

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Petition for Limited Waiver of Manti Telephone Company of Section 54.313 of the Rules |) | WC Docket No. 11-42 |

**PETITION FOR LIMITED WAIVER OF
SECTION 54.313(j) AND THE DEADLINE FOR FILING OF ANNUAL
REPORTING REQUIREMENTS FOR HIGH-COST RECIPIENTS
AT THE COMMISSION**

Manti Telephone Company (“Manti”; Study Area Code 502282), by its attorney and pursuant to Section 1.3 of the Commission's Rules, requests waiver of Section 54.313(j) and the deadline established by Section 54.313 of the Rules and the Commission's Public Notice,¹ which required a recipient of high-cost support to submit its annual reporting information to the Commission by October 31, 2013. Section 54.313 also requires a recipient of high cost support to file its annual reporting information with the Universal Service Administrative Company ("USAC") and the relevant state commission or Tribal government, as appropriate,² in order to receive high cost support for the following calendar year. In 2013, the Commission required high-cost recipients to submit their report to USAC by October 15, 2013.³ However, due to the shut-down of

¹ *Revised Filing Deadlines Following Resumption of Normal Commission Operations*, Public Notice, DA 13-2025, released October 17, 2013.

² Manti’s study area does not include tribal land.

³ *Wireline Competition Bureau Announces Filing Deadline of October 15, 2013 for Eligible Telecommunications Carriers to File High-Cost and Low-Income Annual Reports*, PUBLIC NOTICE, WC Dockets No. 10-90 and 11-42, DA 13-1707, released August 6, 2013.

the federal government, the Commission extended the time period to file the report with the Commission until October 31, 2013. Manti made the required 54.313 filing with USAC on October 4, 2013, well before the filing deadline. Manti also filed its report with the Public Service Commission of Utah ("Utah PSC"). However, due to the government shutdown, followed by an inadvertent oversight, the report submitted to USAC was not filed with the Commission until January 7, 2014. Accordingly, Manti seeks a waiver of the deadline as it applies to the filing before the Commission. Manti also seeks a waiver of the penalty provisions in Section 54.313(j).

Factual Background

Manti is a rural incumbent local exchange carrier ("RLEC") that serves approximately 2,701 access lines in rural Utah. Manti has been an eligible telecommunications carrier ("ETC") since the Universal Service provisions of the Telecommunications Act of 1996 were implemented. Manti prepared the materials for the annual report for high cost recipients well before the due date for the report established by the Commission and, in fact, Manti completed and submitted the electronic filing form to USAC on October 4, 2013. Manti also filed a copy of the report with the Utah PSC on October 15, 2013. Manti was unable to file a copy of the report with the Commission at that time because the federal government was shut down and the Commission was not accepting filings.

On October 17, 2013, after the federal government shutdown was over, the Commission released a Public Notice establishing October 31, 2013, as the deadline for ETCs to file the reports at the Commission. On October 18, 2013, Manti attempted to forward a copy of the report electronically to counsel with a request that it be submitted

to the Commission. However, it does not appear that counsel received Manti's email, and the filing deadline was not met. Manti discovered this issue during an end-of-the-year review of its filings, and had counsel file the report with the Commission on January 7, 2014.

Good Cause Exists for Waiver of the Section 54.313 Deadline and the Penalties in Section 54.313(j)

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. 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). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

The Bureau has waived various USF filing deadlines where there was confusion caused by new filing deadlines.⁴ The Bureau also has waived various USF filing deadlines where carriers promptly made the required filing once the error was discovered and revised their internal procedures to ensure compliance with the Commission's Rules and with future universal service filing deadlines. See, for example, *Petitions for Waiver of Universal Service High-Cost Filing Deadlines (Cedar-Wapsie Communications, Inc. et*

⁴ *Connect America Fund; ACS Wireless, Inc. Petition for Waiver of Section 54.313(j) of the Commission's Rules*, WC Docket No. 10-90, *Order*, 27 FCC Rcd 11107, (rel. Sept. 17, 2012). (*Waiver Order*). See also, *Connect America Fund, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Chillicothe Telephone Company Petition for Waiver of Section 54.303(d)(1) Deadline to File Connect America Fund Intercarrier Compensation Eligibility Support Data*, WC Docket No. 10-90, CC Docket Nos. 01-92 and 96-45, *Order*, 27 FCC Rcd 13200 (rel. Oct. 19, 2012).

al.), DA 11-1337 (WCB, rel. August 2, 2011); and *Petitions for Waiver of Universal Service High-Cost Filing Deadlines (Western New Mexico Telephone Company, Inc. et al.)*, DA 10-107(WCB, rel. January 22, 2010). In the majority of the instances dealt with in these orders, the recipient missed a USAC-only filing deadline, or filed late with both the Commission and USAC. In contrast here, Manti made timely filings with both USAC and the Utah PSC, but was late in making the filing with the Commission.

Good cause exists for the requested waiver because: (a) Manti made material and substantial attempts to comply with the annual reporting requirement, and in fact made the requisite filing with USAC and the Utah PSC in timely fashion; (b) a convergence of unique and unusual circumstances surrounding the new filing requirement contributed to confusion in monitoring the status of the reporting deadlines; (c) Manti promptly filed the report with the Commission as soon as possible after it learned that the report had not been filed with the Commission; (d) Manti has a previously unblemished record of compliance with Commission reporting requirements and Manti has put in place internal procedures to ensure that its Universal Service filings will be received by the Commission, USAC and the Utah PSC in timely fashion; (e) grant of the requested waiver will have no adverse impact upon USAC's administration of the high-cost support program for 2014; and (f) the loss or significant delay of any of the approximately \$460,000.00 of annual high cost support to which Manti is otherwise entitled for 2014 will seriously and adversely impair the company's finances and operations.

A. Material and Substantial Compliance Efforts

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by Manti to comply with the requirements

of Section 54.313 to qualify for and receive high cost support for 2014. As indicated above, Manti made a timely filing with the Commission's agent, USAC, and the Utah PSC pursuant to Section 54.313 of the Commission's Rules. Compliance with the new reporting requirements, navigating the new Form 481, and managing the different filing dates for different jurisdictions added complexity to the process. Manti made substantial, material, timely and good faith efforts to ensure full compliance. Manti met two thirds of the filing requirement by the applicable deadlines, but did not meet the third requirement (filing with the Commission) because of extraordinary circumstances, including a Government shutdown and, subsequently, a technical glitch in electronic communication that resulted in the omission to file the report with the Commission on time.

B. A Convergence of Unique and Unusual Circumstances Created Confusion

A number of new filing requirements went into effect with the October 2013 Form 481. In addition, the form itself, and the new electronic filing procedure for filing the form at USAC was new with the October 2013 filing. The filing procedures were further complicated by the shut-down of the federal government, which led to different filing dates for the USAC and Commission filing. In addition, Manti's long-standing executive responsible for universal service filings recently retired from the day-to-day management of the company, and new Manti personnel without prior experience with Commission filing requirements became responsible for the October 2013 filings. The convergence of these factors further contributed to the oversight in monitoring the status of the filing of the report at the Commission.

C. Prompt Remedy of Situation

Manti was alerted to an issue with its Commission filing when it performed a year-end review of its universal service filing records. Manti contacted its counsel who confirmed on January 6, 2014, that the Commission filing had not been made. Upon this unexpected discovery, Manti immediately filed the report with the Commission on January 7, 2014.

D. Revised Internal Procedures

Manti has been in existence for over 100 years and in that time, Manti has taken seriously and without fail its obligation to fully comply with all regulatory requirements and, in particular, Commission rules and filing requirements. Prior to this current report, Manti's record of compliance has been unblemished.

Manti and its counsel are investigating how and why Manti's electronic communication concerning the filing of the annual report for high cost recipients was not received, which at this point is unknown. However, in order to ensure that Manti files all future universal service reports on time, and to ensure that any future such omissions do not result in a late filing, Manti's management is updating its policies to monitor and confirm the filing of all future filings for Universal Service Fund mechanisms. Specifically, for any filing not directly submitted by Manti employees, Manti and its counsel or consultants will engage in two additional rounds of phone calls and/or emails in connection with the filing: (a) the first round, when the files are sent to Manti's counsel or consultant to ensure receipt; and (b) the second round, on or before each specific filing deadline, to verify that specific documents have been filed with and received by the Commission, USAC and the state commission. Manti's revised internal procedures to

track and verify filings to the Commission, USAC and the state commission are prudent and sufficient.

E. No Adverse Impact on Universal Service Administration

USAC has had Manti's report for high cost recipients since October 4, 2013, before the required deadline for submitting the report to USAC. In addition, USAC has all of the other data required to be filed by high cost recipients for the purpose of calculating high cost support amounts for 2014. Accordingly, the untimely filing of the report with the Commission has not delayed USAC in processing high cost support. Thus, grant of Manti's requested waiver will not adversely impact administration of the high cost program.

F. Adverse Impact upon Revenues and Operations

Manti is a very small company in rural Utah that relies on federal universal service support to provide high quality communications, including broadband service, to the rural customers it serves. In Manti's case, federal high cost support amounts to approximately \$460,000.00 annually for 2014, or approximately \$115,000.00 per quarter. A loss of this critical revenue stream will adversely impact Manti's financial position, loan covenants, and day-to-day operations. This is supported by Manti's confidential financial statement filed with the Commission.⁵

⁵ In addition, because of the delay in the due date for filing the report at the Commission until October 31, 2013, the strict application of the reductions in high cost support set out in Section 54.313(j), if applicable, would have an excessive and unfair impact on Manti. Strict application also would appear to be contrary to the Commission's intent, as set out in the *Waiver Order*. In the *Waiver Order* at paragraph 3, the Bureau stated that the "extent of support reduction is based on how late the ETC is in filing its report" and described the application of Section 54.313(j), as potentially resulting in the loss of one quarter of high cost support if the filing deadline is missed; two quarters of high cost support if the filing deadline is missed by three months; and three quarters of high cost

In addition, there are no other wireline voice providers in Manti's study area and Manti is the only wireline entity that provides broadband service throughout its study area.⁶ Accordingly, any loss of support, with the accompanying impact on Manti's ability to provide voice and broadband service, will adversely impact the public in this rural area of Utah.

Conclusion

Good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant expedited grant of Manti's requested waiver of the October 31, 2013, deadline and the penalties established by Section 54.313(j) of the Rules for the filing with the Commission of the annual report for high cost recipients. The requested waiver is consistent with Commission and Bureau precedent, and is supported by: (a) Manti's compliance in timely fashion with the filing of the annual report for high cost recipients at USAC and the state commission; (b) the unique circumstances that contributed to confusion in connection with the filing deadlines; (c) Manti's prompt submission of the report to the Commission once the oversight was discovered; (d) Manti's establishment of updated internal procedures to ensure that universal service filings are made in timely fashion; (e) the lack

support if the filing deadline is missed by six months. However, the exact language of Section 54.313(j) states the penalty in terms of specific dates (e.g. October 1 and January 1). In this case, Manti filed the report on time in two out of three jurisdictions and it completed its filing well before the expiration of three months. Accordingly, the strict application of Section 54.313(j) would have an excessive and unfair impact on Manti. Moreover, as shown above, in Manti's case, this penalty should be waived by the Commission in its entirety.

⁶ There is one competitive wireline broadband provider in Manti's study area, but this entity does not provide voice service and it does not serve the entire study area. In addition, although there are wireless providers in Manti's study area, wireless service in this rural part of Utah is not available to all parts of the study area on a consistent basis.

of any significant adverse impact upon the Commission's or USAC's administration of high cost support for the current year; and (f) the avoidance of severe hardship to Manti's rural subscribers by loss of high cost support.

Good cause having been shown, the Commission is requested expeditiously to waive the October 31, 2013 deadline and the penalties established by Section 54.313(j) of the Rules for filing of the annual report for high cost support recipients with the Commission, so that Manti can receive high cost support payments for all quarters in 2014.

Respectfully submitted,

MANTI TELEPHONE COMPANY

By: /s/ Mary J. Sisak

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Its Attorney

Dated: January 9, 2014

DECLARATION

I, Dallas Cox, Vice President and General Manager of Manti Telephone Company, hereby declare under penalty of perjury under the laws of the United States of America that I have reviewed the foregoing **PETITION FOR LIMITED WAIVER OF SECTION 54.313(j) AND THE DEADLINE FOR FILING OF ANNUAL REPORTING REQUIREMENTS FOR HIGH-COST RECIPIENTS AT THE COMMISSION** (Petition) and that the statements made in the Petition are true and correct.

Certifying signature:

A handwritten signature in cursive script that reads "Dallas M Cox". The signature is written in black ink and is positioned above a horizontal line.

Dallas Cox

Vice President and General Manager
Manti Telephone Company

Date: January 9, 2014