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REDACTED – FOR PUBLIC INSPECTION

December 19, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

Re: Petition for Limited Waiver
West Kentucky and Tennessee Telecommunications Cooperative
Connect America Fund,* WC Docket Nos. 10-90 *et al.

Dear Ms. Dortch:

On behalf of West Kentucky and Tennessee Telecommunications Cooperative ("WK&T"), John Staurulakis, Inc. respectfully submits the above-referenced Petition for Limited Waiver. WK&T seeks a limited waiver of Federal Communications Commission rules Section 51.917(b)(7)(ii), 2011 Rate-of-Return Carrier Base Period Revenue.

WK&T seeks confidential treatment under the Third Protective Order in this proceeding.[1] Pursuant to the Order, one copy of the confidential document and two copies of the redacted version are provided. The redacted version is also being filed on the Electronic Comment Filing System.

Please direct inquiries regarding the Company's Petition for Limited Waiver to the undersigned consultant for the Company.

Sincerely,

John Kuykendall
Vice President

Enclosures

cc: Chief, Wireline Competition Bureau

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[1] See Third Protective Order, WC Docket Nos. 10-90 *et al.*, DA 12-1418 rel. Aug. 30, 2012 ("Order").

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 OF WEST KENTUCKY AND TENNESSEE TELECOMMUNICATIONS COOPERATIVE FOR LIMITED WAIVER OF 47 C.F.R. § 51.917(b)

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),[1] West Kentucky and Tennessee Telecommunications Cooperative (“WK&T” or the “Company”) hereby requests a limited waiver of 47 C.F.R. Section 51.917(b)(7)(ii).[2] As explained following, good cause exists for waiver of the 2011 Rate-of-Return Carrier Base Period Revenue (“Base Period Revenue”), specifically the Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by

[1] 47 C.F.R. § 1.3.
[2] *Id.* at 51.917(b)(7)(ii)

March 31, 2012. Limited waiver of these rules would allow WK&T to include in its FY 2011 Base Period Revenue amounts for Transitional Intrastate Access Service that should have been billed and collected by March 31, 2012 but were not due to a billing omission that occurred during this period. That condition as demonstrated herein, has been subsequently rectified, and thus grant of this limited waiver is warranted. The "good cause" waiver standard has been satisfied, and grant of this waiver would be in the public interest.

I. Background

West Kentucky and Tennessee Telecommunications Cooperative is a rural incumbent local exchange carrier ("ILEC") operating in West Kentucky and West Tennessee serving approximately 16,000 customers. WK&T is a rate-of-return carrier participating in the National Exchange Carrier Association, Inc. ("NECA") Common Line and Traffic Sensitive pools.

WK&T submitted to NECA data to calculate the FY 2011 Base Period Revenue, including the three required components: (1) 2011 Interstate Switched Access Revenue Requirement; (2) Fiscal Year 2011 revenues from rate elements included in the definition of Transitional Intrastate Access Service received by March 31, 2012; and (3) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less Fiscal Year 2011 reciprocal compensation payments made by March 31, 2012. The Company, however, during the Base Period Revenue had a billing omission related to two intrastate switched access rate elements included in the definition of Transitional Intrastate Access Service – Carrier Common Line/Non-Traffic Sensitive Revenue ("CCL/NTSR") and

Transport Interconnection Charge ("TIC") revenue. This billing omission was not discovered until after March 31, 2012 and therefore WK&T was unable to include the CCL/NTSR and TIC revenues which were associated with FY 2011Base Period Revenue.

Specifically, during late April 2012, the Company became aware that its access billing mistakenly did not include the CCL/NTSR and TIC charges and had not since January 2010. These billing omissions were discovered during the ICC-CAF data collection efforts by NECA in April 2012 as part of the implementation of the USF-ICC Transformation Order.[3] Pursuant to Section 3.9 of WK&T's intrastate access tariff,[4] the CCL/NTSR rate element is billed monthly to carriers on a per terminating minute of use basis but also contains an annual adjustment mechanism. The tariff clearly defines how this adjustment should be made. And this adjustment was routinely made until January, 2010. Prior to that date, WK&T had a single person within the company responsible for tracking, calculating and billing the annual adjustment and true-up to the carriers. However, this person left the company at the end of 2009 and in the transition of that WK&T employee's responsibilities to another employee the true-up function was inadvertently dropped from the intrastate access billing process. As a result, the CCL/NTSR true-up billing did not occur in 2010 and 2011. In addition, the TIC rate element contained in Section 17.6.1 of the Company's intrastate access tariff was also mistakenly omitted from the carrier access billing system and was therefore not billed in 2010 and 2011.

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[3] *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 (10th Cir. filed Dec. 8, 2011).

[4] WK&T is a concurring carrier in the Duo County Cooperative Corp., Inc.'s Intrastate Access Tariff which is in effect and on file at the Kentucky Public Service Commission.

When WK&T discovered these billing oversights, the Company quickly acted to rectify the issue and sent invoices to the carriers on May 22, 2012 and August 1, 2012[5] for the CCL/NTSR adjustment and TIC for usage dating back to January 2010. WK&T also worked with NECA to make any necessary adjustments needed to calculate its transitional intrastate access reductions. From June to December of 2012, WK&T worked with the carriers to explain the billing corrections and to negotiate payment of the invoices for the CCL/NTSR and TIC charges. WK&T reached a settlement agreement with most of the carriers it billed and has received payment of the settlement amount from these carriers. The total amount that WK&T was able to collect for the entire period back to January 2010 was [redacted].

The total terminating amount associated solely with FY 2011 (October 1, 2010 to September 30, 2011) is [redacted]. Because this amount, which is now billed <u>and</u> collected, is associated with FY 2011 and was not billed and collected by March 31, 2012 due an inadvertent billing error, the Company respectfully requests the Commission waive its rules to allow the Company to include [redacted] in its Base Period Revenue.

II. Limited Waiver is Justified

In general, the FCC's rules may be waived for good cause shown.[6] Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."[7] The FCC may grant a waiver of its rules where the requested relief

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[5] WK&T discovered that the May 22, 2012 billing did not contain all of the correct TIC charges so revised invoices were sent out on August 1, 2012.

[6] 47 C.F.R. § 1.3.

[7] *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*").

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.[8]

The Commission anticipated that there would be circumstances similar to this 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.[9] 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.[10]

Although the facts in this case differ somewhat in that the outstanding intrastate access revenue was billed and collected after March 31, 2012 and it was not recovered as a result of a court or regulatory agency decision, the overall purpose of the waiver is the same – to allow a company to include revenues associated with FY 2011 that were billed and collected to be included in the Baseline when those revenues were collected after March 31, 2012. In fact, the circumstances in this waiver are even more favorable to grant than the FCC envisioned in that WK&T successfully negotiated carrier payments and no court or regulatory agency had to be involved.

Further, grant of this waiver is in the public interest. WK&T submitted its FY 2011 Base Period Revenue data in compliance with the Commission's rules and in good

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[8] *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).

[9] *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 (10th Cir. filed Dec. 8, 2011).

[10] *Id.* at footnote 1745. To the extent necessary, WK&T 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".

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 impact of USF-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 inappropriately penalize the Company's Eligible Recovery going forward.[11] Further, grant of the limited waiver would serve the public interest in that WK&T would be able to continue to serve its customers consistent with the FCC's National Broadband Plan goals while having the benefit of the transitional recovery mechanism to the full extent intended by the Commission.

III. Conclusion

In its USF-ICC Transformation Order, the FCC envisioned that there would be circumstances similar to the one faced by WK&T in which revenues associated with FY 2011 are not collected until after March 31, 2012. To address these situations, the FCC provided for an expedited waiver process to allow the amount billed and collected to be included in the Base Period Revenue. The fact that the Fiscal Year 2011 revenue was collected without the involvement of a court or regulatory agency should in no way preclude the Company from a waiver request to include that revenue in its eligible recovery Base Period Revenue.

[11] To illustrate, if the waiver is not granted, the exclusion of the [redacted] would have a cumulative negative effect of approximately [redacted] over the next five years.

Respectfully Submitted,

West Kentucky and Tennessee
Telecommunications Cooperative

By: Trevor R. Bonnstetter, CEO

12/18/12
Date

Certification of West Kentucky and Tennessee Telecommunications Cooperative

I, Trevor R. Bonnstetter, Chief Executive Officer of West Kentucky and Tennessee Telecommunications Cooperative, hereby certify that none of the intrastate carrier common line non-traffic sensitive and transport interconnection charge revenues that are the subject of this Petition for Limited Waiver were included in the West Kentucky and Tennessee Telecommunications Cooperative Eligible Recovery Baseline filed with the Federal Communications Commission on June 18, 2012.

Trevor R. Bonnstetter