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November 6, 2013

By Hand Delivery

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

ACCEPTED/FILED

NOV - 6 2013

Federal Communications Commission
Office of the Secretary

Attention: Wireline Competition Bureau

**Re: Petition for Limited Waiver of 47 C.F.R. § 51.917(b)
Lumos Telephone Inc. and Lumos Telephone of Botetourt Inc.
Connect America Fund, WC Docket Nos. 10-90 et al.**

Dear Ms. Dortch:

On behalf of Lumos Telephone Inc. and Lumos Telephone of Botetourt Inc. (“Lumos Companies”), JSI respectfully submits the above-referenced Petition for Limited Waiver. The Lumos Companies seek a limited waiver of Federal Communications Commission rules Section 51.917(b)(7)(ii), 2011 Rate-of-Return Carrier Base Period Revenue.

The Lumos Companies seek 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 the Lumos Companies’ Petition for Limited Waiver to the undersigned consultant for the Company.

Sincerely,

John Kuykendall
JSI Vice President
301-459-7590
jkuykendall@jsitel.com

Enclosures

cc: Chief, Wireline Competition Bureau

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¹ See Third Protective Order, WC Docket Nos. 10-90 et al., DA 12-1418 rel. Aug. 30, 2012 (“Order”).

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Federal Communications Commission
Office of the Secretary

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 LUMOS TELEPHONE INC. AND
LUMOS TELEPHONE OF BOTETOURT INC.
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 Lumos Telephone Inc. and Lumos Telephone of Botetourt Inc. (collectively the “Lumos Companies” or the “Companies”) hereby request 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 (“FY 2011”) revenues from Transitional

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 51.917(b)(7)(ii).

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Intrastate Access Service received by March 31, 2012. Limited waiver of these rules would allow the Lumos Companies to include in their FY 2011 Base Period Revenue amounts for originating intrastate access revenue associated with dedicated transport access service that was billed and collected but not included due to an inadvertent oversight and which resulted in under-reporting of intrastate access revenue. The Companies request that the grant of the waiver allow for the inclusion of the amounts in the FY 2011 base period as of July 1, 2013.³ The “good cause” waiver standard has been satisfied, and grant of this waiver would be in the public interest.

I. Background

Lumos Telephone Inc. (“Lumos”) is a rural incumbent local exchange carrier (“ILEC”) operating in the Waynesboro, Virginia area serving approximately 20,000 access lines. Lumos Telephone of Botetourt, Inc. (“Lumos Botetourt”) is a rural incumbent local exchange carrier operating in the Roanoke and Botetourt Virginia areas serving approximately 7,000 access lines. The Companies are rate-of-return carriers. Lumos files interstate under the ICORE tariff while Lumos Botetourt participates in the National Exchange Carrier Association, Inc. (“NECA”) Common Line and Traffic Sensitive pools.

³ As explained herein, Lumos will continue to bill all originating traffic that is associated using the current minutes-of-use rate non-Local Transport Restructure elements until action is taken on this waiver request. If the FCC grants this waiver petition and allows Lumos to include the amount in the FY2011 base period as of July 1, 2013, Lumos would refund to carriers the originating intrastate access charges associated with dedicated transport from July 1, 2013 until the date when it converts to Local Transport Restructure (“LTR”) rate structure as it will then be able to recover this revenue as part of the Companies’ Eligible Recovery. This process has been discussed with the Virginia State Corporation Commission (“Virginia SCC”) and the originating rates for 2013 have been approved.

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When Lumos made its annual interstate tariff filing with the FCC on June 18, 2012 and Lumos Botetourt through NECA made its filing that same day, the Companies submitted data to calculate the FY 2011 Base Period Revenue, including the three required components: (1) 2011 Interstate Switched Access Revenue Requirement; (2) FY 2011 revenues from rate elements included in the definition of Transitional Intrastate Access Service received by March 31, 2012 including dedicated transport; and (3) FY 2011 reciprocal compensation revenues received by March 31, 2012, less FY 2011 reciprocal compensation payments made by March 31, 2012. In these filings, however, the Companies excluded originating revenues from FY 2011 Transitional Intrastate Access Service that is associated with dedicated transport that should have been reflected in the base period revenue. This inadvertent oversight was discovered when preparing to migrate to the local transport restructure ("LTR") rate structure for their intrastate access in 2013.

Both Lumos and Lumos Botetourt have non-Local Transport Restructure ("non-LTR") rate structure for intrastate access. The non-LTR rate structure does not have direct trunk rate elements for the intrastate access and instead is billed based on minutes of use. Beginning July 1, 2013, Lumos and Lumos Botetourt have moved to the LTR rate structure at rates equal to interstate level for terminating intrastate access according to the FCC requirements including the flat rate dedicated transport. The Lumos Companies have also been strongly encouraged to migrate originating access to the LTR structure which includes dedicated transport by the Virginia SCC. In order for this to occur without negative financial impacts, however, the Companies must first be granted this instant waiver petition so that they may include in their FY 2011 Base Period Revenue

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amounts for originating intrastate access revenue associated with dedicated transport that was billed and collected.

When the calculations were made by the Companies for their 2012 annual interstate tariff filings, the Companies did not contemplate moving to the LTR structure due to legislation that prevented any change in rate structure. When the state legislation was changed this year (2013) and the Companies began preparing to move to the LTR rate structure for terminating intrastate access, it was determined that if the Companies were to migrate originating access associated with dedicated transport to the LTR structure, a waiver would be required in order to correct the baseline revenue data to include the originating intrastate access revenues associated with dedicated transport. Further, it wasn't until the FCC clarified its rules governing the transitional intrastate access service rates in March of this year (2013) that the Lumos Companies realized that they should have included the originating intrastate access revenues associated with dedicated transport in their baseline revenue data. Specifically, in the March 2013 Clarification Order, the FCC corrected an inadvertent omission in its rules and revised the transitional intrastate access service rate schedule in section 51.909(c)(1) of its rules "to include originating and terminating dedicated transport switched access services rates within the intrastate rate elements that must be reduced to parity with interstate switched access rates beginning July 1, 2013."⁴

⁴ See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order, DA 13-564 (rel. March 27, 2013) para. 21

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Accordingly, the Lumos Companies hereby file this instant waiver to correct this inadvertent oversight and request that the base period for both Lumos Companies be adjusted to include the non-LTR originating intrastate access revenue associated with dedicated transport that the Companies billed and collected during FY 2011. The amounts of the adjustments for Lumos would be [REDACTED] and [REDACTED] for Lumos Botetourt. The Companies further request that these amounts be included in the baseline revenue data as of July 1, 2013 which is when the LTR structure including dedicated transport is required by the FCC and when the most recent annual interstate tariff filing was made.

II. Limited Waiver is Justified

In general, the FCC's rules may be waived for good cause shown.⁵ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁶ 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.⁷

Grant of this waiver is in the public interest. This Base Period Revenue is a critical starting point to calculate the Companies' Eligible Recovery and is part of the

⁵ 47 C.F.R. § 1.3.

⁶ 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*").

⁷ 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).

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 accurately represent the Companies' FY 2011 Base Period Revenue. Further, grant of the limited waiver would serve the public interest in that the Lumos Companies would be able to continue to serve their 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

Limited waiver of Section 51.917 (b)(ii) is requested in order to address an inadvertent oversight by correcting the Companies' baseline revenue data to include the originating intrastate access revenues associated with dedicated transport.

Grant of limited waiver to allow this correction will allow the Lumos Companies to continue expanding their rural telephone network without the impairment that would result from the negative financial impacts of the understated base period revenue.

Respectfully Submitted,

Lumos Telephone Inc.
Lumos Telephone of Botetourt Inc.



By: Mary McDermott
Senior Vice President – Legal and
Regulatory Affairs

Nov. 6, 2013
Date

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Certification of Lumos Telephone Inc. and Lumos Telephone of Botetourt Inc.

I, Mary McDermott, Senior Vice President – Legal and Regulatory Affairs, of Lumos Networks Corp., 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 Lumos Telephone Inc. or the Lumos Telephone of Botetourt Inc. Eligible Recovery Baseline filed with the Federal Communications Commission on June 18, 2012.


Mary McDermott

Nov. 6, 2013
Date