

**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
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Fund – Mobility Fund)	WT Docket No. 10-208

ORDER

Adopted: May 14, 2013

Released: May 14, 2013

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. On April 9, 2013, the National Exchange Carrier Association (NECA) filed a petition on behalf of its rate-of-return member carriers seeking expedited clarification or, in the alternative, a waiver of requirements in section 51.909(a)(4) of the Commission's rules for the 2013-2014 annual access tariff filing period.¹ For the reasons explained below, we find good cause to grant NECA a waiver of section 51.909(a)(4) for purposes of the 2013-2014 annual access tariff filing period.

II. BACKGROUND

2. The *USF/ICC Transformation Order* adopted, among other things, an intercarrier compensation (ICC) reform timeline including rules that require carriers to adjust, over a period of years,

¹ See Petition of the National Exchange Carrier Association for Expedited Clarification or Waiver, WC Docket No. 10-90 et. al at 1 (filed April 9, 2013) (NECA Petition). See also 47 C.F.R. § 51.909(a)(4); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 13-564 (Wireline Comp. Bur. rel. Mar. 27, 2013) (*Rule Clarification Order*). The Wireline Competition Bureau issued a Public Notice seeking comment on NECA's petition. See *Pleading Cycle Established for National Carrier Exchange Association Petition for Expedited Clarification or Waiver of Requirements in Section 51.909(a)(4) of the Commission's Rules*, CC Docket Nos. 03-109 et al., Public Notice, DA 13-709 (Wireline Comp. Bur. rel. Apr. 12, 2013). No comments were filed in this proceeding.

many of their legacy interstate and intrastate switched access charges, effective on July 1 of each of those years, with the ultimate goal of transitioning to a bill-and-keep regime.² The Commission also adopted a recovery mechanism to mitigate the impact of reduced ICC revenues on carriers and to facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo*.³ The recovery mechanism allows incumbent local exchange carriers (LECs) to recover ICC revenues reduced due to the ICC reforms, up to a defined baseline, which is defined as “Eligible Recovery.”⁴ A carrier may recover a limited portion of its Eligible Recovery from its end users through a fixed monthly charge called the Access Recovery Charge (ARC), and the remainder of its Eligible Recovery, if it so elects, from Connect America Fund ICC support.⁵

3. In the *USF/ICC Transformation Order*, the Commission stated that “carriers remain free to make elections regarding participation in the NECA pool and tariffing processes during the transition.”⁶ The *USF/ICC Transformation Order* did not provide procedures governing the switched access rate caps when carriers enter or exit the pool.⁷ In the *Rule Clarification Order*, the Bureau adopted section 51.909(a)(4), which sets out a mechanism requiring NECA to adjust its switched access rate caps upon entry and exit of carriers to the NECA pool.⁸ Section 51.909(a)(4) effectuates the Commission’s intent that NECA pooling remain available during the transition, consistent with its historical operation, and ensures that the balance between interstate switched access revenues and Connect America Fund ICC support is maintained and does not affect a rate-of-return carrier’s decision to enter or exit the NECA pool.⁹

4. NECA’s petition seeks expedited clarification or, in the alternative, a waiver of requirements in section 51.909(a)(4). Specifically, NECA requests that the Commission clarify that section 51.909(a)(4) does not require adjustments to NECA’s capped interstate switched access rates when pool participation changes result in *de minimis* impacts.¹⁰ NECA states that during the 2013-2014 tariff periods, pool composition changes will result in changes of only about 0.053% to NECA’s switched access rate caps, and any potential impacts on the Connect America Fund ICC support associated with such changes also would be minor, approximately \$138,500 for the upcoming tariff year.¹¹ NECA argues that the costs of strictly adhering to this new rule outweigh the benefits in such circumstances.¹² In the alternative, NECA requests that the Commission waive section 51.909(a)(4) for the 2013-2014 tariff

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17934-35, para. 801 and Fig. 9 (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).

³ *Id.* at 17677, para. 36.

⁴ *Id.* at 17956, para. 847.

⁵ *Id.* at 17994, para. 918; 47 C.F.R. § 51.917(d)-(f).

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801 and Fig. 9, n.1499.

⁷ See *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, Order, 27 FCC Rcd 15557, 15567, para. 23 (2012) (*Termination Order*) (citing *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, Order Designating Issues for Investigation, 27 FCC Rcd 10311, 10320, paras. 25 (Wireline Comp. Bur. 2012) (*Designation Order*)).

⁸ 47 C.F.R. § 51.909(a)(4). See *Rule Clarification Order*, para. 13.

⁹ See *Rule Clarification Order*, para. 14. See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17934, para. 801, n. 1499.

¹⁰ NECA Petition at 2.

¹¹ *Id.* at 5.

¹² *Id.* at 2, 6.

period.¹³ NECA states that such a waiver would avoid the need for tariff revisions at the federal and state levels required to effectuate *de minimis* changes in rates associated with 2013 pool election changes.¹⁴

III. DISCUSSION

5. We find that good cause exists to grant NECA a limited waiver of section 51.909(a)(4) for purposes of the 2013-2014 annual access tariff filing period.¹⁵ NECA states that only two companies will change their pool participation status during the relevant time period, and calculates that the net impact of the changes under section 51.909(a)(4) will be a 0.053% increase in NECA's switched access rate caps,¹⁶ which NECA estimates will increase Connect America Fund ICC support by approximately \$138,500 for the 2013-2014 annual access tariff filing period.¹⁷ We agree with NECA that this impact is *de minimis* and the costs of strict compliance with section 51.909(a)(4) for the upcoming tariff period outweigh the benefits, given the administrative costs across the industry of implementing such *de minimis* rate changes at both the interstate and intrastate levels.¹⁸ Therefore, we conclude that NECA has demonstrated the existence of special circumstances and we find that granting the requested waiver will serve the public interest.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that, pursuant to sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 51.909(a)(4) of the Commission's rules IS WAIVED for purposes of NECA's annual access tariff filing for the 2013-2014 annual access tariff filing period.

FEDERAL COMMUNICATIONS COMMISSION

¹³ *Id.*

¹⁴ *Id.* NECA also states that a waiver is appropriate because section 51.909(a)(4) is not currently effective since, although the *Rule Clarification Order* was released on March 27, 2013, Federal Register publication has not yet taken place, which would make timely notification to the companies in its Traffic Sensitive Pool difficult. *Id.* at 9.

¹⁵ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc., v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁶ See NECA Petition at 5 (explaining that, for the 2013-2014 annual access tariff filing period, one carrier has notified NECA that it will enter the pool and one carrier has notified NECA that it will exit the pool). See also Letter from Jennifer Leonard, Director-Access, Tariffs & Costs, NECA, to Julie Veach, Chief, Wireline Competition Bureau, Federal Communications Commission (filed Mar. 28, 2013).

¹⁷ NECA Petition at 5-6.

¹⁸ *Id.* at 2, 6-7 (explaining that without the waiver, the NECA companies would incur a significant cost in making corresponding changes to their intrastate rates).

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