

**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

**LAUREL HIGHLAND TELEPHONE COMPANY
AND
YUKON-WALTZ TELEPHONE COMPANY**

**PETITION FOR LIMITED WAIVER OF
47 C.F.R § 51.917(b)(4)**

Laurel Highland Telephone Company (LHTC) and Yukon-Waltz Telephone Company (YWTC) (together, the Companies), pursuant to 47 C.F.R. § 1.3, hereby request a limited waiver of 47 C.F.R. § 51.917(b)(4) as to the definition of interstate revenue requirement for purposes of calculating 2011 rate-of-return (RoR) carrier Base Period revenue.¹ This limited waiver is sought in order to allow the Companies to appropriately adjust 2011 interstate switched access revenue requirements to recognize the conversion from average schedule to cost-based settlements with the National Exchange Carrier Association (NECA) access pool that took place prior to the Commission's adoption of the *ICC/USF Transformation Order*.² Specifically, the Companies seek to adjust 2011 interstate switched access revenue requirements to reflect the actual revenue requirements calculated pursuant to the Commission's rules³ instead of the average schedule settlements received during a portion of 2011.

FACTUAL BACKGROUND

The Companies are rate-of-return (RoR) regulated carriers and members of the NECA common line and traffic sensitive access pools. LHTC serves 4,454 access lines in a service area covering approximately 175 square miles in southwestern Pennsylvania. YWTC serves 657 access lines in a service area covering approximately 10 square miles in southwestern Pennsylvania. Both Companies are wholly-owned subsidiaries of Laurel Highland Total Communications, Inc. Effective October 1, 2011, the Companies elected to base settlements with the NECA pools on actual costs, instead of average schedule formulas. This decision was made in the months prior to the October 1, 2011 effective date, was based on the rules related to both universal service and intercarrier compensation in effect at that time, and allowed the Companies a better opportunity to earn the 11.25% interstate rate-of-return authorized by

¹ 47 C.F.R. § 51.917(b)(7)

² Report and Order and Further Notice of Proposed Rulemaking 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; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011 (*ICC/USF Transformation Order*)

³ 47 C.F.R. § 32, 36, 65, and 69

the Commission. In other words, the Companies made a prudent decision based on the existing rules and all the available evidence at that time.

With the release of the *ICC/USF Transformation Order*, the Commission established a transition mechanism that eventually establishes switched interstate and terminating intrastate access as a bill and keep service where intercarrier compensation as it is known today, for all intents and purposes, ceases to exist.⁴ As part of this transition, the Commission created a mechanism whereby RoR carriers are provided the opportunity to recover certain foregone revenues as switched access rates are transitioned to a bill and keep level.⁵ Within this mechanism are certain processes and calculations that determine a RoR carrier's Connect America Fund Intercarrier Compensation (CAF ICC) support. The Companies' Petition addresses the process designed to arrive at a RoR carrier's Eligible Recovery through the sum of their 2011 interstate switched access revenue requirements, fiscal year transitional intrastate access service (TIAS) revenues, and net reciprocal compensation revenues for fiscal year 2011.⁶

The adoption of 47 C.F.R. §51.917 and the establishment of Eligible Recovery rules means the Companies' frozen 2011 interstate switched access revenue requirements do not represent the reasonable, ongoing cost of providing interstate switched access service. According to these rules, average schedule company revenue requirements "shall be equal to the average schedule settlements it received from the pool, adjusted to reflect an 11.25 percent rate of return..."⁷ Thus, even though the Companies converted NECA pool settlements from average schedule to cost prior to the effective date of 47 CFR §51.917, the 2011 frozen interstate switched access revenue requirement reflects average schedule settlements. As a result, the Companies' Eligible Recovery and CAF ICC are being artificially constrained by the adoption of 47 §C.F.R. 51.917.

⁴ See e.g., *ICC/USF Transformation Order* at 798

⁵ *Id.*, at 851-853

⁶ 47 CFR §51.917(b)(7)

⁷ 47 CFR §51.917(b)(4)

GOOD CAUSE EXISTS TO GRANT THIS WAIVER

Section 1.3 of the Commission's rules provide for waiver of rules for good cause shown. In addition, it has been established that the Commission may waive rules where particular facts make strict compliance inconsistent with the public interest⁸, and if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁹ The Commission may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ The circumstances described in this Petition meet all of these standards, and thus the Commission is warranted in granting the Companies the relief sought herein.

As discussed above, the Commission's recovery mechanism related to the transition of interstate and terminating intrastate switched access rates to bill and keep levels includes a calculation of base period revenue. One of the components of this calculation is the RoR Company's 2011 interstate switched access revenue requirement, which for average schedule companies equals settlements received from the NECA pool. One of the key issues with the base period revenue amount is that it, and its components, are in essence "frozen" throughout the Commission's access rate reduction transition period. Because of this, a company's recovery from the CAF ICC fund is impacted through the entire transition period. If the base period revenue amount is incorrect, then the entire transition and recovery mechanism will produce inaccurate results and is exacerbated by the length of the transition period. This is where the Companies find themselves, absent Commission approval of this Petition.

Good cause exists for granting the Companies' Petition in that, absent the relief sought, the Companies would be receiving CAF ICC support that is unrealistically and unreasonably low, the occurrence of which is through no fault of the Companies. At the time the decision was made to convert from average schedule-based settlements to cost-based settlements, the Companies could not have foreseen that the benefits of such a conversion would last a brief nine months. The Companies properly followed NECA procedures, guidance and precedent for a process that has happened numerous times in

⁸ *Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990)

⁹ *Id.*, at 1166

¹⁰ *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C.Cir. 1969)

the past. As part of the decision to convert from average schedules to cost, the Companies determined, via a cost analysis performed pursuant to (then) current FCC rules, that interstate settlements were not properly covering interstate costs, and thus not providing the Companies a reasonable opportunity to earn the interstate authorized return on investment of 11.25%. Converting to cost-based NECA pool settlements resolved this issue, at least for a short time. After the imposition of the FCC's transition plan for RoR company access rates, the Companies' settlements have in essence been reverted to average schedules. This causes the Companies' total recovery, via interstate access charges (i.e., NECA settlements), the Access Recovery Charge (ARC), and CAF ICC to be inaccurate and non-reflective of the Companies' total costs, and the situation will remain that way for the foreseeable future, absent FCC approval of this Petition.

Based on the above, the Commission is warranted in granting the Companies' Petition. In addition, the Companies are not claiming that there were reductions in current support levels¹¹, nor are the Companies claiming in this Petition that they have been negatively impacted by the universal service reforms adopted in the *ICC/USF Transformation Order*. Thus, the guidelines adopted for companies filing petitions for waiver in those types of circumstances¹² do not apply to the Companies' Petition. In addition, the "total cost and earnings review" process adopted by the Commission does not apply to the Companies' Petition because the Companies are not claiming a violation of the Takings Clause of the Fifth Amendment of the U.S. Constitution.¹³ Instead, the Companies are seeking relief for the application of a rule that, in this specific circumstance, would be contrary to the public interest, would present an inequity to the Companies, and consists of a special circumstance that warrants deviation from strict compliance with the rule. The special circumstance in this case is the unintended consequence of negating the Companies' properly considered decision to convert from average schedule-based

¹¹ The Companies do not receive any high cost loop support, and did not prior to the *ICC/USF Transformation Order*

¹² *ICC/USF Transformation Order* at 539-544

¹³ *Id.*, at 924-932. In this Petition, the Companies are not arguing about the FCC's access charge transition plan, but rather that the starting point for one of the major components is not correct.

settlements to cost-based settlements - entirely due to the unforeseeable timing and content of the ICC/USF Transformation Order.

RELIEF SOUGHT

The Companies request that the Commission waive strict application of 47 CFR § 51.917(b)(4) to the extent such application would negate the proper and reasonable decision the Companies made to convert from average schedule-based to cost-based NECA pool settlements effective October 1, 2011. Specifically, the Companies request that they be allowed to include, as the 2011 Interstate switched access revenue requirement¹⁴ component of 2011 RoR carrier base period revenue¹⁵, the annualized costs reflected in October 1, 2011 settlements.¹⁶ The Companies request that this relief be applied retroactively to the date in which CAF ICC was implemented and distributed effective July 1, 2012, and that all future payments of CAF ICC reflect such cost-based settlements. In this way, the Companies' base period revenue would be "substantially more accurate"¹⁷ in that it would reflect actual, Company-specific, costs instead of amounts based on NECA's average schedule formulas.

CONCLUSION

In this Petition, the Companies seek a limited waiver of the Commission's rules so that they can reflect in 2011 interstate switched access revenue requirement, and by extension their 2011 rate-of-return carrier base period revenue and ongoing eligible recovery amount, the impacts of conversion from average schedule-based to cost-based NECA pool settlements that took effect on October 1, 2011 - a process that concluded well before the release and implementation of the Commission's ICC/USF Transformation Order. As demonstrated herein, Section 1.3's "good cause" standard has been met, and

¹⁴ 47 CFR §51.917(b)(1) and (b)(7)(i)

¹⁵ 47 CFR §51.917(b)(7)

¹⁶ In this regard, the Companies are explicitly not requesting that their base period revenues reflect the actual 2011 revenue requirement, and which was addressed by the Commission in the *Third Order on Reconsideration* (FCC 12-52 at 55-56)

¹⁷ *Third Order on Reconsideration* in WC Docket No. 10-90, et al., rel. May 14, 2012 at 55

grant of this petition is in the public interest. The relief sought in this Petition is limited to the unique circumstances regarding the impact of the conversion from average schedule to cost-based settlements, and the timing thereof, on the Companies' ongoing ability to receive adequate compensation for their provision of interstate switched access services and the ability to reasonably earn their authorized interstate rate of return.

Respectfully Submitted,

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