrected this on July 7, 2012 (see Attachment A)

## II

### **Good Cause Exists for Waiver of the Section 54.301(e) Deadline**

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

The Bureau has waived various USF filing deadlines where carriers promptly filed the required data and revised their internal procedures to ensure compliance with the Commission's Rules and with future universal service filing deadlines. See, for example, *Petitions for Waiver of Universal Service High-Cost Filing Deadlines (Cedar-Wapsie Communications, Inc. et al.)*, DA 11-1337 (WCB, rel. August 2, 2011); and *Petitions for Waiver of Universal Service High-Cost Filing Deadlines (Western New Mexico Telephone Company, Inc. et al.)*, DA 10-107 (WCB, rel. January 22, 2010). In the majority of the instances dealt with in these orders, the recipient missed a USAC-only filing deadline, or filed late with both the Commission and USAC. In contrast here, Chillicothe made a timely election and data filing with the Commission, but was a couple of days late in making the duplicate data filing with USAC.

Good cause exists for the requested waiver because: (a) Chillicothe made material and substantial attempts to comply with its initial CAF ICC Support filing requirements, and in fact made the requisite CAF ICC Support election and data filing with the Commission in timely fashion; (b) Chillicothe has in place internal procedures to ensure that its Universal Service filings will be received by Commission and/or USAC in timely fashion, but a convergence of

unique and unusual circumstances surrounding the new filing requirement disrupted counsel's forwarding of the copy of the duplicate CAF ICC data to USAC; (c) Chillicothe promptly filed the CAF ICC Support data with USAC as soon as possible after Chillicothe learned that USAC had not received it; (d) grant of the requested waiver will have no adverse impact upon USAC's administration of the CAF ICC Support program for the 2012-2013 period; and (f) the loss or significant delay of any of the more than \$1.6 million of CAF ICC Support to which Chillicothe is otherwise entitled for the 2012-2013 period will seriously and adversely impair the company's finances and operations.

#### **A. Material and Substantial Compliance Efforts**

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by Chillicothe to comply with the requirements and filings necessary to qualify for and receive CAF ICC Support for the July 2012 to June 2013 period.

As indicated above, Chillicothe made in timely fashion on June 18, 2012, the requisite CAF ICC Support election and data filing with the Commission pursuant to new Sections 51.917(f), 51.919(b) and 54.304(d) of the Commission's Rules. Compliance with the new CAF ICC Support filing requirements was a difficult and complex process that challenged carriers, consultants, attorneys and Commission staff members. Whereas the Commission's investigation of the ARC and CAF ICC Support data is not complete as of the filing of this petition, Chillicothe has not yet been notified by the Commission since July 2, 2012 of any questions regarding its CAF ICC Support data submission, or asked by the Commission to file any additional or revised data.

In sum, Chillicothe made substantial, material, timely and good faith efforts to comply with the new and complicated CAF ICC Support requirements, and made all of the requisite elections and data submissions in timely fashion with the Commission.

### **B. Revised Internal Procedures**

After a problem with a United States mail delay resulting in a missed USAC deadline regarding Local Switching Support at the end of 2011, Chillicothe management adopted a new policy that required all future filings for Universal Service Fund and/or CAF mechanisms to be transmitted to USAC and/or the Commission (as required by the applicable filing procedure and deadline) by Federal Express or similar commercial delivery service or by hand-delivery via Chillicothe's Washington, DC legal counsel, with an additional copy sent via email where feasible.

Chillicothe put this revised procedure in place, and used it with respect to the subject CAF ICC Support data filings. The CAF ICC Support data for both the June 18, 2012 Commission filing and the duplicate July 2, 2012 USAC filing were sent to Chillicothe's counsel in early June 2012. Counsel included the CAF ICC Support data as part of Chillicothe's Transmittal No. 102, which was filed with the Commission on June 18, 2012.

However, the complexities of the new ARC and CAF ICC Support mechanisms resulted in a significant number of Wireline Bureau information requests and additional filing requirements during the two-week period from June 18 to July 3, 2012. Chillicothe was required on June 20 to apply for and obtain special permission and to make an additional tariff transmittal (Transmittal No. 103) to issue more specific ARC rates. Chillicothe and other issuing carriers were required to prepare and file additional intrastate access revenue certifications (June 21 and June 26 for Chillicothe), to await and prepare to respond to the Wireline Bureau's July 2

suspension order, and to prepare and file the requisite supplement to implement the suspension (Transmittal No. 104, filed by Chillicothe on July 3). In addition, Chillicothe, its counsel, and other rural local exchange carriers were resolving questions and preparing the new Section 54.313 annual reports due July 2, 2012, during this same two-week period. While focusing on helping Chillicothe and other carriers to comply with these multiple and overlapping tariff submissions and filing deadlines, counsel inadvertently overlooked the new Section 54.304(d)(1) requirement for duplicative filing of the CAF ICC Support data with USAC on July 2, 2012.

Chillicothe's revised internal procedures are prudent and sufficient, and were overwhelmed in this unique and unusual instance only by the newness and complexity of the initial CAF ICC Support data filings (particularly in the context of the Commission's annual access tariff process) and by the substantial amount of focus and activity needed to implement multiple first-time requirements during the two-week period between June 18 and July 2, 2012.

As previously represented, Chillicothe has revised its internal procedures to eliminate use of the U.S. mail for Commission and USAC filings, and will continue to make all such filings by Federal Express (or comparable commercial delivery service), by hand, or via electronic mail. In the future, Chillicothe's consultant and counsel will engage in two additional rounds of phone calls and/or emails: (a) the first round when the files are sent to counsel to specify exactly which files go to the Commission and/or to USAC on which specific dates; and (b) the second round on or before each specific deadline, to verify that specific files have been filed with and received by the Commission and/or USAC.

### **C. Prompt Remedy of Situation**

Once Chillicothe's counsel and consultant realized on Thursday, July 5, 2012 – two business days after the July 2, 2012 deadline – that the duplicate USAC filing had not been

made, counsel immediately transmitted to USAC a substantial data file that had already been filed with the Commission on June 18, 2012, and that was believed to include all of the requisite CAF ICC Support data. When it was discovered that a better and more complete CAF ICC Support data file was available, that file was submitted to USAC on July 7, 2012. In sum, Chillicothe promptly remedied the matter less than a week (a week that included the July 4 Independence Day holiday) after the July 2 due date.

#### **D. No Adverse Impact on CAF Administration**

In its July 2, 2012 *ARC Suspension Order*, the Wireline Bureau suspended the ARCs of Chillicothe and other carriers in order to give itself more time to investigate and implement the new ARCs, and other aspects of CAF ICC Support. As of the date of filing of this petition, the Wireline Bureau's investigation remains pending.

In the meantime, USAC has had Chillicothe's CAF ICC Support data since July 7, 2012 (assuming that it did not get it earlier from the Commission). The original July 2 deadline fell at the beginning of the Fourth of July holiday week (making it unlikely that any substantive review of the Chillicothe data would have taken place before July 7). And as indicated in Attachment A, USAC has reviewed Chillicothe's data, and has noted that it has made some preliminary revised calculations regarding Chillicothe's CAF ICC support for the July 2012 to June 2013 period. Whereas Chillicothe may or may not dispute USAC's calculations, the point here is that USAC has not been significantly delayed, but rather has already completed substantial analysis and processing of Chillicothe's CAF ICC Support data while the Wireline Bureau's investigation remains ongoing.

Given the pendency of the Wireline Bureau's investigation, the intervening holiday and the status of USAC's processing of Chillicothe's CAF ICC Support data, it is clear that USAC's

administration of the CAF ICC program has not been significantly or unduly delayed and that grant of Chillicothe's requested waiver will not adversely impact administration of the new CAF ICC program.

#### **E. Adverse Impact upon Revenues and Operations**

The new CAF ICC Support mechanism is meant to replace a critical portion of the substantial reductions ordered by the Commission as of July, 2012, with respect to terminating intrastate access charges, intraMTA traffic sensitive termination charges and other intercarrier compensation. In Chillicothe's case, this CAF ICC Support amounts to over \$1.6 million for the July 2012-June 2013 period, or over \$133 thousand per month. A loss of this critical revenue stream, or even a significant delay in receiving it, will adversely impact Chillicothe's financial position, loan covenants, and day-to-day operations. It will also affect the record and results of the Commission's intercarrier compensation reforms. The Commission, state regulators, the Congress, the industry and the public will all have a much more accurate and realistic view of the impacts of the Commission's initial intercarrier compensation reforms if CAF ICC Support and other elements thereof are implemented fully and immediately for all eligible carriers, and not eliminated, reduced or delayed due to minor and harmless delays in complying with new requirements.

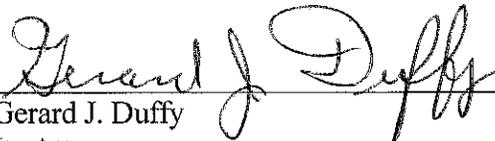
### **III** **Conclusion**

Good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant expedited grant of Chillicothe's requested waiver of the initial July 2, 2012 deadline established by Section 54.304(d)(1) of the Rules for the filing with USAC of its CAF ICC Support Data for the initial July 1, 2012 to June 30, 2013 period. The requested waiver is consistent with Commission and

Bureau precedent, and is supported by: (a) Chillicothe's compliance in timely fashion with the requisite CAF ICC Support election and data filing required to be made with the Commission pursuant to new Sections 51.917(f), 51.919(b) and 54.304(d) of the Rules; (b) Chillicothe's compliance with its internal procedures to ensure that CAF filings are made in timely fashion, and its minor revision to such procedures to address the one-time problem encountered with respect to the subject duplicate filing with USAC; (c) Chillicothe's prompt submission of the duplicate USAC data filing less than a week after the July 2, 2012 deadline; (d) the lack of any significant adverse impact upon the Commission's or USAC's administration of the new CAF ICC Support mechanism for the current year; and (e) the avoidance of severe hardship to Chillicothe by loss or delay of the substantial revenues needed to offset the intercarrier compensation changes implemented by the Commission as of July 2012.

Good cause having been shown, the Commission is requested expeditiously to waive the initial July 2, 2012 deadline established by Section 54.304(d)(1) of the Rules for filing of duplicative CAF ICC Support data with USAC, so that Chillicothe can begin receiving its CAF ICC Support payments in August 2012.

Respectfully submitted,  
**THE CHILLICOTHE TELEPHONE COMPANY**

By   
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Dated: July 26, 2012

## ATTACHMENT A

**Gerard J. Duffy**

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**From:** prvs=15448ec222=hcinfo@usac.org on behalf of HC Info [hcinfo@usac.org]  
**Sent:** Monday, July 23, 2012 2:46 PM  
**To:** 'pinnacle@gemsi.com'  
**Subject:** RE: Connect America Fund

Kym, there is an error in the intrastate revenue tab. It's not reflecting the 5% reduction in the FY2011 revenues in the subtotal. I'm not sure what happened there—when/where did you download the template? It should be column P-R, not O-R. That results in projected CAF ICC support of \$1,604,743, about \$76k off your projection below.

There is another hitch—the filing was late. The first was received on July 5, three days after the deadline, and did not contain the correct sheets. On July 7, the correct ones were submitted. USAC can't grant waivers for late filings, so you will have to petition the FCC for us to accept the data and disburse CAF ICC support.

Please write this address, not the HCLI one, with future questions.

Thanks.

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**From:** HCLI Questions  
**Sent:** Monday, July 23, 2012 1:37 PM  
**To:** HC Info  
**Subject:** FW: Connect America Fund

**From:** [pinnacle@gemsi.com](mailto:pinnacle@gemsi.com) [<mailto:pinnacle@gemsi.com>]  
**Sent:** Monday, July 23, 2012 1:05 PM  
**To:** HCLI Questions  
**Subject:** Connect America Fund

Dear USAC,

As previously stated, I am the cost consultant for The Chillicothe Telephone Company and I would like to confirm the amount of CAF the company will be receiving starting with the NECA August disbursement statements. Per ARC-CAF-3 on file, the CAF ICC support is \$1,680,331 per year, or \$140,027 monthly. The company is in the process of reporting 5-year cash flow projections and would like to confirm with USAC this is the scheduled monthly support payment for 2012.

Thank you for your assistance.

Kym Rupeiks

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