

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Steelville Telephone Exchange, Inc. ) WC Docket No. 10-90  
 )  
Petition for Waiver of Section 54.313(h) ) WC Docket No. 05-337  
of the Commission's Rules, 47 C.F.R. §54.313(h) )

**PETITION FOR WAIVER TO REINSTATE HIGH-COST SUPPORT**

Steelville Telephone Exchange, Inc. (“Steelville”) hereby requests that the Commission grant a limited waiver of its rules to reinstate federal high-cost support to which Steelville is entitled for July 1 through December 31, 2012 under the Commission’s rules, but which was reduced due to the company’s inability to modify its local residential voice rates within a few days following late changes in federal and state rules. For the reasons stated below, grant of the limited relief requested herein would serve the public interest by restoring critical funding to a rural local exchange carrier (“LEC”) serving a high-cost study area.

**I. BACKGROUND**

Steelville is a cost-based rate-of-return regulated LEC providing local exchange and exchange access services, as well as advanced services, to residential and business customers in rural areas of Missouri.<sup>1</sup> Under the *USF/ICC Transformation Order*<sup>2</sup> and Section 54.318 of the Commission’s rules, the high-cost support of LECs such as Steelville was subject to reduction

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<sup>1</sup> Steelville participates in the National Exchange Carrier Association (“NECA”) traffic-sensitive pool.

<sup>2</sup> The Commission’s *USF/ICC Transformation Order* became effective on December 29, 2011. See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et al.*, FCC 11-161 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011) (“*USF/ICC Transformation Order*”).

beginning July 1, 2012 if the carrier's local residential voice rate was not at or above the local urban rate floor specified in the Commission's rules.<sup>3</sup> For the period beginning July 1, 2012 and ending June 30, 2013, the local urban rate floor is \$10.<sup>4</sup> As explained below, Steelville's local residential voice rate was \$10 as of July 1, so Steelville should not have experienced any reduction in high-cost support under this rule. However, another Commission rule, Section 54.313(h)(1), which sets forth the operative local rate reporting requirement, provides that incumbent LECs who receive high-cost support must report their local residential voice rates (as defined in the local urban rate floor rule cited above) in effect as of June 1.<sup>5</sup>

Steelville filed local tariff revisions in Missouri in compliance with Section 54.318(f)(1) of the FCC's rules on May 11, 2012, intending to provide more than 30 days' notice of the rate increase anticipated to take effect July 1. When the Commission's *Third Order on Reconsideration* was released on May 14, making the effective date of the local urban rate floor June 1 instead of July 1, it appeared impossible to comply with the Missouri requirement of 30 days' advance notice for tariff changes and the FCC's June 1 effective date for the rate floor. The Missouri Public Service Commission ("PSC") attempted to remedy this conflict by adopting an order on May 24 expediting the effective date of Steelville's and the other affected LECs' tariffs, so they could become effective as of June 1, 2012, in conformity with Section

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<sup>3</sup> 47 C.F.R. §54.318(b) (the "local residential voice rate" is defined specifically as the "flat rate for residential local service plus state regulated fees offered for voice service"); 47 C.F.R. §§54.318(f) (the term "local urban rate floor" means "the national average of local urban rates plus state regulated fees under the schedule provided in [Section 54.318(f) of the Commission's rules]").

<sup>4</sup> 47 C.F.R. §54.318(f)(1).

<sup>5</sup> The rule initially required reporting the local residential voice rates in effect as of January 1; this rule was revised in the Commission's *Third Order on Reconsideration* released May 14, after Steelville already had modified its local rates to comply with the July 1 requirement, as explained below. 47 C.F.R. §54.313(h)(1), *as modified by the Third Order on Reconsideration* in WC Docket Nos. 10-90 *et al.*, FCC 12-52 (rel. May 14, 2012) ("*Third Order on Reconsideration*").

54.313(h)(1) of the FCC's rules.<sup>6</sup> However, at that late date, Steelville was unable to implement the rate change in its billing system in time to comply with the June 1 deadline under Section 54.313(h)(1). Steelville's local residential voice rates therefore were increased to \$10 as of July 1, 2012, in compliance with the local urban rate floor as set forth in Section 54.318(f)(1) of the Commission's rules.

Section 54.313(h)(2) permits LECs to file updates of their local residential voice rates on January 2 of each year, reporting rates in effect as of December 1, and footnote 51 of the *Third Order on Reconsideration* suggests that carriers whose rates were below the rate floor on June 1 may report rate increases between June 1 and December 1 in that January 2 update so that support may be restored for the remainder of the year.<sup>7</sup> However, Office of Management and Budget ("OMB") approval of this mid-year update apparently remains pending. Steelville therefore files this petition for waiver, and will notify NECA and USAC on or before January 2, 2013, so that Steelville will not be subject to any high-cost support reduction and its high-cost support will be restored for the period from July 1 through December 31, 2012. Further, Steelville intends to notify NECA and USAC on or before January 2, 2013 that its local residential voice rates in effect as of December 1 comply with the specified rate floor so that its high-cost support for January through June 2013 will not be reduced.<sup>8</sup>

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<sup>6</sup> A copy of the PSC's May 24, 2012 "Order Approving Tariffs and Granting Motions for Expedited Treatment" is attached.

<sup>7</sup> 47 C.F.R. §54.313(h)(2); *Third Order on Reconsideration* at n. 51 ("If, for instance, a carrier reports rates and state fees as of June 1st that are below the applicable benchmark, but then its rates and/or fees increase on October 1st, it may report those increased rates and/or fees in its January 2<sup>nd</sup> update, so that USAC can modify the support reductions for the remainder of the year. If the rates and/or fees increase after the June 1st sampling date to a level above the applicable rate floor, such that the carrier no longer would be subject to any reduction due to the rate floor, it may notify USAC of those increased rates in the January 2<sup>nd</sup> filing").

<sup>8</sup> See *Third Order on Reconsideration* at para. 20 & n. 51.

## II. GRANT OF LIMITED WAIVER RELIEF WOULD SERVE THE PUBLIC INTEREST

The Commission may waive its rules for “good cause shown.”<sup>9</sup> More specifically, the Commission may exercise its discretion to waive a rule where, due to special circumstances, deviation from the general rule would better serve the public interest than strict adherence to the general rule.<sup>10</sup> The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>11</sup> Steelville’s waiver request meets this standard.

The Commission’s recent *USF/ICC Transformation Order* significantly altered the landscape of federal regulation for incumbent LECs such as Steelville. Compliance with the Commission’s many rule changes and new reporting requirements has been challenging for Steelville. As the Commission has observed, rate-of-return carriers face unique challenges responding to changes in regulation and market conditions.<sup>12</sup> Indeed, the Commission expressed a desire in the *USF/ICC Transformation Order* to mitigate the potential adverse effects of its new rules on rate-of-return carriers and their customers.<sup>13</sup>

The Commission should grant a waiver in this case so as to avoid the undue hardship on Steelville and its customers due to the reduction of high-cost support for July 1 through December 31, which Steelville estimates to be \$18,456 (\$3,076 per month). This support represents a significant portion of the revenue on which Steelville relies to continue to invest in

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<sup>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> *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).

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> *See, e.g., USF/ICC Transformation Order* at ¶891.

<sup>13</sup> *See USF/ICC Transformation Order* at ¶ 801.

its network serving the rural Missouri communities of Cherryville, Huzzah, Steelville and Viburnum. Without this support, service to Steelville's 2,000 broadband customers and 4,000 voice customers could be at risk.

The Commission should grant a waiver of Section 54.313(h) to the extent necessary for Steelville's high-cost support to be restored for the last six months of 2012. Steelville and its customers should not be penalized by Steelville's failure to increase its local residential voice rates in effect as of June 1, when it had only a few days' notice that it even had the ability to do so under state law. Steelville's local residential voice rates in effect as of July 1 complied with the rate floor, so Steelville was out of compliance with the Commission's rate floor merely for 30 days. Grant of the requested waiver will harm no party. However, in the absence of a waiver, Steelville and its customers would be penalized. This would not serve the purpose of the rule. Indeed, the Commission expressed its intent that LECs would be permitted to file mid-year updates of their local residential voice rates to avoid continuing reductions in support after they raised their rates to comply with the rate floor. In the absence of OMB approval of such a filing, grant of the waiver requested herein would serve the interest of equity and prevent undue hardship. The policy underlying the Commission's rules would be served by grant of a waiver of Section 54.313(h) in this case.

### III. CONCLUSION

For the foregoing reasons, a waiver of Section 54.313(h) should be granted as necessary for the avoidance of undue hardship and to serve the policy underlying the Commission's rules.

Respectfully submitted,

/s/

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December 31, 2012

Attachment A

Missouri Public Service Commission  
*Order Approving Tariffs and Granting Motions for Expedited Treatment*  
(issued May 24, 2012)