



REDACTED – FOR PUBLIC INSPECTION

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March 27, 2013

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

Attention: Wireline Competition Bureau

**Re: Petition for Limited Waiver
Smart City Telecommunications LLC d/b/a Smart City Telecom
Connect America Fund, WC Docket Nos. 10-90 et al.**

Dear Ms. Dortch:

On behalf of Smart City Telecommunications LLC d/b/a Smart City Telecom (“Smart City”), John Staurulakis, Inc. respectfully submits the above-referenced Petition for Limited Waiver. Smart City seeks a limited waiver of Federal Communications Commission rules Section 51.917(b)(7)(ii), 2011 Rate-of-Return Carrier Base Period Revenue.

Smart City 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 Smart City’s Petition for Limited Waiver to the undersigned consultant for the Company.

Sincerely,

John Kuykendall
Vice President

Enclosures

cc: Chief, Wireline Competition Bureau

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 SMART CITY TELECOMMUNICATIONS LLC D/B/A SMART
CITY TELECOM
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 Smart City Telecommunications LLC d/b/a Smart City Telecom (“Smart City” 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 Smart City Telecom 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 dispute 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

Smart City Telecom is a rural incumbent local exchange carrier (“ILEC”) operating in the Orlando, Florida area serving approximately 12,014 access lines. Smart City Telecom is a rate-of-return carrier and an Issuing Carrier in the John Staurulakis, Inc. Tariff F.C.C. No. 1.

Smart City Telecom submitted data to John Staurulakis, Inc. to calculate the Fiscal Year 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. Pursuant to FCC Rules pertaining to revenue not collected by March 31, 2012, the Company excluded revenue associated with an ongoing billed minutes dispute from the Base Period Revenue submission. This dispute remained

unsettled until December 24, 2012, significantly after the data collection for Base period revenues ended, at which time the dispute was settled and payment was received.

The dispute involved traffic type and billed rates for traffic terminated by [REDACTED] to Smart City for the period(s) August 1, 2010 through January 1, 2012. The bills for the aforementioned period, totaling [REDACTED], were assessed the Intrastate per minute access rate in accordance with Smart City Telecommunications LLC d/b/a Smart City Telecom, Florida Tariff No. 1. [REDACTED] disputed this amount, asserting a portion of the billed minutes were VOIP traffic and therefore not subject to tariffed intrastate access rates for switched access service. The [REDACTED] dispute resulting in nonpayment due to the assertion those VOIP minutes of use not subject to intrastate access rate billing was mitigated by the release of the F.C.C.'s USF/ICC Transformation Order³. The Order addressed VOIP traffic and indicated terminating VOIP minutes of use should be billed at interstate rates effective January 1, 2012, and originating VOIP minutes of use continue to be billed at intrastate access rates until July 1, 2014. After the release of The Order negotiations, between [REDACTED] and Smart City, regarding the appropriate per minute billing rate ensued. Negotiations continued through the months of January to December of 2012, at which point [REDACTED] and Smart City reached a settlement agreement. The total amount agreed upon in the settlement negotiations for the disputed billed period of, August 1, 2010 through January 1, 2012, was [REDACTED].

The total of the received settled amount, of the intrastate terminating amount, associated solely with Fiscal Year 2011 (October 1, 2010 to September 30, 2011) is

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).

██████████. Because this amount, which is now collected, is associated with Fiscal Year 2011 but was not collected by March 31, 2012 due to a billing dispute, Smart City respectfully requests the Commission waive its rules to allow the Company to include ██████████ in its Base Period Revenue.

II. Limited Waiver is Justified

In general, the FCC’s rules may be waived for good cause shown.⁴ Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”⁵ The FCC may grant a waiver of its rules where the requested relief 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.⁶

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. 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.⁷

⁴ 47 C.F.R. § 1.3.

⁵ 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*”).

⁶ 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).

⁷ *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”.

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 Smart City successfully negotiated carrier payments and no court or regulatory agency had to be involved.

Further, grant of this waiver is in the public interest. Smart City submitted its FY 2011 Base Period Revenue data in compliance with the Commission’s rules and in good 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 represent, accurately; the Company’s FY 2011 Base Period Revenue and would not inappropriately penalize the Company’s Eligible Recovery going forward.⁸ Further, grant of the limited waiver would serve the public interest in that Smart City 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

⁸ 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.

In its USF-ICC Transformation Order, the FCC envisioned that there would be circumstances similar to the one faced by Smart City 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.

Respectfully Submitted,

Smart City Telecommunications LLC d/b/a
Smart City Telecom



By: James Schumacher,
Vice President, Finance and Administration

March 27, 2013

Date

Certification of Smart City Telecommunications LLC d/b/a Smart City Telecom

I, James Schumacher, Vice President, Finance and Administration, of Smart City Telecommunications LLC d/b/a Smart City Telecom, 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 Smart City Telecommunications LLC d/b/a Smart City Telecom Eligible Recovery Baseline filed with the Federal Communications Commission on date.

March 27, 2013