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April 29, 2014

**VIA ECFS**

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

Attention: Wireline Competition Bureau

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

Dear Ms. Dortch:

On behalf of Etex Telephone Cooperative, Inc. ("Etex"), JSI respectfully submits the above-referenced Petition for Limited Waiver. Etex seeks a limited waiver of Federal Communications Commission rules Section 51.917(b)(7)(ii), 2011 Rate-of-Return Carrier Base Period Revenue.

Please direct inquiries regarding the Etex Petition for Limited Waiver to the undersigned consultant for the Company.

Sincerely,

John Kuykendall  
JSI Vice President  
301-459-7590  
[jkuykendall@jsitel.com](mailto:jkuykendall@jsitel.com)

Enclosures

cc: Chief, Wireline Competition Bureau

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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 a 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 ETEX TELEPHONE COOPERATIVE, 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”),<sup>1</sup> Etex Telephone Cooperative, Inc. (“Etex” or the “Company”) hereby requests a limited waiver of 47 C.F.R. Section 51.917(b)(7)(iii).<sup>2</sup> As explained herein, 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”) Interstate Switched Access Revenue Requirement. Limited waiver of these rules would allow the Company to include in their FY 2011 Base Period Revenue amounts for historically determined interstate switched access revenue requirement which were mistakenly excluded in the calculation of the Company’s Base Period Revenue. The Company requests that the grant of the waiver allow for the adjustment of

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 51.917(b)(7)(iii).

the amounts in the FY 2011 base period as of July 1, 2012. The “good cause” waiver standard has been satisfied, and grant of this waiver would be in the public interest.

## **I. BACKGROUND**

Etex is a rural incumbent local exchange carrier (“ILEC”) operating in Gilmer, Texas serving approximately 10,900 access lines. The Company is a rate-of-return carrier and files its interstate tariff under Etex Telephone Cooperative, Inc. Tariff F.C.C. No. 1.

When Etex made its annual interstate tariff filing with the FCC on June 18, 2012, and amended June 29, 2012, the Company 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; 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 Company filed incorrectly pertaining to historically determined interstate switched access revenue requirement. The amount that should have been filed was \$434,925; however, the Company filed \$291,178. This oversight was brought to the Company’s attention in March 2014 by the outside consultant who prepared the CAF-ICC support data. Accordingly, the Company respectfully requests the Commission waive its rules to allow the Company to include the difference, \$143,747, in its Base Period Revenue effective as of July 1, 2012.

## **II. LIMITED WAIVER IS JUSTIFIED**

In general, the FCC’s rules may be waived for good cause shown.<sup>3</sup> Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> 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*”).

<sup>5</sup> 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).

The Commission anticipated that there would be circumstances where revenues associated with FY 2011 were not able to be collected by March 31, 2012 and allowed for a waiver of the March 31, 2012 deadline in its USF-ICC Transformation Order.<sup>6</sup> Specifically, the Commission stated:

Carriers may, however, request a waiver of our rules defining the Baseline to account for revenues billed for terminating switched access service or reciprocal compensation provided in FY2011 but recovered after the March 31, 2012 cut-off as the result of the decision of a court or regulatory agency of competent jurisdiction.<sup>7</sup>

Although the facts in this case differ somewhat, the overall purpose of the waiver is the same – to allow a company to include the entirety of the proper Baseline components.

Grant of this waiver is in the public interest. Etex submitted its FY 2011 Base Period Revenue data in compliance with the Commission’s rules and in good faith. This Base Period Revenue is a critical starting point to calculate the Company’s Eligible Recovery and is part of the 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 Company’s FY 2011 Base Period Revenue and would not inappropriately penalize the Company’s Eligible Recovery going forward.<sup>8</sup> Further, grant of the limited waiver would serve the public interest in that the Company would be able to continue to serve its 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.

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<sup>6</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“USF-ICC Transformation Order”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10<sup>th</sup> Cir. Filed Dec. 8, 2011)

<sup>7</sup> *Id.* at footnote 1745. To the extent necessary, Etex also seeks waiver of the provision that waivers of this nature are a result of “the decision of a court or regulatory agency of competent jurisdiction”.

<sup>8</sup> To illustrate, if the waiver is not granted, the exclusion of the \$143,747 would have a cumulative negative effect of approximately \$1.1 million over the next ten years.

### III. CONCLUSION

Limited waiver of Section 51.917(b)(7)(iii) is requested in order to address an oversight by correcting the Company's eligible recovery Base Period Revenue to include \$143,747 in the FY 2011 Interstate Switched Access Revenue Requirement for the CAF Baseline. Grant of limited waiver to allow this correction will allow the Company to continue network investments that will otherwise be undermined as a result of the negative financial impacts of the understated Base Period Revenue.

Respectfully submitted,



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Charlie Cano  
General Manager  
Etex Telephone Cooperative, Inc.  
1013 State Highway 155 N  
P.O. Box 130  
Gilmer, Texas 75644

4-28-14  
Date

**Certification of Etex Telephone Cooperative, Inc.**

I, Charlie Cano, General Manager of Etex Telephone Cooperative, Inc., hereby certify that none of the historically determined interstate switched access revenue requirement that is the subject of this Petition for Limited Waiver was included in the Etex Telephone Cooperative, Inc. Eligible Recovery Baseline filed with the Federal Communications Commission on June 18, 2012 and amended June 29, 2012.

  
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Charlie Cano