

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Smart City Telecom Petition for Limited)	CC Docket Nos. 01-92, 96-45; GN Docket
Waiver of the Commission’s Intercarrier)	No. 09-51; WC Docket Nos. 03-
Compensation Revenue Recovery Rules for)	109, 05-337, 07-135, 10-90; WT
Rate of Return Carriers)	Docket No. 10-208

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”)¹ submits these comments in response to the Wireline Competition Bureau’s (“Bureau”) Public Notice (“*Notice*”)² requesting comment on the Petition of Smart City Telecom (“Smart City Petition”)³ for limited waiver of 47 C.F.R. section 51.917(b)(7)(ii). Smart City requires the waiver to allow inclusion in its FY 2011 Base Period revenue amounts that were not billed and collected by March 31, 2012, due to a billing dispute that occurred during FY 2011.⁴ The company excluded the disputed amount when it calculated the FY 2011 Base Period Revenue.⁵ The dispute has been settled and Smart

¹ USTelecom is the premier trade association representing service providers and suppliers of the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See Public Notice, *Wireline Competition Bureau Seeks Comment on Smart City Telecom Petition for Limited Waiver of the Commission’s Intercarrier Compensation Revenue Recovery Rules for Rate-of-Return Carriers*, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208, DA 13-612 (rel. April 4, 2013).

³ See Smart City Telecommunications LLC d/b/a Smart City Telecom Petition for Limited Waiver of 47 C.F.R. § 51.917(b), WC Docket Nos. 10-90, 07-135, 05-337 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; and WT Docket No. 10-208 (filed March 27, 2013).

⁴ *Id* at 1-2.

city received payment for charges incurred in FY 2011 after the March 31, 2012, collection deadline.⁶ Smart City demonstrates good cause for its request for limited waiver. USTelecom urges the Bureau to promptly grant Smart City's waiver request.

I. Smart City's Request for Limited Waiver Meets and Exceeds the Commission's Standards

As noted by the Smart City Petition, the Commission anticipated circumstances similar to its situation. The Commission included language in the *USF/ICC Transformation Order* ("*Order*")⁷ specifying a waiver process for revenues associated with FY 2011 that were not able to be collected by March 31, 2012. The Commission expected such situations to result from the decision of a court or regulatory agency of competent jurisdiction, and thus recommended that the waiver request include a copy of the decision of such a body requiring payment of the disputed intercarrier compensation.⁸ The specified waiver process also includes a showing that the revenues are not already included in the carrier's Baseline, including providing a certification to the Commission to that effect.⁹ Waivers under this provision will be subject to the Commission's traditional "good cause" waiver standard.¹⁰

Smart City should not be denied relief merely because the resolution of disputed revenues billed for terminating switched access service or reciprocal compensation provided in FY 2011 but recovered after the March 31, 2012, cut-off was not the result of decision by "a court or

⁵ *Id.*

⁶ *Id.* at 3-4.

⁷ See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, n. 1745, WC Docket No. 10-90, *et al.*, FCC 11-161 (2011) ("*USF/ICC Transformation Order*" or "*Order*").

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

regulatory agency of competent jurisdiction.”¹¹ Instead, the dispute was settled via negotiations between Smart City and the entity terminating VoIP traffic on Smart City’s network. The settlement agreement between the parties serves the same purpose as “a copy of the decision requiring payment of the disputed intercarrier compensation,”¹² is equally verifiable and auditable, and is thus a suitable substitute. Further, the fact that the intrastate access revenue was billed after March 31, 2012,¹³ has no bearing on its inclusion in the Baseline for Eligible Recovery. The *Order*’s language concerning revenues subject to potential waiver requests addresses terminating switched access service provided in FY 2011 but recovered after the March 31, 2012, cutoff and does not reference the billing date. The revenue in question fulfills the requirements for inclusion in the Baseline.

There is good cause for the Bureau to grant Smart City’s request for limited waiver. Such grant would allow the initial calculation of Eligible Recovery to accurately represent its FY 2011 Base Period Revenue and would not inappropriately penalize the company’s Eligible Recovery going forward. Smart City acted in good faith and in compliance with the Commission’s rules in its initial submission, and the instant Smart City Petition is consistent with those principles. Moreover, grant of the limited waiver is in the public interest as it would allow Smart City to continue to serve its customers consistent with the FCC’s National Broadband Plan goals by enabling it to access the transitional recovery mechanism to the full extent intended by the Commission.

¹¹ *Id.*

¹² *Id.*

¹³ *See* Smart City Petition at 5.

II. Conclusion

Prompt grant of Smart City's request for limited waiver would support the policy objective of the rule concerning calculation of the Baseline for Eligible Recovery. The billing dispute, which was resolved through negotiations, is certainly a special circumstance that warrants a deviation from the general rule, and was actually anticipated by the Commission. Thus grant of the Smart City Petition will serve the public interest.

Respectfully submitted,

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April 15, 2013